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FRANKFORT, KENTUCKY

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TUESDAY, MAY 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 May 11, 1990. See tentative agenda on pages 2307-23(in this Administrative Register.

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - May 11, 1990
(Rm. 107, Capitol Annex @ 10 a.m.)

PERSONNEL BOARD

Personnel Board

101 KAR 1:365. Appeal and hearing procedures.

101 KAR 1:367. Standards of conduct and technology governing electronic media and still photography coverage of board proceedings.

FINANCE AND ADMINISTRATION CABINET
Department for Administration

Travel Expense and Reimbursement

200 KAR 2:006 & E. Employees' reimbursement for travel.

GENERAL GOVERNMENT CABINET

Board of Pharmacy

201 KAR 2:074. Pharmacy services in hospitals. (Amended After Hearing) (Deferred from April Meeting)

201 KAR 2:076. Parenteral pharmaceutical compounding. (Amended After Hearing) (Deferred from April Meeting)

Board of Hairdressers and Cosmetologists

201 KAR 12:125. Schools' student regulations.

Department of Agriculture

Organic Agricultural Product Certification

302 KAR 40:010. Standard organic agricultural product requirements. (Deferred from April meeting)

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

Water Quality (Regulations filed in November, 1989)

401 KAR 5:026. Classification of waters. (Amended After Hearing) (Deferred from January Meeting)

401 KAR 5:029. General provisions. (Amended After Hearing) (Deferred from January Meeting)

401 KAR 5:031. Surface water standards. (Amended After Hearing) (Deferred from January Meeting)

Water Quality (Regulations filed in March, 1990)

401 KAR 5:029. General provisions.

401 KAR 5:040. Treatment requirements, coal remining operations.

CORRECTIONS CABINET

Office of the Secretary

501 KAR 6:060. Northpoint Training Center.

501 KAR 6:110 & E. Roederer Farm Center. (Deferred from April Meeting)

EDUCATION AND HUMANITIES CABINET
State Board for Elementary and Secondary Education
Office of Administration and Finance

Food Service Programs

702 KAR 6:090. Competitive food and beverage sales and service requirements.

Office of Local Services

School Terms, Attendance and Operation

702 KAR 7:090. Requirements for coaches and other personnel staffing interscholastic athletic programs.

Office of Instruction

Instructional Services

704 KAR 3:304. Required program of studies.

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.

704 KAR 3:360. Parenting and family life skills.

Teacher Certification

704 KAR 20:005. Kentucky standards for preparation-certification of professional school personnel program approval.

704 KAR 20:057. Certificate endorsements for certain subjects.

704 KAR 20:570. Approval for teaching business education, grades 5-8.

MOREHEAD STATE UNIVERSITY

Board of Regents

755 KAR 1:010. Acquisition and disbursement of funds, accounting system - records and annual report.

755 KAR 1:020. Delegation of financial management responsibility.

755 KAR 1:030. Annual audit.

755 KAR 1:040. Purchase - inventories - sales of surplus property procedures.

755 KAR 1:050. Issuance of bonds.

755 KAR 1:060. Fund for excellence.

LABOR CABINET
Office of Labor-Management Relations

Kentucky Labor-Management Matching Grant Program
803 KAR 6:010. Kentucky Labor-Management Matching Grant Program.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

Utilities
807 KAR 5:041. Electric. (Amended After Hearing)

Department of Housing, Buildings and Construction
Division of Plumbing

Plumbing
815 KAR 20:020.Parts or materials list.
815 KAR 20:191. Minimum fixture requirements.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance

Unemployment Insurance
903 KAR 5:290 & E. Employer contribution rates.

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 the regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. 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
810 KAR 1:050

The attached amendment to 810 KAR 1:050 is required on an emergency basis inasmuch as there is not sufficient time for the amendment to be effective if processed as a routine change. The regulation will only have bearing on the Dueling Grounds meet scheduled for April 22, 1990. A regular proposed amendment to an administrative regulation is being filed at the same time to make these changes permanent by replacing the emergency filing. The changes are necessary due to the circumstances associated with conducting a one day meet drawing horses from several countries. In particular, many horses will not have an opportunity to be clocked for a published work-out and steeplechase racing in general does not make use of such work-outs. Hence, our proposal to delete that requirement. Additionally, a numerical reference in this regulation to another regulation relating to off-track stables requires changing since the off-track stable regulation itself was renumbered as part of an unrelated change.

WALLACE G. WILKINSON, Governor
LYLE G. ROBEY, Chairman

PUBLIC PROTECTION & REGULATION CABINET
Kentucky State Racing Commission

810 KAR 1:050E. Steeplechase racing.

RELATES TO: KRS 230.361
STATUTORY AUTHORITY: KRS 230.215
EFFECTIVE: March 30, 1990
NECESSITY AND FUNCTION: To regulate conditions on which steeplechase races shall be conducted when there is pari-mutuel wagering.

Section 1. Definitions. (1) "Steeplechase race" means a running contest between thoroughbred horses, ridden by jockeys, over a prescribed course which may include obstacles or jumps and which is conducted at a racing association licensed by the Kentucky State Racing Commission.

(2) For steeplechase races, "recognized meeting" means any meeting with regularly scheduled races for thoroughbreds, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority which has reciprocal relations with the Jockey Club and whose race records can be provided an association by the Jockey Club.

(3) A foreign substance is defined as all substances except those which exist naturally in the untreated horse at normal physiological concentration, and substances or metabolites thereof, which are contained in equine feeds or feed supplements, do not contain pharmacodynamic or chemotherapeutic agents, and do not interfere with the detection of prohibited foreign substances.

Section 2. All steeplechase races on which pari-mutuel wagering is conducted shall be in accord with this regulation and all other provisions of KAR Title 810 except as noted in the sections of this regulation.

Section 3. For steeplechase races, "maiden" means a horse which, at the time of starting, has never won a race at a recognized meeting, except as follows:

(1) In the races on the flat, a horse is still a maiden although the winner of a steeplechase.

(2) In a steeplechase, a horse is still a maiden although the winner of a flat race.

Section 4. For steeplechase races, a horse shall be considered a "starter" immediately upon the assistant starter dropping the flag.

Section 5. For steeplechase races, the "weight for ages" schedule in 810 KAR 1:014, Section 1(12) shall not apply. Each association desiring to conduct steeplechase races shall submit to the commission for its approval a "weight for ages schedule for steeplechase races" as a part of its application for race dates.

Section 6. For steeplechase races, 810 KAR 1:006, Section 33 shall not apply.

Section 7. For steeplechase races, 810 KAR 1:012, Section 7 shall not apply.

Section 8. For steeplechase racing 810 KAR 1:012, Section 9(3) shall not apply.

Section 9. Notwithstanding other provisions of KAR Title 810, spurs shall be allowed for steeplechase races.

Section 10. For licensed steeplechase associations [races], the provisions of 810 KAR 1:013, Section 4 [3] shall not apply. For steeplechase races, the provisions of 810 KAR 1:013, Section 3(7) shall not apply.

Section 11. Notwithstanding the provisions of 810 KAR 1:018 for steeplechase races, no horse participating in any race shall carry in its body any foreign substance.

Section 12. For steeplechase races, stewards shall serve from one (1) minute after midnight on the day before entries are made until one (1) minute before midnight on the day after the last racing day of the race meeting for which they are appointed; provided, in the event a dispute or controversy arises during a race meeting which is not settled at the conclusion of the race meeting, then the power of the stewards shall be extended over the period necessary to resolve the matter, or until the matter is referred or appealed to the commission.

Section 13. For steeplechase races, 810 KAR 1:009, Section 4(1) and (2) shall not apply. For such steeplechase races, the apprentice allowance shall be ten (10) pounds until he has ridden a winner, seven (7) pounds until he has ridden an additional four (4) winners; five (5) pounds until he has ridden ten (10) winners.

Section 14. For steeplechase races, the Jockey Club registration certificate of each horse must be filed with the horse identifier within one (1) hour after the horse's arrival on the grounds.

Section 15. For steeplechase races, 810 KAR 1:014, Section 1(11) shall not apply and ten (10) pounds is the limit of overweight any horse is permitted to carry with the exception of when the rider is an amateur, in which case there is no limit.

LYLE C. ROBEY, Chairman
APPROVED BY AGENCY: March 28, 1990
FILED WITH LRC: March 30, 1990 at 1 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:016E

This emergency administrative regulation is adding the income of an individual receiving mandatory or optional state supplementary payments under Section 1616(a) of the Act or under Section 212 of P.L. 93-66 to the excluded income section in accordance with 45 CFR 233.20(a)(3)(x). This section will also include an exclusion for other benefits mandated by federal regulation or legislation. Also, the criteria for shortening an ineligibility period based on receipt of lump sum income is being expanded. This revision clearly defines "unavailability" and "beyond the control" as required by federal regulations. These definitions are being broadened beyond "life threatening situations". Another revision includes the Transitional Child Care Program which must be implemented by April 1, 1990, as mandated by the Family Support Act of 1988. In addition, the recoupment section is being revised to delete the waiver of collections of inactive nonfraud overpayments of less than $35. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler.

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

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

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

RELATES TO: KRS 205.200(2), 205.210(1), 42 CFR 435.831, 45 CFR 233
STATUTORY AUTHORITY: KRS 205.200(2)
EFFECTIVE: March 29, 1990
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Assistance group" is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The assistance group shall include the dependent child, child's eligible parent(s), and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his eligible parent(s), the minor's parent(s) shall also be included in the assistance group if the minor's parent applied for assistance. The incapacitated natural or adoptive parent of the child(ren) who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent/legal guardian is considered any person under the age of eighteen (18).

(3) "Sanctioned individual" means any person who is required to be included in the assistance group but who is excluded from the assistance group due to failure to fulfill an eligibility requirement.

(4) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(5) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(6) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in a General Educational Development (GED) program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time; or

(d) Eight (8) clock hours per month in a literacy program.

(e) Twenty-five (25) clock hours per week in combination programs.

(7) "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(8) "Combination programs" means any educational program which includes as its basis literacy or GED. This program must also include life skills, skills training or job readiness training.

(9) "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 7 of this regulation, and any educational allowance as set forth in Section 8 of this regulation.

(10) "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(11) "Recoupment" means recovery of overpayments of assistance payments.

(12) "Retrospective budgeting" means computing amount of assistance based on actual income and circumstances which existed in the second month prior to the payment month.

(13) "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

(14) "Unavailable" means that the income is not accessible to the AFDC benefit group for use toward basic food, clothing, shelter, and utilities.

(15) "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible;

(c) Expenditure of the lump sum income to meet extraordiary expenses, that are not included in the AFDC Standard of Need.

Section 2. Resource Limitations. Real and personal property owned in whole or in part by an applicant or recipient including sanctioned individual(s) and his parent(s), even if the parent(s) is not an applicant or recipient, if the applicant/recipient is a dependent child living in the home of said parent, shall be considered. The amount that can be reserved by each assistance group shall not be in excess of $1,000 equity value excluding those items specifically listed in subsection (1) of this section as follows:

(1) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Home furnishings, including all appliances;

(c) Clothing;

(d) One (1) motor vehicle, not to exceed $1,500 equity value;

(e) Farm machinery, livestock or other inventory, and tools and equipment other than farm, used in a self-employment enterprise;

(f) Items valued at less than fifty (50) dollars each;

(g) One (1) burial plot/space per family member;

(h) Funeral agreements not to exceed maximum equity of $1,500 per family member;

(i) Real property which the assistance group is making a good faith effort to sell. This exemption shall not exceed a period of nine (9) months and is contingent upon the assistance group agreeing to repay AFDC benefits received beginning with the first month of the exemption. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment. The amount of the repayment shall not exceed the net proceeds of the sale. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Other items/benefits mandated by federal regulations.

(2) Disposition of resources. An applicant/recipient shall not have transferred or otherwise divested himself/herself of property without fair compensation in order to qualify for assistance. If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limitation, the household's application shall be denied, or assistance discontinued. The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer. If the amount of excess transferred resources does not exceed $500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

Section 3. Income Limitations. In determining eligibility for AFDC the following will apply:

(1) Gross income test. The total gross non-AFDC income of the assistance group, as well as income of parent(s), sanctioned individuals and amount deemed available from the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group, and amount deemed available from a stepparent(s) living in the home, and amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor, shall not exceed the gross income limitation standard. Disregards specified in Section 4(1) of this regulation shall apply. If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.

(2) Applicant eligibility test. If the gross income is below the gross income limitation standard and the assistance group has not received assistance during the four (4) months prior to the month of application, the applicant eligibility test shall be applied. The total gross income after application of exclusions/disregards set forth in Section 4(1) and (2) of this regulation shall be compared to the assistance standard set forth in Section 7 of this regulation. If income exceeds this standard, the assistance group is ineligible. For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation. If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4(1), (2), and (3) of this regulation. If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible. Amount of assistance for the initial two (2) months of eligibility shall be determined prospectively in accordance with 45 CFR 233.34 and for subsequent months retrospectively, in accordance with 45 CFR 233.35.

(4) A period of ineligibility shall be established in accordance with 45 CFR 233.20(a)(3)(ii)(F), for applicants/recipients whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income. The ineligibility period shall be recalculated if any of the following circumstances occur:

(a) The standard of need increases and the amount of grant the assistance group would have received also changes.

(b) Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group. [The income received has become

unavailable to the assistance group for reasons beyond their control.]

(c) The assistance group incurs and pays necessary medical expenses not reimbursable by a third party in accordance with 42 CFR 435.831(C).

Section 4. Excluded/Disregarded Income. All gross non-AFDC income received or anticipated to be received by the assistance group, natural parent(s) and parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group and stepparent(s) living in the home, shall be considered with the applicable exclusions/disregards as set forth below:

(1) Gross income test. All incomes listed below shall be excluded/disregarded:

(a) Disregards applicable to stepparent income and/or income of the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with the assistance unit, as set forth in Section 5 of this regulation;

(b) Disregards applicable to alien sponsor's income, as set forth in Section 6 of this regulation;

(c) Disregards applicable to self-employment income, as set forth in 45 CFR 233.20(a)(6)(v)(B);

(d) Work Incentive Program (WIN) incentive payments;

(e) Earnings received by a dependent child from participation in the Summer Youth Program, Work Experience Program, Limited Work Experience Program, and Tryout Employment Program under the Job Training Partnership Act (JTPA) for a period not to exceed six (6) months within a given calendar year, effective March 1, 1988;

(f) Unearned income received by a dependent child from participation in a JTPA program;

(g) Reimbursement for training-related expenses made by a manpower agency to applicants or recipients in institutional and work experience training programs under the WIN program;

(h) Value of the monthly allotment of food stamp coupons or value of United States Department of Agriculture (USDA) donated foods;

(i) Nonemergency medical transportation payments;

(j) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program;

(k) Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans to any undergraduate made or insured under any program administered by the United States Commissioner of Education;

(l) Highway relocation assistance;

(m) Urban renewal assistance;

(n) Federal disaster assistance and state disaster grants;

(o) Home produce utilized for household consumption;

(p) Housing subsidies received from federal, state or local governments;

(q) Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of Public Law 94-114 that became effective October 17, 1975;

(r) Funds distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, Public Law 93-134 or Public Law 94-540;

(s) Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

(t) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under Titles II and III, pursuant to Section 418 of Public Law 93-113;

(u) Payments to volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of Public Law 93-113 except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater than the minimum wage under state or federal law, whichever is greater;

(v) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended;

(w) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, adult foster care, or subsidized adoption;

(x) Payments made under the Low Income Home Energy Assistance Act (LIHEAP) and other energy assistance payments which are permitted to be excluded pursuant to 45 CFR 233.53 (c)(5)(i);

(y) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(z) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance;

(aa) Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group; and

(bb) Effective January 3, 1989, loans.

(cc) Effective June 1, 1989, up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II.

(dd) Effective June 1, 1989, the essential person's portion of the SSI check.

(ee) The advance payment or refund of earned income tax credit (EITC).

(ff) Income of an individual receiving mandatory or optional state supplementary payments under Section 1616(a) of the Social Security Act or under Section 212 of P.L. 93-66.

(gg) Other benefits mandated by federal regulations or legislation.

(2) Applicant eligibility test. The exclusions/disregards set forth in subsection (1) of this section and those listed below shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(d) Child care, for a child(ren) or incapacitated adult living in the home and

receiving AFDC, is allowed as a work expense is allowed not to exceed $175 per month per individual for full-time employment or $150 per month per individual for part-time employment, or $200 per month per individual for child under age two (2).

(3) Benefit calculation. After eligibility is established, exclude/disregard all incomes listed in subsections (1) and (2) of this section as well as:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. The one-third (1/3) portion of this disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his earned income. The thirty (30) dollar portion of this disregard shall be applied concurrently with the one-third (1/3) disregard, however, it shall be extended for an additional eight (8) months following the four (4) months referenced in the preceding sentence. These disregards shall be applied in accordance with 45 CFR 233.20(a)(11)(i)(D) and 45 CFR 233.20(a)(11)(ii)(B) and shall not be available to the individual until he/she has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Disregards from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in such employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at such job or training would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for such work in the community was not made; or

5. Effective February 1, 1988, the child care arrangement is terminated through no fault of the client; or

6. Effective February 1, 1988, the available child care does not meet the needs of the child(ren), e.g., handicapped or retarded children.

(b) Fails to make a timely report of earnings unless good cause exists as follows:

1. The assistance group moved and reported the move timely, however, the move resulted in a delay in receiving or failure to receive the mandatory monthly report form; or

2. An immediate family member living in the home was institutionalized or died during the filing period; or

3. The specified relative was out of town during the entire filing period; or

4. The assistance group has been directly affected by a natural disaster (i.e., fire, flood, storm, earthquake).

(c) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section.

(5) Sanction exception. The earned income of sanctioned individuals shall be counted without providing the exclusion/disregards in either subsections (2) and (3) of this section.

Section 5. Income and Resources. Income and resources of a stepparent living in the home with a dependent child and parent(s)/legal guardian(s) living in the home with a minor parent/legal guardian but whose needs are not included in the grant are considered as follows:

(1) Income. The gross income is considered available to the assistance group, subject to the following exclusions/disregards:

(a) The first ninety (90) dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for the appropriate family size, for the support of the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian and any other individuals living in the home but whose needs are not taken into consideration in the AFDC eligibility determination and are or may be claimed by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian as dependents for purposes of determining his federal personal income tax liability;

(c) Any amount actually paid by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian to individuals not living in the home who are or may be claimed by him as dependents for purposes of determining his/her personal income tax liability;

(d) Payments by the stepparent and parent(s)/legal guardian(s) of a minor parent/legal guardian for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent and parent(s)/legal guardian(s) of a minor parent/legal guardian receiving Supplemental Security Income (SSI) under Title XVI.

(2) Sanction exception. The needs of any sanctioned individual are not eligible for the exclusion(s) listed in this section.

(3) Resources. Resources which belong solely to the stepparent and parent(s)/legal guardian(s) of a minor parent/legal guardian are not considered in determining eligibility of the parent or the assistance group.

Section 6. Alien Income and Resources. For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor. The gross non-AFDC income and resources of an alien's sponsor shall be deemed available to the alien(s), subject to disregards as set forth below, for a period of three (3) years following entry into the United States. If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens. A sponsored alien is ineligible for any month in which adequate information on the sponsor/sponsor's spouse is not provided. If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years

from date of entry into the United States, unless it is determined that the sponsoring agency or organization is no longer in existence or does not have the financial ability to meet the alien's needs. The provisions of this section shall not apply to those aliens identified in 45 CFR 233.51(e).

(1) Income. The gross income of the sponsor is considered available to the assistance group subject to the following disregards:

(a) Twenty (20) percent of the total monthly gross earned income, not to exceed $175;

(b) An amount equal to the AFDC assistance standard for the appropriate family size of the sponsor and other persons living in the household who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability, and whose needs are not considered in making a determination of eligibility for AFDC;

(c) Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

(d) Actual payments of alimony or child support paid to nonhousehold members; and

(e) Income of a sponsor receiving SSI or AFDC.

(2) Resources. Resources deemed available to the alien(s) shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were an AFDC applicant in this state, less $1,500.

Section 7. Payment Maximum. The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities from which countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, is as follows:

Effective July 1, 1989

Number of Eligible Persons	Payment Maximum	Standard of Need
1 child	$162	$394
2 persons	$196	$460
3 persons	$228	$526
4 persons	$285	$592
5 persons	$333	$658
6 persons	$376	$724
7 or more persons	$419	$790

Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size. The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

Section 8. Special Requirement Educational Allowance (SREA). An educational allowance for child care shall be included in the assistance standard each month at the request of the caretaker relative, if the criteria in subsection (1) of this section are met and verified for those month(s) and funds are available. Households receiving the educational allowance shall be subject to time frames, procedures, and penalties established for households required to report monthly. In addition, effective August 1, 1988 a transportation allowance shall be included in the assistance standard if the criteria in subsection (1)(a) and (b) of this section are met. Effective May 1, 1989, SREA recipients may request that the SREA payment be issued directly to the child care provider of their choice unless the caretaker relative has more than one (1) provider in a given month.

(1) Technical requirements. The following requirements shall be met during any month for which an education allowance is paid.

(a) The caretaker relative shall be included in the assistance grant;

(b) The caretaker relative shall be enrolled full time, as defined in Section 1 of this regulation, in a literacy program, high school (including primary and secondary), vocational school, or a General Educational Development (GED) program or combination program for which no wage or child care allowance is received. If attending college, the caretaker relative shall be enrolled either full or part-time, as defined in Section 1 of this regulation;

(c) A cost shall have been incurred for the care of a child(ren) who is/are under the age of thirteen (13) or a child(ren) who is/are under the age of eighteen (18), if a physician determines the child is unable to attend school due to a physical or mental disability, and is/are included in the assistance grant; and

(d) The payment for child care is made to a provider who is not a household member.

(2) Educational allowance payment standards. The amount of the monthly transportation allowance shall be twenty (20) dollars. The amount of monthly educational allowance payment shall be based on the number of eligible children for whom care is being provided and whether or not enrollment is full or part-time. Effective May 1, 1989 the payment standards are as follows:

	1 Child		2 or More Children	
	Full-Time	Part-Time	Full-Time	Part-Time
Literacy	$ 20	-	$ 36	-
GED	$ 94	-	$169	-
Elementary School/ Junior High	$174	-	$313	-
High School	$174	-	$313	-
Vocational School	$174	-	$313	-
College/University	$174	$143	$313	$257
Combination Programs	$174	$143	$313	$257

The only combination programs recognized in operating JET counties are those authorized by the department.

(3) Limitations. The number of months a child care educational allowance payment or a transportation educational allowance payment is made shall be limited according to the type of program in which the student enrolls and shall not be provided beyond completion of one (1) program at each level.

	Type of Program	Maximum
(a) Literacy:	Literacy	24 months

(b) High school level.

1. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
General Educational Development (GED)	16 months
High School (includes primary and secondary)	27 months

2. A student wishing to continue his education past the high school level may be eligible for additional payments not to exceed the maximums for the posthigh school level.

(c) Posthigh school level. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
Vocational School	24 months
College/University	50 months

Effective May 1, 1989, if a student changes enrollment from full time to part time or from part time to full time during the month, payment shall be authorized for the type of enrollment in which the student participated for the majority of the month.

Section 9. Transitional Child Care (TCC). Effective April 1, 1990, child care assistance shall be provided by the state to families whose eligibility for AFDC assistance has ceased due to increased hours of, or earnings from, employment or as a result of the loss of income disregards due to the expiration of the time limits at 45 CFR 233.20(a)(11). TCC shall be administered by the Cabinet for Human Resources, Department for Social Insurance through an interagency agreement with the Department for Social Services. Child care assistance shall be provided for children if the criteria in subsection (1) of this section are met:

(1) Technical eligibility. The following requirements shall be met during any month for which TCC is paid:

(a) The child(ren) is under age thirteen (13); or

1. Physically or mentally incapable of caring for himself, as verified by the state based on a determination of a physician or a licensed or certified psychologist; or

2. A dependent child under court supervision (if needy); or

3. Would be a dependent child except for the receipt of benefits under SSI under Title XVI or foster care under Title IV-E.

(b) Child care must be necessary in order to permit a member of an AFDC family to accept or retain employment;

(c) Payments are not made for care provided by parents, legal guardians or members of the assistance unit (including essential persons);

(d) The family shall have ceased to be eligible for AFDC as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at 45 CFR 233.20(a)(11);

(e) The family shall have received AFDC in at least three (3) of the six (6) months preceding the first month of ineligibility;

(f) The family requests TCC benefits, provides the information necessary for determining eligibility and fees, and meets application requirements;

(g) The family ceased to be eligible for AFDC on or after April 1, 1990.

(2) Time limitations. Eligibility for TCC begins with the first month for which the family is ineligible for AFDC and continues for a period of twelve (12) consecutive months when the family requests assistance for TCC. Families may begin to receive child care in any month during the twelve (12) month eligibility period.

(3) Notification of eligibility. A family shall be notified of their potential eligibility for TCC when their AFDC benefits are terminated.

(4) Sanctions. The family is not eligible for TCC for any remaining portion of the twelve (12) month period if the caretaker relative:

(a) Terminates employment unless good cause exists as follows:

1. The individual is personally providing care for a child under age six (6) and employment will require the individual to work more than twenty (20) hours per week.

2. Child care is necessary for the individual to participate in the program or accept employment and such care is not available or the available child care does not meet the special needs of the child(ren), e.g., handicapped or retarded child(ren).

3. The individual is unable to engage in employment or training for mental or physical reasons including participation in a drug and alcohol rehabilitation program.

4. Unavailability of transportation with no readily accessible alternative means of transportation available.

5. Travel time to the work site exceeds two (2) hours daily.

6. Illness of another household member requiring the presence of the participant.

7. Temporary incarceration.

8. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs.

9. Work demands or conditions that render continued employment unreasonable, such as consistently not being paid on schedule or work presents a risk of the individual's health or safety.

10. Wage rates are decreased subsequent to acceptance of employment.

11. Acceptance of a better job which, because of circumstances beyond the control of the recipient, does not materialize.

(b) Fails to cooperate with the state IV-A agency in establishing payments and enforcing child support obligations, as defined in 45 CFR 232.12.

(5) Notices and hearings. Notices of adverse action, hearings, and appeals shall comply with the provisions of 904 KAR 2:046 and 904 KAR 2:055.

(6) Fee requirements. Each family receiving TCC shall be required to contribute toward the payment for child care based on the family's income.

(a) A minimum fee of one (1) percent of the family's gross income shall be charged for families who fall below the federal poverty income guidelines. A sliding fee shall be charged for child care when the gross income exceeds the federal poverty guidelines as defined in 905 KAR 3:010 and 905 KAR 3:020.

(b) Individuals who fail to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for TCC for the period of time back fees are owed, unless satisfactory arrangements are made to

make full payment.

(7) Recoupment. The following provisions apply to overpayments in TCC:

(a) Necessary action shall be taken promptly by the state IV-A agency to correct and recoup any overpayments.

(b) Overpayments, including assistance paid pending hearing decisions, shall be recovered from:

1. The responsible party;

2. The family unit which was overpaid;

3. The provider who was responsible for the overpayment;

4. Individuals who were members of the family when overpaid; or

5. Families which include members of a previously overpaid family.

(c) Overpayments shall be recovered through:

1. Repayment by the individual or child care provider to the cabinet; or

2. Reduction in child care payments; or

3. Reduction of AFDC benefits only upon a voluntary request of the recipient family.

(d) Repayment by the individual shall allow the recipient family to retain, for any month, a reasonable amount of funds.

(e) Underpayments and overpayments may be offset against each other in adjusting incorrect payments.

(f) Benefits shall not be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing as specified in 904 KAR 2:055 requested within the timely notice period.

Section 10. [9.] Recoupment. The following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The overpaid assistance unit;

(b) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(c) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 7 of this regulation; or

(c) Civil action in the court of appropriate jurisdiction.

[(4) Overpayments may be waived for inactive nonfraud cases involving less than thirty-five (35) dollars in overpayment.]

(4) [(5)] In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) [(6)] Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in 904 KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned in accordance with Title 904, Chapter 2.

Section 11. [10.] Provisions contained in this regulation shall become effective April 1, 1990 [October 1, 1989].

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: March 20, 1990
FILED WITH LRC: March 29, 1990 at 4 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:004E

This emergency administrative regulation is being amended to comply with Section 6401 of the Omnibus Budget Reconciliation Act of 1989 which mandates, effective April 1, 1990, coverage of pregnant women and children up to age six whose family income is up to, but does not exceed, 133 percent of the official poverty income guidelines. This regulation must be promulgated on an emergency basis to comply with the mandated implementation date. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed November 2, 1989, as this regulation contains the mandated coverage of specified pregnant women and children under age six with income not in excess of 133 percent of the official poverty income guidelines. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about April 1, 1990.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: April 9, 1990
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security Act. KRS 205.520(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

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

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

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

remains out of a medical institution or nursing facility or HCBS waiver program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A homestead, occupied or abandoned,

household equipment, and farm equipment without limitation on value are excluded from consideration.

(3) Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, is excluded from consideration. Effective with regard to determinations of eligibility made on or after May 1, 1990, the value of property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is essential for self-support for the individual or spouse, or family group in the instance of families with children, and which is used in a trade or business or by the individual or member of the family group as an employee is excluded from consideration as a resource. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or nonincome producing) may be excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

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

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

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

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

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

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

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

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

(d) Disaster relief assistance is excluded from consideration.

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

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

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

1. Such property is jointly owned and its sale would cause undue hardship due to loss of housing for the other owner or owners; or
2. Its sale is barred by a legal impediment; or
3. The owner's reasonable efforts to sell have been unsuccessful.

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

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

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

Section 4. Income Limitations of the Medically Needy. Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 5 of this regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the

following scale of income protected for basic maintenance:

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

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

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

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

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

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

(2) The following special factors are applicable for pregnant women, infants and children eligible pursuant to Section 6401 [9401] of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) [1986 (OBRA 86)]:

(a) Such pregnant women and children may have family income up to, but not to exceed, 133 [100] percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of March 1 of the particular state fiscal year;

(b) Pregnant women, infants and children who would be eligible under the provisions of OBRA 89 [86] except for income in excess of the allowable standard may not become eligible by spending down to the official poverty guidelines;

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

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

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

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

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

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

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

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

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

Section 6. Specified Individuals in Long-Term Care Facilities. For aged, blind or disabled individuals in long-term care facilities not subject to treatment as the institutionalized spouse of a community spouse as shown in Section 21 of this regulation, the following

requirements with respect to income limitations and treatment of income shall be applicable.

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

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

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

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

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

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

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

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

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

Section 9. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medical Assistance Program. Examples of such special services or items include television and telephone service, private room or bath, private duty nursing services, etc.

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

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

(1) "Living with" is defined as sharing a common living arrangement or household, but not including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness. Effective July 1, 1987, a husband and wife sharing a room or comparable accommodation in a long term care

facility may be considered to be "living with" each other after they have continuously shared such a room or accommodation for six (6) months, if treating such husband and wife as living apart would prevent either of them from receiving medical assistance.

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

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

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

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

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

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

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

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

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

(6) For an individual whose case is being worked as if he were a single individual due to living apart from his spouse, as shown in Section 11(4) and (5) of this regulation, who has jointly held resources with his spouse, one-half (1/2) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

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

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

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

considered as living with his parents.

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

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

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

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

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

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

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

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

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

(2) Determining eligibility of the grandchild(ren) and stepchild(ren). When a stepparent or grandparent has available income remaining after disregards/exclusions are applied, the income may be deemed to the spouse (of the stepparent) or minor parent (child of the grandparent) but not to the stepchild(ren) or grandchild(ren). Eligibility of the stepchild(ren) or grandchild(ren) is determined in the following manner in order to take this requirement into consideration: consider only the income of the grandchild(ren) and minor parent, or stepchild(ren) and parent (spouse of the stepparent) as appropriate. The budget size would include the child(ren) and parent. If there is no excess, the child(ren) is eligible; if there is an excess, the excess amount may be spent down in the usual manner.

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

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

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

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

(1) In the case of an application for assistance for a dependent child(ren), the

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

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

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

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

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

Section 15. Transferred Resources. (1) Effective for determinations of eligibility made on or after October 1, 1989, an individual who transferred property on or before June 30, 1988 for less than fair market value must have a period of ineligibility for medical assistance computed beginning with the month in which the resources were transferred. The period of ineligibility shall be equal to the lesser of twenty-four (24) months or the number of months derived by deducting from the uncompensated excess value the actual cost of care on a monthly basis if the individual is institutionalized or $500 for each month from the month of transfer if not institutionalized.

(2) Effective for determinations of eligibility on or after October 1, 1989, when an institutionalized individual (defined as an individual in a skilled nursing facility, general intermediate care facility, or a participant in the home and community based services waiver program) applies for medical assistance a period of ineligibility for payments for such service must be computed if at any time during the thirty (30) month period immediately preceding the application (but on or after July 1, 1988) the individual <u>(or his spouse with regard to transfers occurring after December 19, 1989)</u> disposed of property for less than fair market value. The period of ineligibility for such service (beginning with the month in which the resources were transferred) shall be equal to the lesser of thirty (30) months or the number of months derived by dividing the total uncompensated value of the resources so transferred by the average cost, to a private patient at the time of the application, of nursing facility services in the state (either intermediate care or skilled nursing care as appropriate for the level of care).

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

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

(5) After determining that the purpose of the transfer was to become or remain eligible, the cabinet shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of

resource it was prior to transfer, e.g., if nonhomestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for nonhomestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

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

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

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

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

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

(1) Usual institutional deeming rules shall be applicable.

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

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

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

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

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

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

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

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

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

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

(1) Income protected for basic maintenance of HCB services program participants who are

eligible as medically needy or under the special income level shown in this section shall be the standard used for an individual in the federal supplemental security income (SSI) program in addition to the SSI general exclusion.

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

(3) If an HCB services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of HCB services projected if eligibility is determined on a monthly basis.

(4) Usual institutional deeming rules shall be applicable.

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

Section 20. Resource Assessment. Pursuant to Section 1924(c)(1)(B) of the Social Security Act as amended, an assessment of the joint resources of an institutionalized spouse and the community spouse shall be made upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon receipt of relevant documentation of resources. The cabinet shall complete the assessment within forty-five (45) days when the necessary documentation or verification is provided in a timely manner. When the resource assessment is complete, each spouse shall receive a copy of the assessment and notification that the right of appeal of such assessment shall exist at such time as the institutionalized spouse applies for medical assistance.

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

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

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

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

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

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

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

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

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

1. The state spousal resource standard; and, if applicable
2. Additional amounts transferred under a court support order; or, if applicable
3. An additional amount designated by a hearing officer.

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

1. When the institutionalized spouse has assigned to the cabinet any rights to support from the community spouse;
2. When the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the state has the right to bring a support proceeding against a community spouse without such assignment; or
3. When the cabinet determines that denial of

eligibility would work an undue hardship.

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

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

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

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

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

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

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

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

(b) Establishment of the community spouse maintenance standard. The community spouse maintenance standard is set at $1,500 per month, to be increased for each calendar year after 1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved; the maintenance standard may be increased for an individual, as appropriate, by a hearing officer.

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

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

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

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

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

(8) Prohibited transfers. Except for transfers of resources to the community spouse as specified in subsection (6) of this section, the transfer of resource policies defined in Section 15 of this regulation apply.

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

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

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

a. The community spouse monthly income allowance;

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

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

d. The determination of the community spouse resource allowance.

2. Revision of monthly maintenance needs allowance. If either the institutionalized spouse or community spouse establishes during

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

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

Section 22. Effective Dates. Except as specified in Section 2(3) [11(3)(c)] of this regulation, the provisions of this regulation, as amended, shall be effective with regard to determinations of eligibility made on or after April 1, 1990 for medical assistance provided after that date [October 1, 1989].

ROY BUTLER, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: March 25, 1990
FILED WITH LRC: April 9, 1990 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:011E

This emergency administrative regulation is being amended to comply with Section 6401 of the Omnibus Budget Reconciliation Act of 1989 which mandates, effective April 1, 1990, coverage of pregnant women and children up to age six (6) whose family income is up to, but does not exceed, 133 percent of the official federal poverty income guidelines. This regulation must be promulgated on an emergency basis to comply with the mandated implementation date. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about April 1, 1990.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:011E. Technical eligibility requirements.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: April 9, 1990
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, referred to as MA, to Kentucky's indigent citizenry. This regulation sets forth the technical eligibility requirements of the MA Program.

Section 1. The Categorically Needy. All individuals receiving Aid to Families with Dependent Children, Title IV-E benefits, Supplemental Security Income or Optional or Mandatory State Supplementation are eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons are included in the program as categorically needy and thus eligible for MA participation.

(1) Children in foster family care or private nonprofit child caring institutions dependent in whole or in part on a governmental or private agency;

(2) Children in psychiatric hospitals or medical institutions for the mentally retarded;

(3) Pregnant women;

(4) Children of unemployed parents;

(5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;

(6) Families terminated from the Aid to Families with Dependent Children (AFDC) program because of increased earnings or hours of employment;

(7) Children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children program, who were born after September 30, 1983 and who are under the age of five (5); and effective July 1, 1987, children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children Program, who are under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(8) A child(ren) born to a woman eligible for and receiving medical assistance, so long as the child(ren) has not reached his first birthday, resides in the household of the woman, and the woman remains eligible for such assistance. In this situation, an application is deemed to have been made and the child found eligible for MA as of the date of birth;

(9) Effective June 1, 1987, individuals in institutions meeting appropriate patient status criteria who (if not institutionalized) would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income, may be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income. Eligibility for similar hospice participants and similar participants in the waiver projects of home and community based services for the mentally retarded and the aged, blind or disabled may also be determined under this provision. Eligibility of an individual whose gross income exceeds 300 percent of the previously specified SSI benefit amount may not be determined in accordance with this provision;

(10) Effective July 1, 1987, qualified severely impaired individuals as specified in Section 9404 of P.L. 99-509 and Sections 2, 3 and 4 of P.L. 99-643 (to the extent such coverage is mandatory in this state);

(11) Effective July 1, 1987, individuals who lose SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in child's insurance benefits based on

disability as specified in Section 6 of P.L. 99-643;

(12) Effective February 1, 1989, individuals specified in Section 9116 of P.L. 100-203 who lose SSI or state supplementation payments as a result of receipt of benefits under Section 202(e) or (f) of the Social Security Act, would be eligible for SSI or SSP except for such benefits, and are not entitled to hospital insurance benefits under Part A of Title XVIII; and

(13) Effective April 1, 1990 [October 1, 1987], women during pregnancy (and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy), and infants and children under six (6) [two (2)] years of age, as required [permitted] by Section 6401 [9401] of the Omnibus Budget Reconciliation Act of 1989 [1986, and effective with regard to determinations of eligibility made for periods beginning on or after October 1, 1988, pregnant women and children under the age of one (1) as permitted by Section 4101 of the Omnibus Budget Reconciliation Act of 1987], subject to the following:

(a) Pregnant women, infants and children are required to meet the income [and resource] requirement for this [these] eligibility group as specified in 907 KAR 1:004, Resource and income standard of medically needy; and

(b) When an infant or child eligible under this provision is receiving covered inpatient services on a birthday which will make him ineligible due to age, the infant or child will remain eligible until the end of the stay for which the covered inpatient services are furnished so long as the infant or child remains otherwise eligible except for age.

Section 2. The Medically Needy. Other individuals (including children as shown in Section 1(7) of this regulation), and pregnant women meeting income and resource standards of the medically needy program), meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the Cabinet for Human Resources. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy; a woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated). [For individuals covered on January 1, 1985 pursuant to this section, the usual three (3) month rule on retroactivity (as shown in Section 3(15)) will apply.]

Section 3. Qualified Medicare Beneficiaries. Effective January 1, 1989, coverage is extended to qualified Medicare beneficiaries as specified in Section 301 of the Medicare Catastrophic Coverage Act of 1988, subject to the income and resource limitations shown in 907 KAR 1:004, and for the scope of benefits specified in 907 KAR 1:006. A qualified Medicare beneficiary must be eligible for and receiving Medicare Part A benefits, and may be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made but not retroactively and not for the month in which the determination is made.

Section 4. Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under Section 1(1) through (6) of this regulation, or as medically needy under Section 2 of this regulation are:

(1) Children in foster care, private institutions, psychiatric hospitals or mental retardation institutions must be under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(2) Pregnant women are eligible only upon medical proof of pregnancy, except as otherwise specified in Section 2 of this regulation;

(3) Unemployment relating to eligibility of both parents and children is defined as:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty (50) dollars during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent must not have refused suitable employment without good cause as determined in accordance with 45 CFR Section 233.100(a)(3)(ii);

(f) The unemployed parent must meet the requirements for independent employment search as specified herein. That is:

1. The unemployed parent must make not less than twenty-four (24) contacts with prospective employers in each three (3) month period following an approval, reinvestigation or reapproval.

2. The unemployed parent may not contact the same prospective employer more than once in each calendar month.

3. If the unemployed parent does not meet the requirement for the minimum number of employment contacts during the three (3) month period, the parent may, prior to or upon receipt of the advance notice of proposed discontinuance, meet the requirement for the number of contacts for the prior three (3) month period. These contacts shall not offset the requirement for employer contacts during the three (3) month period following the next approval, reinvestigation or reapproval.

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work when it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute when such involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual must be at least sixty-five (65) years of age.

(6) A blind individual must meet the definition of blindness as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(7) A disabled individual must meet the definition of permanent and total disability as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(8) For families losing AFDC eligibility solely because of increased earnings or hours of employment, medical assistance shall continue for four (4) months to all such family members as were included in the family grant (and children born during the four (4) month period) if the family was eligible for and received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The four (4) month period begins on the date AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated.

(9) Families losing AFDC eligibility solely due to loss of the thirty (30) dollars disregard or the one-third (1/3) disregard from earnings shall be deemed AFDC eligible for nine (9) months after the termination of the disregard, and shall as a result be eligible for continued medical assistance for the nine (9) month period. The nine (9) month period begins on the date the AFDC should have been terminated. Coverage for medical assistance is extended to all family members who were included in the grant (and children born during the nine (9) month period).

(10) Families losing AFDC eligibility as a result (wholly or partly) of the collection or increased collection of child or spousal support, and who were eligible for and received AFDC in at least three (3) of the six (6) months immediately preceding the month in which such ineligibility begins, shall be deemed AFDC eligible for Title XIX purposes for four (4) months beginning with the month in which ineligibility begins. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated. Coverage for medical assistance is extended to all family members losing eligibility as a result of the receipt of the child or spousal support. The extended eligibility provision contained herein is applicable only with respect to families discontinued on or after July 18, 1984 and before October 1, 1988.

(11) Parents may be included for assistance in the cases of families with children including natural and adoptive parents. Other relatives who may be included in the case (one (1) only) are caretaker relatives to the same extent they may be eligible in the Aid to Families with Dependent Children Program.

(12) An applicant who is deceased may have eligibility determined in the same manner as if he was alive, in order to pay medical bills during the terminal illness.

(13) Effective for determinations of eligibility made on or after January 1, 1989, including the usual determinations of retroactive eligibility for pending cases for periods prior to January 1, 1989, children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member(s) is pregnant, the unborn child(ren) will be considered as a family member(s) for budgeting purposes.

(14) The following citizenship and residency requirements will be applicable:

(a) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law (except as specified in paragraph (b) of this subsection). An alien must have been admitted for permanent residence except as shown in paragraphs (b), (c) and (d) of this subsection. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403.

(b) Effective January 1, 1987, an alien not legally admitted to this country or residing in this country under color of law may be eligible for medical assistance under the following circumstances and conditions:

1. The alien must meet all other requirements for receipt of medical assistance, however, an alien qualifying as a categorically needy recipient need not actually receive an AFDC or federal supplemental security income (SSI) cash payment so long as the alien meets the income resource and categorical requirements of the applicable cash assistance program;

2. The alien must have (or have had within the usual period for retroactive eligibility) an emergency medical condition, defined as a medical condition (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

3. Approval of eligibility shall be for a time limited period, with such period to include the

month in which the medical emergency began and the next following month, with the added provision that the eligibility period may be extended for an appropriate period of time upon presentation to the cabinet of acceptable documentation that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

4. The medical assistance to which the alien shall be entitled is limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien.

(c) Effective May 5, 1987, select groups of aliens who are illegally residing in this country may qualify for legalization of residence status under Section 201 of P.L. 99-603. Such aliens are prohibited from Medicaid eligibility for a period of five (5) years (beginning on the date temporary resident status is granted) except as follows:

1. The aged, blind or disabled may be eligible;

2. Children under age eighteen (18) may be eligible;

3. Pregnant women may be eligible for pregnancy related services only; and

4. All such aliens may qualify for emergency services to the extent specified in paragraph (b) of this subsection and with the limitations shown.

(d) Effective June 1, 1987, aliens qualifying for legalization of status as seasonal agricultural workers under Section 302 of P.L. 99-603 are subject to the same coverage limitations as shown in paragraph (c) of this subsection.

(15) An individual may be determined eligible for medical assistance for up to three (3) months prior to the month of application if all conditions of eligibility are met. The effective date of medical assistance is generally the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility may not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion must have existed for thirty (30) days, and the effective date of eligibility may not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility is the day the spend-down liability is met.

(16) "Child" means a needy dependent child under the age of eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before the age nineteen (19)), who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, and who is a recipient of or applicant for public assistance. Included within this definition is an individual(s) meeting the age requirement specified above, previously emancipated, who has returned to the home of his parents, or to the home of another relative, so long as such individual is not thereby residing with his spouse.

(17) Benefits shall be denied to any family for any month in which any legally liable caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and no individual's needs shall be considered in determining eligibility for medical assistance for the family if, on the last day of the month, such individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(18) [Effective January 1, 1989,] A responsible relative (but not a child) sanctioned (removed) from an AFDC <u>or AFDC related medical assistance only</u> case due to failure to meet a[n AFDC] technical eligibility requirement may not be eligible for medical assistance as a medically needy individual unless such individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which such individual has been sanctioned.

Section 5. Institutional Status. No individual shall be eligible for MA if a resident or inmate of a nonmedical public institution. No individual shall be eligible for MA while a patient in a state tuberculosis hospital unless he has reached age sixty-five (65). No individual shall be eligible for MA while a patient in a mental hospital or psychiatric facility unless he is under age twenty-one (21) or age twenty-two (22) if receiving such inpatient services on his 21st birthday or is sixty-five (65) years of age or over. No individual shall be eligible for MA while a patient in a skilled nursing facility or intermediate care facility classified by the Medicaid program as an institution for mental diseases unless such individual has reached age sixty-five (65).

Section 6. Emergency Shelters. Effective July 1, 1985, an individual (or family group) who is in an emergency shelter for a temporary period of time may be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions are as follows:

(1) The individual (or family group) must be a resident of an emergency shelter no more than six (6) months in any nine (9) month period, effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988.

(2) The individual (or family group) must not be in the facility serving a sentence imposed by the court, or awaiting trial.

(3) The individual (or family group) must be otherwise eligible when outside the emergency shelter; that is, eligibility must have existed immediately prior to admittance to the shelter, or it must exist immediately after leaving the shelter.

Section 7. Application for other Benefits. As a condition of eligibility for medical assistance, applicants and recipients must apply for all annuities, pensions, retirement and

disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause is considered to exist when such benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the federal law providing for such benefits shows the benefit to be optional and that the potential applicant or recipient for such benefit need not apply for such benefit when to do so would, in his opinion, act to his disadvantage.

Section 8. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 9. Third Party Liability as a Condition of Eligibility. Any individual applying for or receiving medical assistance shall be required as a condition of eligibility to cooperate with the Cabinet for Human Resources in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless such individual has good cause for refusing to cooperate as determined by the cabinet taking into consideration the best interests of the individuals involved. A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

Section 10. Provision of Social Security Numbers. Beginning May 1, 1985, each applicant for or recipient of medical assistance shall be required to provide a social security number as a condition of eligibility. However, no one shall be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration when appropriate application for such number has been made. For recipients, the requirement shall be effective with the first full reinvestigation occurring on or after May 1, 1985.

ROY BUTLER, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: March 28, 1990
FILED WITH LRC: April 9, 1990 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:036E

This emergency administrative regulation is being amended to provide that federal or state minimum wage increases will not be offset against the usual inflation allowance and to provide that facility costs will be rearranged so as to establish upper limits taking into consideration the minimum wage increases. This action is being taken to insure that the cost for the minimum wage rate increases is fully passed through to the facilities. This regulation must be promulgated on an emergency basis to meet the requirements of passing through the federal wage increase. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed July 14, 1989, as this regulation insures that the costs for minimum wage rate increases are fully passed through to the facilities. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about April 1, 1990.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: April 9, 1990
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for skilled nursing care facility services and intermediate care facility services.

Section 1. Definitions. For purpose of Sections 2 through 6 of this regulation, the following definitions shall prevail unless the specific context dictates otherwise:
(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the cabinet in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the cabinet, i.e., the allowable cost is "reasonable."
(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which except for ventilator therapy services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:
(a) Legend and nonlegend drugs, including indwelling urethral catheters and syringes, and irrigation supplies and solutions utilized with those catheters regardless of how those supplies and solutions are utilized. Coverage and allowable cost payment limitations are specified in the cabinet's regulation on payment for drugs. Hyperalimentation, when used as the total source of nutrition for a resident, is included as a drug cost.
(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.
(d) X-ray.
(e) Oxygen and other related oxygen supplies.
(f) Respiratory therapy (excluding the routine administration of oxygen) effective September 1, 1988.
(g) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only).
(h) Ventilator therapy services, subject to the coverage limitations shown in the reimbursement manual.
(i) Disposable and reusable incontinent briefs, reusable briefs with disposable liners, and disposable or reusable underpads when ordered by a physician.

(3) "Hospital based skilled nursing facilities" means those skilled nursing facilities so classified by Title XVIII-A.

(4) The "basic per diem cost" is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs. The inflation factor shall be included for rates computed on August 3, 1985, and thereafter.

(6) "Incentive factor" means the comparison of the basic per diem cost with the incentive return schedule to arrive at the actual dollar amount of cost containment incentive return to be added to the basic per diem cost.

(7) "Investment factor" means the comparison of the basic per diem cost with the investment return schedule to arrive at the actual dollar amount of investment return to be added to the basic per diem cost.

(8) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(9) "Maximum payment" means the maximum amount the cabinet will reimburse, on a facility by facility basis, for routine services.

(10) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(11) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

(12) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(13) For disposable briefs, reusable briefs, reusable briefs with disposable liners, and disposable or reusable underpads provided upon a physician's orders, the per unit product cost in excess of twenty (20) cents, but not in excess of forty (40) cents, shall be considered ancillary cost, with other cost for such products (including all laundry cost) to be considered routine cost. The first six (6) dollars and fifty (50) cents of cost per catheter for indwelling urethral catheters (excluding specialty purpose catheters) shall be considered as allowable ancillary cost with any balance of cost to be considered as allowable routine cost. Indwelling urethral special purpose catheters will be reimbursable as an ancillary at full allowable cost when ordered by a physician.

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

Section 2. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing facilities (SNFs) or intermediate care facilities (ICFs) participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by

application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, revised April 1, 1990 [December 20, 1988] which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles. The Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

Section 4. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Title XVIII-A Principles of Reimbursement, with the system utilizing such principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section, including the provisions contained in subsections (14) and (15) of this section. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1 - June 30) by taking the latest cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. (Unaudited, partial year, or budgeted cost data may be used if a full year's audited data is unavailable. Unaudited reports are subject to adjustment to the audited amount. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities beginning program participation on or after July 1, 1984 whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) After allowable costs are indexed for inflation for the rate year, freestanding (nonhospital based) facilities will be arrayed and the maximum set at 102 percent of the median for the class (SNF or ICF). Publicly operated skilled nursing and intermediate care facilities classified as institutions for mental diseases will not be subject to the administratively set upper limit and component limitations, although such facilities will be included in the arrays for purposes of establishing the applicable upper limits. In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 125 percent of the upper limit of all other SNFs for covered services provided on or after January 1, 1989 (with costs to include, through June 30, 1991, the adjustments for nurse aide training and universal precautions). For a skilled nursing facility with mental retardation specialty, effective with regard to services provided on or after October 1, 1988, the upper limit shall be set at 120 percent of the maximum payment for freestanding skilled nursing facilities. For skilled nursing facility Medicaid certified units providing preauthorized specialized rehabilitation services for persons with brain injuries, the all inclusive payment rate shall be usual and customary actual billed charges up to a maximum of $360 per diem. For skilled nursing facilities or intermediate care facilities caring for patients with care needs associated with highly infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphlococcus aureus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immuno-deficiency virus (HIV), the payment rates shall be usual and customary actual billed charges up to a maximum of ninety-five (95) dollars and seventy-five (75) dollars per diem for SNFs and ICFs, respectively, for the qualifying patient with these care needs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1985, so that the maximum payment amount for the prospective uniform rate year will be at 102 percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data except as specified in this subsection. For ICF-MRs, there is no administratively established upper limit. To accomplish federally mandated program improvements, effective July 1, 1989, and continuing through June 30, 1991, the allowable per diem cost for each SNF or ICF shall include one (1) dollar and twenty (20) cents for nurse aide training and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control, and ICFs shall be paid an additional four (4) cents for medical director costs; these allowable cost amounts shall not be subject to

adjustment or cost settlement. Arrays and upper limits shall be altered to allow for the effect of passing through to the facilities, without cost offsets, costs which result from increases in the federal or state minimum wage rate effective on the date the federal or state minimum wage rate increase takes place.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy services which shall be paid on a prospective rate basis. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent. A refund will be requested from a facility if the amount paid to the facility for legend drugs, covered legend devices and nonlegend drugs, if applicable, exceeds the program's computed maximum allowable cost. The amount of refund will be determined by conducting a statistically accurate sample of the Medicaid patients for the facility's fiscal year. The percentage that a facility is over the computed maximum allowable cost will be multiplied by the amount paid by the program for drugs for the fiscal year under review.

(4) Interest expense used in setting the prospective rate is an allowable cost if permitted under Title XVIII-A principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates will be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relates to providing patient care. The form of such indebtedness may include, but is not limited to, notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets will not be considered an allowable cost.

(5) Compensation to owner/administrators will be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation includes the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis will not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation will be based on total licensed beds (all levels). Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Intermediate Care/Skilled Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship will be considered to exist when an individual or individuals possess five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship shall be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for general intermediate care facilities entering into lease/rent arrangements prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and skilled nursing facilities entering into lease/rent arrangements prior to December 1, 1979, the cabinet will determine the allowable costs of such arrangements based on the general reasonableness of such costs.

(8) The following provisions are applicable with regard to median per diem cost center upper limits:

(a) For facilities (except ICF-MRs) beginning participation in the Medicaid program on or after April 1, 1981, (and classified as newly participating facilities for purposes of this subsection), the following upper limits (within the class) shall be applicable with regard to otherwise allowable per diem costs, by cost center: for nursing services, 125 percent of the median; for dietary services, 125 percent of the median; for capital costs, 105 percent of the median; and for all other costs, 105 percent of the median.

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities (solely for purposes of this subsection) when either of the following occurs on or after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant or, second, when a multilevel

facility (one providing more than one (1) type of care) converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of additional or converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981; however, as an exception to the conditions specified in this subsection a facility will not be considered as newly participating if it increases its certified bed capacity by no more than a cumulative total of thirty-five (35) beds (on or after April 1, 1981) so long as its new total certified bed capacity does not exceed sixty-five (65) beds. Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.

(c) For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the class) which are attributable to the specific cost center, which are otherwise allowable costs for the facilities' prior fiscal year, and which are adjusted by trending, indexing and the occupancy factor. The median for each cost center for each class shall be determined annually using the same cost data for the class which was used in setting the maximum payment amount. The Department for Medicaid Services shall notify all participating facilities of the median per diem cost center upper limits currently in effect.

(d) A facility may request that the Reimbursement Review Panel grant a waiver of its status as a newly participating facility based upon a presentation of facts showing that the provider had already incurred a substantial material financial obligation or binding commitment toward building or expanding a facility prior to April 1, 1981. The obtaining of a certificate of need shall not be construed, in itself, to be sufficient to justify approval of a waiver request, and a waiver, if granted, shall be applicable only with regard to that building or expansion for which the waiver was requested and approved.

(e) Intermediate care facilities for the mentally retarded (ICF-MRs) are not subject to the median per diem cost center upper limits shown in this subsection.

(f) Effective with regard to services provided on or after October 1, 1988, skilled nursing facilities with a mental retardation specialty (SNF/MRS) are not subject to the median per diem cost center upper limits shown in this subsection.

(9) Certain costs not directly associated with patient care will not be considered allowable costs. Costs which are not allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs unless such costs are incurred by administrators or owners.

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain is defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale is any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which is usually fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner are not considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis will be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(11) Notwithstanding the provisions contained in subsection (10) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (10)(e) of this section) shall be determined in accordance with the methodology set forth herein for the reevaluation of assets of skilled nursing and intermediate care facilities.

(a) No increase will be allowed in capital costs.

(b) The allowable historical base for depreciation for the purchaser will be the lesser of the allowable historical cost of the seller less any depreciation allowed to the seller in prior periods, or the actual purchase price.

(c) The amount of interest expense allowable to the purchaser is limited to the amount that was allowable to the seller at the time of the sale.

(12) Each facility shall maintain and make available any records (in a form acceptable to the cabinet) which the cabinet may require to justify and document all costs to and services performed by the facility. The cabinet shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(13) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and will be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program are to be so indicated with a description and rationale as a supplement to the cost report.

(c) Cabinet approval or rejection of projections or expansions will be made on a prospective basis in the context that if expansions and related costs are approved they will be considered when actually incurred as an allowable cost. Rejection of items or costs will represent notice that such costs will not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval will relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of projections or expansions is made, absence of a response by the cabinet shall not be construed as approval of the item or expansion.

(14) The cabinet shall review each year-end cost report to determine the necessity for and scope of an audit in relation to routine and ancillary service cost. If an audit is not performed, the report will be settled without audit. If an audit is indicated, it will be either a limited-scope audit or a full field audit. An audit may be conducted for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost will be conducted as needed.

(15) Year-end adjustments of the prospective rate and a retroactive cost settlement will be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

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

(16) Reimbursement paid shall not exceed the facility's customary charges to the general public for such services, except in the case of public facilities rendering inpatient services at a nominal charge (which may be reimbursed at the prospective rate established by the cabinet).

(17) The cabinet may develop and utilize methodology to assure an adequate level of care. Facilities determined by the cabinet to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(18) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

(19) Effective September 26, 1985 (for services provided on or after September 1, 1985), a participating skilled nursing facility may be paid for care provided to Medicaid eligible patients who meet intermediate care patient status criteria subject to the following criteria or conditions:

(a) The payment shall be made at the upper limit for payments to intermediate care facilities, or the skilled nursing rate for the facility if lower;

(b) The patient is required to be in the skilled nursing facility bed awaiting placement to an intermediate care bed; and

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

Section 5. Prospective Rate Computation. The prospective rate for each facility will be set in accordance with the following:

(1) Determine allowable prior year cost for routine services.

(2) The allowable prior year cost, not including fixed or capital costs, will then be trended to the beginning of the uniform rate year and increased by a percentage so as to reasonably take into account economic conditions and trends. Such percentage increase shall be known as an inflation factor.

(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be determined by comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(4) Cost center median related per diem upper

limits will then be applied as appropriate to the unadjusted basic per diem cost. The resultant adjusted amounts (and unadjusted amounts, as applicable) will be combined (or recombined) to arrive at the basic per diem cost (defined as the adjusted allowable cost per patient per day for routine services).

(5) To the basic per diem cost shall be added a specified dollar amount for investment risk and an incentive for cost containment in lieu of a return on equity capital, except that no return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the investment or incentive return.

(a) Cost incentive and investment schedule for general intermediate care facilities:

(Effective 4-1-90 [7-1-89])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$36.99 & below	$.92	$.58
37.00 - 37.99	$.86	$.50
38.00 - 38.99	$.78	$.41
39.00 - 39.99	$.70	$.32
40.00 - 40.99	$.61	$.21
41.00 - 41.99	$.51	$.09
42.00 - Maximum Payment* [43.78]	$.35	-

*The maximum payment is set at 102 percent of the median of the array of allowable costs of intermediate care facilities.

[Maximum Payment $43.78]

(b) Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 4-1-90 [7-1-87])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$86.99 & below	$1.38	$.87
87.00 - 92.99	$1.29	$.75
93.00 - 98.99	$1.18	$.62
99.00 - 104.99	$1.06	$.47
105.00 - 110.99	$ .92	$.31
111.00 - 116.99	$ .76	$.13
117.00 - Maximum Payment [123.49]	$ .53	-

*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(c) Cost incentive and investment schedule for skilled nursing facilities:

(Effective 4-1-90 [7-1-89])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$49.99 & below	$.92	$.58
50.00 - 51.99	.86	.50
52.00 - 53.99	.78	.41
54.00 - 55.99	.70	.32
56.00 - 57.99	.61	.21
58.00 - 59.99	.51	.09
60.00 - Maximum Payment for Freestanding Facilities* [62.32]	.35	-

*The maximum payment for freestanding skilled nursing facilities is set at 102 percent of the median of the array of allowable costs for the freestanding facilities. The maximum payment for hospital based skilled nursing facilities is set at 125 percent of the upper limit for freestanding skilled nursing facilities.

[Maximum Payment $62.32*

*The maximum payment for hospital based skilled nursing facilities is set at $77.90 effective July 1, 1989.]

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

(Effective 4-1-90 [7-1-89])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$56.99 & below	$1.38	$.87
57.00 - 59.99	1.29	.75
60.00 - 62.99	1.18	.62
63.00 - 65.99	1.06	.47
66.00 - 68.99	.92	.31
69.00 - 71.99	.76	.13
72.00 - Maximum Payment* [74.78]	.53	-

*The maximum payment for skilled nursing facilities with a mental retardation speciality is set at 120 percent of the maximum payment for freestanding skilled nursing facilities.

[Maximum Payment $74.78*]

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 102 percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities and, effective October 1, 1988, skilled nursing facilities with a mental retardation specialty have special requirements that are required to be considered. The cabinet has determined that the maximum payment rates shall be reviewed annually against the criteria of 102 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1985 and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 102 percent of the median is a lower dollar amount than has been currently set.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general

policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division of Reimbursement and Contracts, a reevaluation of the point at issue. This request is required to be received within forty-five (45) days following notification of the prospective rate or forwarding of the audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Medicaid Services, a review by a standing review panel to be established by the commissioner. This request is required to be postmarked within twenty (20) days following notification of the decision of the Director, Division of Reimbursement and Contracts. Such panel shall consist of three (3) members: one (1) member from the Division of Reimbursement and Contracts, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Department for Medicaid Services (but not within the Division of Reimbursement and Contracts) as designated by the Commissioner, Department for Medicaid Services, with such designated member to act as chairperson of the review panel. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of the written request. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which are required to be considered in order to provide for equitable treatment and reimbursement of the provider. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

Section 7. Implementation Date. The amendments to this regulation shall be effective with regard to payments for services provided on or after April 1, 1990 [July 1, 1989].

ROY BUTLER, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: March 28, 1990
FILED WITH LRC: April 9, 1990 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:054E

This emergency administrative regulation is being amended to comply with Section 6404 of the Omnibus Budget Reconciliation Act of 1989 which mandates, effective April 1, 1990, coverage of services provided by all federally-qualified health centers (which include many primary care centers). The services which must be provided are those services described in the Social Security Act at Section 1861(aa)(1) plus other ambulatory services offered on an outpatient basis and which are included in the Medicaid state plan. This regulation must be promulgated on an emergency basis to comply with the mandated implementation date. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about April 1, 1990.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:054E. Primary care center and federally-qualified health center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: April 9, 1990

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. Primary care centers [as defined by the Health Certificate of Need and Licensure Board] and federally-qualified health centers represent an opportunity for the provision of comprehensive medical services to the indigent citizenry of Kentucky. This regulation, therefore, sets forth the provisions relating to primary care center and federally-qualified health center services for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and medically needy.

Section 1. Definitions. As used in this regulation, the following definitions apply:

(1) Basic services. Those services which shall be provided by the primary care center [facility] for it to be considered a primary care center by the cabinet;

(2) Supplemental services. Those specified services which are in addition to the basic or required range of services, and for which the cabinet shall make payment when appropriately provided by the primary care center;

(3) Element. A specific subprogram within the Medical Assistance Program; for example, dental [primary] care center services is a subprogram or element of the Medical Assistance Program;

(4) Requirements for program participation. Those requirements of law or regulation generally applicable throughout the Medical Assistance Program and with which all medical services providers shall comply in order to participate and receive reimbursement as a provider of services to eligible medical assistance recipients.

Section 2. Requirement for Participation. Each primary care center shall be required to meet

the standards set for certification by the Commission on Health Economics Control in Kentucky, and shall not receive reimbursement for services as a primary care center provider until the cabinet determines that the standards are met and that the provider complies with all requirements for program participation. Each federally-required health center shall be required to meet appropriate licensure standards (whether as a primary care center or other health facility) and shall in addition be receiving a grant under section 329, 330, or 340 of the United States Public Health Service Act or be determined by the Secretary, United States Department of Health and Human Services to meet the requirements for receiving a grant under section 329, 330, or 340 of the United States Public Health Service Act.

Section 3. Covered Services. Each primary care center shall provide directly to eligible program recipients on a regular, full-time basis the basic services as specified in subsection (1) of this section, and may provide one or more of the supplemental services. Each federally-qualified health center shall be entitled to provide the services described in the Social Security Act at Section 1861(aa)(1) and any other ambulatory services offered on an outpatient basis which are included in the Medicaid state plan.

(1) Basic services which shall be provided by primary care centers.

(a) Medical diagnostic and treatment services for all age groups, as provided by a physician(s), nurse practitioner(s), or physician assistant(s) if licensed under state authority.

(b) Treatment of injuries and minor trauma;

(c) Prenatal and postnatal care;

(d) A program of preventive health services which shall include well-baby care, well-child care, and immunization, and which may include other types of preventive care;

(e) Referral services designed to ensure the referral to and acceptance by an appropriate medical resource when services necessary to the health of the patient are not provided directly by the center;

(f) Health education services. These services shall provide as a minimum appropriate personnel to present, on request, information on general health care to local school systems, civic organizations and other concerned local groups. Services are to include distribution of written material on pertinent health subjects.

(g) The primary care center shall provide directly at least two (2) of the following additional professional services:

1. Dentist;

2. Optometrist;

3. Family planning services. These services shall be provided as a package which shall include those services required under the family planning element of the Medical Assistance Program;

4. Home health services. These services shall include the same services as provided under the home health element of the Medical Assistance Program;

5. Social services counseling. This shall include, as a minimum, information and referral services. Intensive counseling is to be limited to crisis situations and health related problems. Individuals with other identified counseling needs are to be referred to appropriate social service agencies. These services shall be performed by a licensed, graduate, or certified social worker;

6. Pharmacy services. These services shall meet the standards of the pharmacy component of the Medical Assistance Program;

7. Nutritional services. These services shall include as a minimum individual counseling relating to nutritional problems or nutritional education. Group nutritional services may also be provided. These services shall be performed by a professional nutritionist; and

8. Nurse midwifery services. These services shall be provided as a program which is to include prenatal services to expectant mothers, as well as delivery and postnatal services. These services shall be performed by a certified nurse midwife.

(2) Supplemental services which may be provided by primary care centers.

(a) Other services (excluding institutional care) within the scope of the Medical Assistance Program;

(b) Holding/observation accommodations;

(c) Any of the types of service in subsection (1)(g) of this section, which are not provided as basic services;

(d) Outreach services. These services shall be provided as a package structured to identify health care needs in the service area; and

(e) Clinical pharmacist. A clinical pharmacist is a licensed pharmacist whose services include taking medication histories, monitoring drug use, contributing to drug therapy, drug selection, patient counseling, administering drug programs, and surveillance for adverse reactions and drug interactions.

Section 4. Drugs for Specified Immunizations. Effective with regard to services provided on or after October 1, 1988, primary care centers and, effective April 1, 1990, federally-qualified health centers, will be allowed to secure drugs for specified immunizations from the Department for Health Services free to provide immunizations for Medicaid recipients. The specified immunizations are:

(1) Diptheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine, live (MMR);

(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and

(4) Hemophilus B conjugate vaccine (HBCV).

Section 5. Limitations on Services. The following limitations are applicable to specified services:

(1) Pharmacy services are limited to those drugs covered through the pharmacy services element of the Medical Assistance Program;

(2) Other drugs and biologicals not covered under pharmacy services are limited to those necessary for the treatment of emergency cases;

(3) Laboratory services are limited to those procedures provided directly by the center, or if purchased, these services are limited to those covered under the independent laboratory element of the Medical Assistance Program;

(4) Dental services are limited to those procedures covered through the dental services element of the Medical Assistance Program[,

except for orthodontia services which are not covered in a primary care center];

(5) Vision care services are limited to those services covered through the vision care services element of the Medical Assistance Program;

(6) Audiology services are limited to those services covered through the hearing services element of the Medical Assistance Program;

(7) Abortion and sterilization services shall be performed in accordance with guidelines specified by the cabinet;

(8) Durable medical goods and prosthetics are limited to those covered under the durable medical equipment or home health element of the Medical Assistance Program;

(9) Mental health services are limited to emergency services and appropriate referral;

(10) Holding/observation accommodations are covered for not more than twenty-four (24) hours when provided in accordance with the following:

(a) The patient's record shall document the appropriateness of such utilization;

(b) The physician shall make the decision that such utilization is necessary;

(c) A licensed nurse shall be on duty at the center during the time a patient is held in center accommodations beyond regular scheduled hours;

(d) A licensed physician shall be on call at all times when a patient is held beyond the regular scheduled hours of the center;

(e) A statement of conditions observed and treatment rendered during the holding time shall be entered in the patient's medical record;

(11) Radiology procedures shall be performed by either a licensed practitioner of the healing arts or an individual holding a valid certificate to operate sources of radiation.

Section 6. Noncovered Services. The following services are specifically excluded from coverage as primary care center or federally-qualified health center services:

(1) All institutional services;

(2) Housekeeping, babysitting, and other homemaker services of like nature;

(3) Services which are not provided in accordance with restrictions imposed by law or regulation.

Section 7. The provisions of this regulation as amended shall be effective with regard to services provided on or after April 1, 1990 [July 1, 1989].

ROY BUTLER, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: March 28, 1990
FILED WITH LRC: April 9, 1990 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:055E

This emergency administrative regulation is being amended to comply with Section 6404 of the Omnibus Budget Reconciliation Act of 1989 which mandates, effective April 1, 1990, that payment to all federally-qualified health centers (which include many primary care centers) shall be at 100 percent of their reasonable cost. This regulation must be promulgated on an emergency basis to comply with the mandated implementation date. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on July 14, 1989, as this regulation contains the mandated payment to all federally-qualified health centers at 100 percent of their reasonable cost. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about April 1, 1990.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:055E. Payments for primary care center and federally-qualified health center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: April 9, 1990

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 primary care center and federally-qualified health center services.

Section 1. Primary Care Centers and Federally-qualified Health Centers. In accordance with 42 CFR 447.325, the cabinet shall make payment to providers who are appropriately licensed and have met the conditions for participation set by the cabinet, on the following basis:

(1) Payment shall be made on the basis of reasonable allowable cost.

(2) Payment amounts shall be determined by application of the "Primary Care Center and Federally-Qualified Helath Center [General Policies and Guidelines and Principles of] Reimbursement Manual" (revised April 1, 1990 [July 1, 1989], and hereby incorporated by reference) developed and issued by the cabinet, supplemented by the use of title XVIII-A reimbursement principles. The Kentucky Medical Assistance Program Primary Care Center and Federally-Qualified Health Center [General Policies and Principle of] 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.

(3) Allowable costs shall not exceed customary charges which are reasonable.

[(4) For services provided prior to July 1, 1985, reimbursement for medical and nursing cost center costs shall be subject to adjustment for a growth allowance. The growth allowance shall be computed for the year beginning each July, and shall be based on a projection of the change in the medical component of the Consumer Price Index over the previous year as applied to the

median service cost of medical and nursing services, on a per visit basis, for all participating providers. Increases in medical and nursing center costs in excess of the growth allowance shall be disallowed. For those facilities with medical and nursing cost increases which are less than the growth allowance, the difference between the two (2) shall be reimbursable as a cost containment incentive payment at the time of the usual cost settlement.]

[(5) For services provided on or after July 1, 1985, the average allowable cost per visit for the medical and nursing services cost center shall not exceed the lesser of actual allowable costs, or charges, or the actual allowable average cost per visit for medical and nursing center services for the facility fiscal year ending prior to July 1, 1985 (not adjusted to the lower of cost or charges) plus an additional growth allowance of twenty (20) cents per visit per month (if such cost is incurred) for each month after the facility's fiscal year end but prior to July 1985; effective with regard to services provided on or after July 1, 1989, facilities whose established rates on July 1, 1985 were below the median cost and which currently have an actual cost for medical and nursing services equal to or exceeding the median cost established on July 1, 1985 will receive the median cost as their rate, and facilities with an actual cost per service which is less than the median will be limited to actual costs. Primary care centers beginning participation on or after July 1, 1985, or which have less than two (2) full years of program participation on that date, shall be reimbursed on the basis of the lower of reasonable allowable costs or charges (as shown in subsections (1) through (3) of this section) for the first two (2) years of participation in the program. For the third and subsequent years, the average allowable cost per visit may not exceed the lower of the facility's actual allowable costs, or charges, or the facility's actual allowable costs (not adjusted to the lower of cost or charges) for the second year of participation.]

[(6) During the first six (6) months after the implementation of the policy contained in subsection (4) of this section, centers with fiscal year endings occurring in the six (6) month period shall not have medical and nursing center costs disallowed as a result of imposition of the growth allowance upper limit, but shall be entitled to receive any applicable incentive payment.]

[(7) The amount of any allowable incentive payment determined pursuant to the policy specified in subsection (4) of this section may not exceed the growth allowance, and must be added to allowable costs for application of the lower of costs or charges principle.]

(4) [(8)](a) Effective January 1, 1989 all primary care centers and, effective April 1, 1990, all federally-qualified health centers, will be placed on a universal rate year for purposes of payments. [upper limits. Except as specified in subsection (9) of this section, the following upper limits shall be applied on a prospective basis: medical and nursing services, 105 percent of the weighted median per visit cost with the upper limit for centers with a teaching component through affiliation with a medical school (University of Kentucky or University of Louisville) set at 135 percent of the weighted median per visit cost effective January 1, 1989, 120 percent effective January 1, 1990, and 105 percent effective January 1, 1991 and thereafter; pharmacy service cost shall be limited to the average amount paid by the Department for Medicaid Services to providers through the pharmacy element of the Medicaid program as determined from the most recent state fiscal year data, trended and indexed; and dental service cost shall be limited to the average amount paid per utilizer by the Department for Medicaid Services to providers through the dental element of the Medicaid program as determined from the most recent state fiscal year data, trended and indexed.]

[(b) A newly participating center shall not be included in the cost array and shall not be subject to upper limits until the center has one (1) full year of audited data resulting from Medicaid program participation.]

(b) [(c)] For the purpose of calculating interim rates [and establishing prospective upper limits], costs from the most recent audited cost report will be used with costs trended to the beginning of the [upper limit] year (e.g., to January 1, 1989 for the first universal rate year) and indexed for inflation to the end of that year.

(5) [(9)] As an incentive for cost efficiency, providers which at the beginning of the universal rate year have medical and nursing costs in the lowest one-fourth (1/4) of the array will receive an incentive payment which is set at twenty (20) percent of the average composite interim rate of the incentive eligible group, with the incentive to be paid only on visits which are not in excess of 10,000. The entire interim payment will be considered prospective in nature for the incentive eligible group in that there will be no settlement after audit requiring a payback unless charges are less than payments; to the extent that cost exceeds the interim payments, an upward adjustment will be made to compensate for the additional costs[, subject to the upper limits or July 1, 1985 medical and nursing services cost limit]. At the time of settlement, the center shall receive the greater of the interim payment, or actual cost up to the upper limits, not to exceed charges.

(6) [(10)] Effective with regard to services provided on or after October 1, 1988, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 which are provided free from the Department for Health Services to primary care centers and federally-qualified health centers shall be paid by the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the [primary care] centers that the drugs were used to provide immunizations to Medicaid recipients.

(7) [(11)] Effective with regard to services provided on or after January 1, 1989, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 shall not be considered an allowable cost even though the drugs are purchased on the open market so long as the drugs could have been obtained free from the Department for Health Services.

Section 2. Implementation of the Payment System. (1) The reimbursement system developed

by the cabinet for primary care centers and federally-qualified health centers is supported by the Title XVIII-A reimbursement principles which will serve as guidelines for determining reasonable allowable cost in areas not addressed specifically by the cabinet.

(2) The system shall utilize a method whereby [primary care] providers are paid an interim rate based on a reasonable estimation of current year costs followed by a year end adjustment to actual reasonable allowable costs. When the need can be demonstrated, adjustment to an interim rate will be made.

(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each [primary care center] provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(5) Interim payments due the provider [primary care center] shall be made at reasonable intervals but not less often than monthly.

Section 3. Prohibition against Joint Participation. Dual or joint participation in the medical assistance program by a primary care center or federally-qualified health center is not permitted. When a primary care center or federally-qualified health center elects to participate as such in the medical assistance program it may not participate concurrently under other regular ongoing elements of the medical assistance program, including the rural health clinic services element. In addition, when a center elects to participate as such in the medical assistance program, it is considered to elect participation for all eligible service elements, components, or subunits of the center.

Section 4. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:054, primary care center and federally-qualified health center services, nor for that portion of a [primary care] center's costs found unreasonable or nonallowable in accordance with the cabinet's "Primary Care Center and Federally-Qualified Health Center [General Policies and Guidelines and Principles of] Reimbursement Manual." In addition, when the utilization review processes of the cabinet find that costs have been incurred through provision of unnecessary medical treatment services, such costs shall be disallowed.

Section 5. The amendments to Sections 1 through 4 of this regulation shall be effective with regard to payments for services provided on or after April 1, 1990.

ROY BUTLER, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: March 28, 1990
FILED WITH LRC: April 9, 1990 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:340E

This emergency administrative regulation is being amended to comply with a federal mandate contained in Section 6408 of the Omnibus Budget Reconciliation Act of 1989 by providing, effective April 1, 1990, that for hospice patients in skilled nursing, intermediate care, dual licensed, and swing beds participating in the Medicaid program, the hospice shall be paid an amount for room and board furnished by the facility which is equal to 95 percent of the upper limit for that type of care. This regulation must be promulgated on an emergency basis to comply with the mandated implementation date. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about April 1, 1990.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:340E. Payments for hospice services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: April 9, 1990
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 policies of the cabinet with regard to payments for hospice services.

Section 1. Conditions for Participation. A hospice program must meet the Medicare conditions for participation and any [such] other standards [as may be] set by the cabinet in order to participate in the Medicaid program.

Section 2. Provision of Service. Payment for services shall be limited to those hospice program services as defined in 907 KAR 1:330, provided to eligible individuals meeting the criteria for receipt of hospice care as set forth in 907 KAR 1:330.

Section 3. Payment Rates. The payment rates shall be the same as those used in the Medicare program. If for some reason a Medicare payment rate is unavailable, the payment rate [that will be] used by Medicaid shall [will] be determined in the same manner as Medicare rates. In addition, for hospice patients in skilled nursing, intermediate care, dual licensed, and swing beds participating in the Medicaid Program, the hospice shall be paid an amount for room and board furnished by the facility which is equal to ninety-five (95) percent of the upper limit for that type of care.

Section 4. Copayments. (1) The Medicaid program shall [will] pay the Medicare copayments

if the Medicaid recipient qualifies for and has elected Medicaid hospice benefits as specified in 907 KAR 1:330.

(2) No copayments shall [will] be applied to Medicaid payment rates for hospice services.

Section 5. Coverage of Drugs. When the hospice provides to a participating recipient a medically necessary drug which is for a condition not relating to the terminal illness, the Medicaid program shall [will] reimburse the hospice separately for the [such] drug taking into consideration usual program constraints on drug coverage and payments. (Drugs relating to the terminal illness are reimbursed as a part of the usual hospice payment rate.)

Section 6. Effective Date. The amendments to this regulation [Payments for hospice services] shall be effective for hospice services provided on or after April 1, 1990 [October 1, 1986].

ROY BUTLER, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: March 28, 1990
FILED WITH LRC: April 9, 1990 at 11 a.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The administrative regulations published in this section of the Administrative Register were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on April 12, 1990, and are not yet in effect. Typographical and grammatical corrections, which are not republished, were corrected in other regulations as follows:

401 KAR 30:010, Definitions.
Section 1(86) - "quarternary" was changed to "quaternary". Section 1(118)(a) - added a closing parenthesis after "401 KAR 38:040". Section 1(188)(u) - added a "(u)" in front of the "1."
401 KAR 47:070, Operator certification.
Section 7(3)(b) - insert "shall" and delete "must". Section 13 - remove the "(s)" on "operator(s)".
401 KAR 47:090, Solid waste permit fees.
Section 1(2) - add "E" to the reference to "401 KAR 47:090".
401 KAR 47:140, Public information and permit issuance procedures.
"RELATES TO" - "224.889" is changed to "224.888". Section 4(2)(e)3 - added a period after the phrase "in the final decision"; deleted "; and".

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

401 KAR 30:020. General provisions.

RELATES TO: KRS 224.033, 224.036, 224.830 through 224.888 [889], 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033
NECESSITY AND FUNCTION: KRS 224.033 and the waste management provisions of KRS Chapter 224 require the cabinet to adopt rules and regulations for the generation, treatment, storage, recycling and disposal of hazardous wastes and the disposal of solid wastes. This chapter establishes the general administrative procedures which are applicable 401 KAR Chapters 31 through 49. This regulation sets forth general provisions which apply to the waste management regulations with regard to applicability, scope, exceptions, variances, general prohibitions, compatibility, conflicting provisions, severability, availability and confidentiality of information.

Section 1. Applicability. The waste management regulations shall apply to the disposal of solid waste and the management of all liquid, semisolid, solid, or gaseous waste defined or identified as hazardous in KRS Chapter 224 or the appropriate regulations (401 KAR 30:010, 401 KAR Chapter 31) by all persons and state and federal agencies who engage in the generation, treatment, storage, or disposal of such wastes, including hazardous substances spilled into the environment, thereby meeting the criteria of hazardous waste.

(1) The waste management regulations apply to all waste disposal sites or facilities with the following exceptions:

(a) Domestic sewage and any mixture of domestic sewage and other wastes that pass through a sewer system to a publicly-owned treatment works for treatment. (Note: these exemptions do not apply to sludges generated by the treatment of domestic sewage.)

(b) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended **through November 1988**. (Note: these exemptions do not apply to sludges generated by the treatment of industrial wastewater.)

(c) Solid or dissolved materials in irrigation return flows.

(d) Source special nuclear or by-product material as defined by the Atomic Energy Act, as amended **through September 1988** [42 U.S.C. 2011 et seq].

(e) Materials subjected to in situ mining techniques which are not removed from the ground as part of the extraction process.

(2) Any waste that is not excepted by subsection (1) of this section and that is identified or listed under 401 KAR Chapter 31 is subject to the waste management regulations pertaining to hazardous waste.

(3) Any waste which is not excepted by subsection (1) of this section or granted a variance under the conditions of 401 KAR 30:080, or Sections 8 and 9 of 401 KAR 31:010, and which is not subject to subsection (2) of this regulation is subject to the waste management regulations pertaining to solid waste except for:

(a) Agricultural wastes including manures and crop residues, returned to the soil as fertilizers or soil conditioners.

(b) Overburden resulting from mining operations intended for return to the mine site and coal mining wastes, refuse, overburden and coal mining by-products.

(c) The location and operation of septic tanks. These regulations do, however, apply to the disposal of septic tank pumpings.

(d) Disposal of waste by underground well injection subject to [the regulations (40 CFR Part 146) for] the Underground Injection Control Program (UICP) under the Safe Drinking Water Act, as amended **through October 1988** [, 42 U.S.C. 3007] [et seq].

Section 2. Variance. A variance, except as provided in 401 KAR Chapter 38, is a written waiver from any provision of the waste management regulations, upon the finding by the cabinet that the absence of such provision(s) shall [will] provide adequate protection to health and the environment in a manner consistent with the purpose of the waste management regulations and KRS Chapter 224. Variances may be granted for recycling operations in accordance with the standards contained in 401 KAR 30:080.

(1) The cabinet may grant a variance or permit modification from the requirements of the waste management regulations if a waste permit requirement, or the process and equipment used is determined by the cabinet to be either:

(a) Insignificant as a potential hazard to public health or the environment because of its small quantity; low concentration; physical, biological, or chemical characteristics; or

method of operation used; or

(b) Handled, processed, or disposed of pursuant to regulations of another governmental agency, providing the regulations of other agencies meet the requirements of the waste management regulations, including federal exemption rule-making actions pertaining to hazardous waste management.

(2) A request for variance from a requirement of the waste management regulations shall be submitted in a report as prescribed by the cabinet in sufficient detail to describe clearly the analyses, procedures, controls, and other pertinent data necessary to support the request. The granting of such a request by the cabinet shall be in writing and shall specify appropriate conditions such as duration, limitations, and review procedures.

(3) The cabinet shall [will] not grant any request for a variance which:

(a) Would make the hazardous waste program less stringent than the federal hazardous waste management program; or

(b) Would be in conflict with Kentucky Revised Statutes; or

(c) Would be in conflict with a regulatory provision stating that no variance shall be granted; or

(d) Would vary the requirements of 401 KAR 47:030 [30:030]; or

(e) Would vary the financial responsibility requirements in a manner conflicting with Section 1 of 401 KAR 34:080 or Section 1 of 401 KAR 35:080.

Section 3. Compatibility with the Federal Acts. The regulations promulgated pursuant to the waste management provisions of KRS Chapter 224 are intended to be compatible with federal regulations adopted pursuant to Public Law 94-580, the "Resource Conservation and Recovery Act of 1976," as amended **through November 1988**.

Section 4. Conflicting Provisions. The provisions of the waste management regulations are to be construed as being compatible with and complimentary to each other. In the event that any of these regulations are found to be contradictory, the more stringent provisions shall apply.

Section 5. Severability. In the event that any provision of KRS Chapter 224 or any regulation promulgated pursuant thereto is found to be invalid, the remaining waste management regulations in 401 KAR Chapters 30 through 49 shall not be affected or diminished thereby.

Section 6. Use of Number and Gender. As used in 401 KAR Chapters 30 through 49:

(1) Words in masculine gender also include the feminine and neuter genders; and

(2) Words in the singular include the plural; and

(3) Words in the plural include the singular.

Section 7. Applicability of Regulations. (1) At the time of permit issuance, the applicable regulations shall be those waste management regulations which are in effect upon the date of permit issuance except as provided in 401 KAR 47:080, Section 6(3).

(2) Unless otherwise provided in 401 KAR 47:080, Section 6(3), for permit modifications, revocation and reissuance, or termination, the applicable regulations shall be those regulatory provisions which are in effect upon the date that the cabinet makes a final determination (i.e., approval of a permit modification) upon the permit action and are applicable to those specific permit conditions being modified or revoked and reissued. The procedures which shall be used for permit modifications, revocation and reissuance, or termination shall be those regulatory procedures which are in effect upon the date of the cabinet's final determination.

Section 8. Availability of Information; Confidentiality of Information. (1) Any information provided to the cabinet under 401 KAR Chapters 30 through 49 shall [will] be made available to the public to the extent and in the manner authorized by the Freedom of Information Act **(1966), as amended through November 1974**, 5 U.S.C. section 552, KRS 224.035 and 224.036 and Chapter 61 and [EPA regulations implementing the Freedom of Information Act and] 400 KAR 1:060 as applicable.

(2) Any person who submits information to the cabinet in accordance with 401 KAR Chapters 30 through 49 and 400 KAR 1:060 may assert a claim of business confidentiality or trade secret covering part or all of that information by following the procedures set forth in 400 KAR 1:060. Information covered by such a claim shall [will] be disclosed by the cabinet only to the extent, and by means of the procedures, set forth in 400 KAR 1:060 and KRS Chapter 61 except that information required by Section 4(1) of 401 KAR 32:050 which is submitted in notification of intent to export a hazardous waste shall [will] be provided to the U.S. Department of State and the appropriate authorities in a receiving country regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by the cabinet, it may be made available to the public without further notice to the person submitting it.

Section 9. Compliance Deadlines. After promulgation of regulations under 401 KAR Chapter 31 identifying by its characteristics or listing any substance as hazardous waste subject to the hazardous waste management regulations, any person generating or transporting such substance or owning or operating a facility for treatment, storage, disposal or recycling of such substance shall register with the cabinet. Such registration shall be filed within ninety (90) days after promulgation or revision of the regulations unless another notification date is specified.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: March 8, 1990
FILED WITH LRC: March 9, 1990 at noon

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

401 KAR 47:030. Environmental performance standards.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888, 224.994, 50 CFR Part 424

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the treatment, storage, recycling and disposal of solid wastes. KRS 224.842 requires that persons engaging in the treatment, storage, recycling and disposal of solid waste obtain a permit. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities, and the standards for certification of operators. An overview of the permit program is found in Section 1 of 401 KAR 47:080. This regulation sets forth the minimum environmental standards with which all solid waste sites or facilities shall comply.

Section 1. Purpose, Scope and Applicability. The standards in this regulation are for use under the waste management provisions of KRS Chapter 224 in determining which solid waste sites or facilities pose a reasonable probability of adverse effects on human health or the environment. Solid waste sites or facilities failing to satisfy the requirements of this regulation shall be considered open dumps which are prohibited by KRS 224.835. No owner or operator shall cause, suffer, or allow a solid waste site or facility or any unit of a solid waste site or facility to violate any provision of this regulation.

Section 2. Floodplains. No solid waste site or facility shall restrict the flow of the 100 year flood, reduce the temporary water storage capacity of the flood plain, or be placed in a manner likely to result in washout of waste, so as to pose a hazard to human health, wildlife, or land or water resources.

Section 3. Endangered Species. No solid waste site or facility shall:

(1) Cause or contribute to the taking of any endangered or threatened species or candidate species of the Endangered Species Act of 1973 as amended through January 1984 and 50 CFR Part 424 as of October 1984 [and subsequent regulations] [of plants, fish, wildlife]; or

(2) Result in the destruction or adverse modification of the critical habitat of endangered or threatened species or candidate species as identified in the Endangered Species Act of 1973 as amended through January 1984 and 50 CFR Part 424 as of October 1984 [and subsequent regulations].

Section 4. Surface Waters. No solid waste site or facility shall:

(1) Cause a discharge of pollutants into waters of the Commonwealth, including wetlands, that violates any requirements of KRS Chapter 224, including but not limited to the Kentucky Pollutant Discharge Elimination System;

(2) Cause a discharge of dredged material or fill material to waters of the Commonwealth that is in violation of the requirements under Section 404 of the Clean Water Act as of February 4, 1987 [, as amended]; or

(3) Cause the release [discharge] of nonpoint source pollution to waters of the Commonwealth, including wetlands, that violates any requirements of the Kentucky Nonpoint Source Pollution Program [an areawide or statewide water quality management plan that has been approved by the cabinet].

Section 5. Groundwater. No solid waste site or facility shall contaminate an underground drinking water source [groundwater] beyond the point of compliance [waste boundary] in excess of the maximum contaminant levels contained in Section 6 of this regulation.

Section 6. Maximum Groundwater Contaminant Levels. The maximum contaminant levels of this section are for use in determining whether solid waste site or facility activities comply with the groundwater criteria of Section 5 of this regulation. Only analytical methods for these contaminants that are approved by the cabinet shall be used. No solid waste site or facility shall contaminate an underground drinking water source [aquifer] beyond the maximum contaminant levels established in this section.

(1) Maximum contaminant levels for inorganic chemicals. No solid waste site or facility shall contaminate an underground drinking water source [aquifer] beyond the maximum contaminant levels established herein.

(a) The following are the maximum levels of inorganic chemicals other than fluoride:

Contaminant	Maximum Level[1] (milligrams per liter)
Arsenic	0.05 mg/l
Barium	1.0 mg/l
Cadmium	0.01 mg/l
Chromium	0.05 mg/l
Lead	0.05 mg/l
Mercury	0.002 mg/l
Nitrate (as N)	10.0 mg/l
Selenium	0.01 mg/l
Silver	0.05 mg/l

[1]Metal criteria are total recoverable metals to be measured in an unfiltered sample.

(b) The maximum contaminant levels for fluoride are:

Temperature[1] Degrees Fahrenheit	Degrees Celsius	Maximum Level
53.7 and below	12 and below	2.4 mg/l
53.8 to 58.3	12.1 to 14.6	2.2 mg/l
58.4 to 63.8	14.7 to 17.6	2.0 mg/l
63.9 to 70.6	17.7 to 21.4	1.8 mg/l
70.7 to 79.2	21.5 to 26.2	1.6 mg/l
79.3 to 90.5	26.3 to 32.5	1.4 mg/l

[1]Annual average of the maximum daily air temperature.

(2) Maximum contaminant levels for organic chemicals. The following are the maximum contaminant levels for organic chemicals other than volatile synthetic organic chemicals:

	Maximum Level
(a) Chlorinated hydrocarbons:	
Endrin (1,2,3,4,10,10-Hexachloro-6, 7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1,4-endo-endo-5,8-dimethano-naphthalene)	0.0002 mg/l
Lindane (1,2,3,4,5,6-Hexachlorocyclo hexane, gamma isomer)	0.004 mg/l
Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxyphenyl) ethane)	0.1 mg/l
Toxaphene ($C_{10}H_{10}C_{18}$-Technical chlorinated camphene, 67 to 69 percent chlorine)	0.005 mg/l
(b) Chlorophenoxys:	
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1 mg/l
2,4,5-TP Silvex (2,4,5-Trichloro-phenoxypropionic acid)	0.01 mg/l [0.001 mg/l]

(3) Maximum contaminant levels for radioactivity. The following are the maximum contaminant levels for radionuclides:

Radionuclides	Maximum Level
Gross alpha particles	15 picocuries per liter
Radium	5 picocuries per liter
Gross beta particles	50 picocuries per liter
Strontium 90	8 picocuries per liter
Tritium	20,000 picocuries per liter
Iodine 131	3 picocuries per liter

(4) Maximum contaminant levels for volatile synthetic organic chemicals. The following are the maximum contaminant levels for volatile synthetic organic chemicals:

Chemicals	Maximum Level (milligrams per liter)
Benzene	0.005
Carbon tetrachloride	0.005
1,2-Dichloroethane	0.005
Trichloroethylene	0.005
para-Dichlorobenzene	0.075
1,1-Dichloroethylene	0.007
1,1,1-Trichloroethane	0.2
Vinyl chloride	0.002

(5) Maximum microbiological contaminant levels. The maximum contaminant level for coliform bacteria from any one (1) well shall be:

(a) Using the membrane filter technique:

1. Four (4) [One (1)] coliform bacteria [bacterium] per 100 milliliters if one (1) sample is taken; or

2. Four (4) [One (1)] coliform bacteria [bacterium] per 100 milliliters in more than one (1) sample of all the samples analyzed in one (1) month; or

(b) Using the five (5) tube most probable number procedure (the fermentation tube method) in accordance with the analytical procedures approved by the cabinet, and using a standard sample, each portion being one-fifth (1/5) of the sample:

1. If the standard portion is ten (10) milliliters, coliform in any five (5) consecutive samples from a well shall not be present in three (3) or more of the twenty-five (25) portions; or

2. If the standard portion is 100 milliliters, coliform in any five (5) consecutive samples from a well shall not be present in five (5) portions in any of five (5) samples or in more than fifteen (15) of the twenty-five (25) portions.

Section 7. Application to Land Use for the Production of Food Chain Crops. No solid waste site or facility shall exist or occur which applies solid waste within three (3) feet of the surface of land used for the production of food chain crops unless in compliance with all the requirements of subsection (1) or (2) of this section:

(1)(a) The pH of the solid waste and soil mixture is six and five-tenths (6.5) or greater at the time of each solid waste application, except for solid waste containing cadmium at concentrations of two (2) mg/kg (dry weight) or less;

(b) The annual application of cadmium from solid waste does not exceed 0.44 pounds per acre on land used for production of tobacco or food chain crops. The annual cadmium application rate does not exceed 0.44 pounds per acre; and

(c) The maximum cumulative application of cadmium from the waste does not exceed the levels in Table 1 of this paragraph.

Table 1

Maximum cumulative application

Soil Cation Exchange Capacity (meq/100g)	Background Soil pH	Pounds/per/Acre
<5	≥6.5	4.46
5-15	≥6.5	8.92
>15	≥6.5	17.84
>15	<6.5*	4.46

*For soils with a background pH of less than six and five-tenths (6.5), the maximum cumulative cadmium applications rate for soils with a background pH equal to or greater than six and five-tenths (6.5) may be used if the pH of the sludge-soil mixture is adjusted to and maintained at six and five-tenths (6.5) or greater whenever food chain crops are grown.

(2) If animal feed is the only food chain crop produced, there is no limit to the cadmium application rate, as long as the pH of sludge and soil mixture is six and five-tenths (6.5) or greater at the time of sludge application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food chain crops are grown. A plan shall also be developed which demonstrates how the animal feed shall be distributed to preclude human ingestion, and the measures to be taken to safeguard against possible health hazards from

cadmium entering the food chain, which may result from alternative land uses. Future property owners shall also be notified by a stipulation in the land record or property deed which states that the property received sludge at high cadmium application rates and that food chain crops, except for animal feed, shall not be grown due to possible health hazards.

Section 8. Polychlorinated Biphenyls. No solid waste site or facility shall exist or occur which places solid waste containing concentrations of polychlorinated biphenyls (PCBs) equal to or greater than one (1) mg/kg (dry weight) on the land. However, residual landfills may dispose of PCBs in accordance with their permit and contained landfills may dispose of solid wastes containing PCBs equal to forty-nine (49) mg/kg (dry weight) or less.

Section 9. Disease. (1) Disease vectors. No solid waste site or facility shall exist or occur unless the on-site population of disease vectors is prevented or controlled through the periodic application of cover material or other techniques as appropriate to protect human health and the environment.

(2) Sewage sludge and septic tank pumpings. No solid waste site or facility shall exist or occur which applies sewage sludge or septic tank pumpings within three (3) feet of the surface of the land unless a method to reduce pathogens has been utilized.

Section 10. Air. (1) No solid waste site or facility shall engage in open burning of solid waste or hazardous wastes. This requirement does not apply to infrequent burning of agricultural wastes in the field, silvicultural wastes for forest management purposes, land-clearing debris, diseased trees, debris from emergency cleanup operations, or ordinance.

(2) No solid waste site or facility shall violate applicable air pollution requirements contained in KRS Chapter 224 or 401 KAR Chapters 50 through 63.

Section 11. Safety. (1) Explosive gases. No solid waste site or facility shall allow the concentration of explosive gases generated by the facility to exceed:

(a) Twenty-five (25) percent of the lower explosive limit for the gases in facility structures (excluding gas control or recovery system components); and

(b) The lower explosive limit for the gases at the facility property boundary.

(2) Fires. No solid waste site or facility shall pose a hazard to the safety of persons or property from fires. This may be accomplished through compliance with Sections 9 and 10 of this regulation, through the periodic application of cover material or other techniques as appropriate.

(3) Access. No solid waste site or facility shall allow uncontrolled public access, unauthorized vehicular traffic, or illegal dumping of wastes. This requirement to ensure protection of human health and the environment may be met by using artificial barriers, natural barriers, or other methods as appropriate.

Section 12. Public Nuisance. No solid waste site or facility shall result in a public nuisance because of blowing litter, debris, or other waste or material.

Section 13. Wetlands. No <u>new or expanded</u> solid waste site or facility shall be located in wetlands.

Section 14. Compliance. No solid waste site or facility shall violate any requirement of KRS Chapter 224 [or any regulation promulgated under the authority of KRS Chapter 224].

Section 15. 401 KAR 30:030, entitled Environmental performance standards, is hereby repealed.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: March 8, 1990
FILED WITH LRC: March 8, 1990 at noon

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

401 KAR 47:080. Classification of solid waste sites or facilities.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888, 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842
NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the management, processing, and disposal of solid wastes. KRS 224.842 requires that persons engaging in the storage, treatment, recycling, and disposal of solid waste obtain a permit. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities, and the standards for certification of operators. This regulation sets forth the classification of solid waste sites or facilities for permitting purposes.

Section 1. Coverage. The permit regulations of 401 KAR Chapter 47 establish provisions for the solid waste permit program under KRS Chapter 224. The regulations of this chapter cover the basic permitting requirements, including application requirements, standard permit conditions, a presiting procedure, construction, modification, monitoring and reporting of any facility that manages solid waste. The regulations of this chapter are part of a regulatory scheme implementing the solid waste provisions of KRS Chapter 224. The solid waste permit program relies upon technical requirements which are contained in 401 KAR Chapter 48. The technical regulations are used by the cabinet to determine what conditions are applicable to each permit and to determine compliance with KRS Chapter 224. Regulations governing solid waste planning are set forth in 401 KAR Chapter 49 and the enforcement and compliance monitoring requirements in 401 KAR Chapter 40.

Section 2. Permit Types. This chapter provides for several types of solid waste site or facility permits which are classified based on the waste managed and the facility type.

(1) Contained landfill permit. Contained landfill is the category of solid waste site or facility which may accept [accepts] for isposal all nonhazardous solid waste including residential, commercial, institutional, industrial, and municipal waste, [and] shredded tires[. Contained landfills may also accept, with approval from the cabinet], household hazardous waste, limited quantity generator hazardous waste and nonhazardous spill cleanup residue. The technical requirements for contained landfills are found in 401 KAR 48:050 and 401 KAR 48:070 through 401 KAR 48:090.

(2) Construction/demolition debris landfill permit. Construction/demolition debris landfill is the category of solid waste site or facility for the disposal of solid waste which results from the construction, remodeling, repair and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm-related cleanup. Such waste includes, but is not limited to: bricks, shredded or segmented tires, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, tree stumps, limbs, saw dust, leaves, yard waste, paper, paper products, metals, furniture, insulation, roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, electrical wiring and components containing no liquids or hazardous metals that are incidental to any of the above and other inert waste as approved by the cabinet. Asbestos-containing materials may be accepted only if the permit application includes procedures approved by the cabinet to handle these materials. Construction/demolition debris landfills shall not be for disposal of garbage, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, PCB-containing waste, hazardous material spill residues, [hazardous substances,] limited quantity generator hazardous waste, any waste regulated by 401 KAR Chapter 31 and 32, whole tires, liquids, drums, fuel tanks, or other nonpermitted waste. The technical requirements for construction/demolition debris landfills are found in 401 KAR 48:050 and 401 KAR 48:060.

(3) Residual landfill permit. Residual landfill is the category of solid waste site or facility designed and operated to accept for disposal a limited number of industrial wastes or residues which are fully characterizable. It also includes residuals from air and water pollution control devices and energy generation which are codisposed in a mining operation. In addition, residual landfills may accept sludge, and special wastes. The technical requirements for residual landfills are found in 401 KAR 48:050 and 401 KAR 48:170.

(4) Landfarming permit. Landfarming is a category of solid waste site or facility where solid waste is applied to the soil surface or injected into the upper layer of the soil to improve soil quality or provide plant nutrients. Solid wastes suitable for this purpose include, but are not limited to, food processing waste, municipal sewage treatment plant sludge, and municipal water treatment plant sludge. The technical requirements for landfarming facilities are found in 401 KAR 48:200.

(5) Permit-by-rule. Permit-by-rule is a category of solid waste site or facility permit for certain solid waste management practices listed in 401 KAR 47:150 which are deemed to have a permit without the owner or operator having made application to the cabinet. The practices and conditions of the permit-by-rule are specified in Section 1 of 401 KAR 47:150 and include limited tire disposal, on-site disposal of land clearing wastes, on-site disposal of construction and demolition wastes, sawdust piles, pumpings, oil production brine pits, gas and oil drilling, mud pits, and asphalt residues, waste piles, surface impoundments with a KPDES permit, automobile and truck recycle and salvage yards, beneficial reuse of solid wastes.

(6) Registered [Granted] permit-by-rule.

(a) Registered [Granted] permits-by-rule are a category of solid waste site or facility permit providing for the storage, treatment and disposal of solid waste that includes:

1. Commercial recycling centers;

2. Transfer stations;

3. Construction/demolition debris landfills of one (1) acre or less, when the wastes are not disposed at the site of generation;

[4. Waste piles;]

4. [5.] Solid waste incinerators that have a rated capacity of more than one (1) ton per day including those using refuse derived fuel;

5. [6.] Sludge giveaway programs, composted sludge and other composted material programs in accordance with 401 KAR 48:200;

6. [7.] Landfarming of class I sludges in accordance with 401 KAR 48:200;

[8. Junkyards;]

[9. Surface impoundments;]

7. [10.] Septic tank pumpings if in compliance with the Cabinet for Human Resources regulations and the waste is not applied to within three (3) feet of the surface of the land unless a method to reduce pathogens has been utilized in accordance with 401 KAR 48:200; and

8. [11.] Convenience centers. [;]

[12. Beneficial reuse of solid waste; and]

[13. Facilities that do not conform to any other type of permit.]

(b) Owners and operators of a registered permit-by-rule site or facility are deemed to have a permit without further action by the cabinet. Owners and operators of a registered permit-by-rule site or facility shall prevent [The determination that such facilities qualify for a granted permit-by-rule shall include consideration by the cabinet of the nature of the waste, including the amount and characteristics, and the potential for] adverse effects on human health and the environment as identified in 401 KAR 47:030 and implement any necessary [the potential need for] corrective action [including surface and groundwater monitoring] under Section 8 of 401 KAR 48:300.

(c) Operators shall submit a registration on a form prescribed by the cabinet [notice of intent to apply for a solid waste facility permit] as specified in Section 3 of this regulation[, 401 KAR 47:170] or 401 KAR 48:200, and shall operate in accordance with the standards specified in 401 KAR 48:200 or 401 KAR 47:110, and 401 KAR 47:030.

(7) Emergency permit. An emergency permit is a category of solid waste site or facility permit for the short-term storage or disposal of solid waste generated from a storm or flood event or other emergency as specified by the cabinet. The requirements for emergency permits are found in

401 KAR 47:150.

(8) Research, development and demonstration permit. A research, development and demonstration permit is a category of solid waste site or facility permit issued for a short period to demonstrate unproven technology. The permit procedures for this category can be found in 401 KAR 47:150.

(9) Residential landfill permit. A residential landfill permit is a category of solid waste site or facility construction permit which was issued prior to the effective date of this regulation. Landfills in this category may continue to operate under the prior issued permit provided they notify the cabinet in accordance with Section 4 of this regulation and comply with the operating standards for contained landfills as specified in 401 KAR 48:090, or construction/ demolition debris landfills as specified in 401 KAR 48:060. The facility may close in accordance with Sections 4 and 5 of this regulation or submit an application in accordance with the technical standards in 401 KAR Chapter 48.

(10) Inert landfill permit. An inert landfill permit is a category of solid waste site or facility permit which was issued prior to the effective date of this regulation. Landfills in this category may continue to operate under the prior issued permit provided they notify the cabinet in accordance with Section 4 of this regulation and comply with the operating standards for construction/demolition debris landfills as specified in 401 KAR 48:060 or residual landfills specified in 401 KAR 48:170 [depending on the classification of wastes in the section]. The facility may close in accordance with Sections 4 and 5 of this regulation or submit an application in accordance with the technical standards of 401 KAR Chapter 48.

Section 3. Notification Procedures for Registered [Granted] Permit-by-rule Facilities [Without Permits]. All solid waste sites or facilities in existence on the effective date of this regulation that require registered [granted] permits-by-rule as specified in Section 2(6) of this regulation shall, no later than October 1, 1990, submit a form prescribed by the cabinet. [either file a notice of intent to apply for a solid waste permit (see 401 KAR 47:170 or 401 KAR 48:200) or close using the standards in Section 5(1)(c)1, 3, and 4 of this regulation.]

(1) After submission of the registration [notice of intent to apply] form, the cabinet shall acknowledge receipt in writing [may issue a solid waste granted permit-by-rule]. Facility owners or operators with registered [granted] permits-by-rule shall comply with the environmental performance standards of 401 KAR 47:030[, the recordkeeping requirements of 401 KAR Chapter 48,] and any condition of the registered [granted] permit-by-rule specified in 401 KAR 47:110.

(2) [Timely submission of the notice of intent to apply form qualifies the operator of a granted permit-by-rule facility in existence on the effective date of this regulation for a solid waste granted permit-by-rule.] The operator of such facilities may continue to operate the facility without further application to the cabinet subject to the conditions specified in 401 KAR 47:110.

(3) Existing facilities required by this chapter to register with the cabinet [apply for a granted permit-by-rule] which close prior to [the effective date of this regulation and complete closure prior to] October 1, 1990, may close without submittal of the registration form [notice of intent to apply for a solid waste permit].

Section 4. Solid Waste Facilities with Permits Issued Prior to the Effective Date of this Regulation. (1) Within six (6) months of the effective date of this regulation, any person that possesses a solid waste landfill or landfarming permit issued before the effective date of this regulation under KRS Chapter 224 shall file a notice with the cabinet which states the operator's intent to close or meet the revised technical requirements by July 1, 1992.

(2) After July 1, 1992, no person shall operate a solid waste landfill or landfarming facility unless one (1) of the paragraphs of this subsection is satisfied and the owner or operator has complied with subsection (1) of this section:

(a) The facility, owner or operator possesses a permit issued under 401 KAR Chapters 47 and 48;

(b) The facility, owner or operator possesses a permit modified to meet the technical standards of 401 KAR Chapter 48;

(c) An [A complete technical] application for a permit modification which addresses each of [meets] the applicable technical standards for closure or conversion to a different classification under 401 KAR Chapters 47 and 48 has been filed with the cabinet within twelve (12) months of the effective date of this regulation and the cabinet has not yet rendered a decision with respect to the complete application; or

(d) The facility, owner or operator has requested and received approval from the cabinet in accordance with subsection (3) of this section.

(3) Residential and contained landfills [Solid waste sites or facilities] with permits issued prior to the effective date of this regulation may operate until July 1, 1995 if the owner or operator complies with [following criteria are met]:

(a) [The owner or operator complies with] Subsections (1), (2), and (5) of this section;

(b) The construction quality control plan which has [and quality assurance data have] been approved by the cabinet or meets the requirements of 401 KAR 48:080, Section 4 to [and shall meet the requirements specified in Section 6 of 401 KAR 47:190 and] document the existence or placement of:

1. At least twelve (12) inches of soil with a maximum permeability of 1×10^{-7} centimeters per second or its equivalent;

2. A leachate collection system installed in a manner approved by the cabinet;

3. A groundwater monitoring system meeting the requirements of 401 KAR 48:300; and

(c) The installation of scales and equipment as specified in 401 KAR 48:070, Sections 6 and 13. [Groundwater monitoring data indicate no contamination sufficient to trigger assessment or corrective action as specified in Section 8 of 401 KAR 48:300.]

(4) Solid waste sites or facilities with permits issued prior to the effective date of

this regulation may close prior to July 1, 1992, under the closure requirements specified in Section 5 of this regulation without complying with the requirements of 401 KAR Chapter 48 provided:

(a) The permittee has provided the notice as required in subsection (1) of this section;

(b) [(a)] A complete closure plan which complies with the closure requirements of Section 5 of this regulation is submitted to the cabinet within twelve (12) months of the effective date of this regulation or one (1) year prior to last intended receipt of waste whichever occurs first;

(c) [(b)] The operator maintains a valid operating permit including the bond required by KRS 224.846 prior to and during closure [commencing]; and

(d) [(c)] The groundwater monitoring data for the facility includes the parameters [show no increase above existing background of contaminants] listed in 401 KAR 48:300, Section 11.

(e) The owner or operator performs corrective action if required under 401 KAR 48:300.

(5) Residential and inert landfills permitted prior to the effective date of this regulation shall comply with the following operating requirements:

(a) Residential landfills shall meet the operating requirements for contained landfills in 401 KAR 48:090 or construction/demolition debris landfills in 401 KAR 48:060.

(b) Inert landfills shall meet the operating requirements for construction/demolition debris landfills in 401 KAR 48:060 or residual landfills in 401 KAR 48:170.

(6) No placement of the low permeability soil liner component shall be initiated at any landfill, or portion thereof, unless it meets the requirements of subsection (7) of this section or 401 KAR Chapters 47 and 48.

(7) Operation may be authorized for any portion of a landfill in accordance with Section 4(3) [(2)] of this regulation for which a [placement of the] low permeability soil liner component had been approved [commenced] prior to January 16, 1990. Any soil construction shall be certified using the requirements of Section 4 of 401 KAR 48:080. [the effective date of this regulation.]

Section 5. Closure Requirements for Sites Closing under Section 4(1) of this Regulation. (1) Residential landfills, contained landfills and inert landfills permitted prior to the effective date of this regulation, closing pursuant to the notice in Section 4(1) of this regulation, shall comply with the following:

(a) All records shall be submitted to the cabinet;

(b) A closure plan shall be submitted to the cabinet that shall contain the following requirements:

1. A description of the access controls;

2. A description of the covering activities and procedures including frequency of cover, total volume and source of borrow material available, and total estimated volume and source of cover required (final, daily and interim);

3. The proposed revegetation program, including provisions for liming, fertilization, seed types and seeding schedule, erosion control during early growth period, and interim cover vegetation program;

4. A final cover maintenance program covering the entire site and lasting two (2) years beyond closure, to include erosion control, reseeding, refertilization and growth control; and

5. A detailed plan for closure of the landfill in accordance with KRS 224.846 along with an estimate of closure costs; and

(c) Closure requirements.

1. Those areas of a landfill that shall receive no additional deposits of solid waste within 365 days of the last placement of waste shall receive final cover. A minimum final cover of two (2) feet shall be required in addition to any daily and interim cover required. All contained and residential landfills shall have the lower six (6) inches of the final cap contain soil with a permeability of 1×10^{-7} centimeters per second;

2. Before earth-moving equipment is removed from the site, an inspection of the entire site shall be made by an authorized representative of the cabinet to determine compliance with approved plans and specifications. The owner or operator shall submit a closure schedule based on the approved closure plan thirty (30) days prior to the last intended use of a solid waste facility;

3. Final cover shall be graded as provided in the approved closure plan in a manner to prevent ponding. For a period of two (2) years, the surface of final cover shall be maintained at the proper elevation as specified in the approved closure plan;

4. Final cover shall be revegetated. After grading, final cover shall be fertilized as necessary, seeded, and/or planted with legumes, perennial grasses or other vegetation according to the approved closure plan. The owner or operator shall be required to repeat this process until adequate vegetation is obtained to ensure soil stabilization as specified in the approved closure plan;

5. Other necessary corrective work required by the cabinet, if any, shall be performed before the landfill is accepted as closed and financial responsibility funds released;

6. The owner or operator of a residential or contained landfill shall record a notice that shall in perpetuity notify any potential purchaser of the property of the location and time of operation of the facility, and a statement that future disturbance of this area shall only occur after an examination of potential gas or leachate migration problems. Such notice shall be recorded in accordance with state property law prior to acceptance of final closure of the landfill.

(2) Landfarming facilities permitted prior to the effective date of this regulation closing under Section 4(1) of this regulation shall comply with the following:

(a) All records shall be submitted to the cabinet; and

(b) Food chain crops restrictions of 401 KAR 47:030 shall be met including deed notice if applicable.

(3) Residual landfills permitted prior to the effective date of this regulation closing under Section 4(1) of this regulation shall comply with the following:

(a) The closure plan shall specify the function and design of the final cover for the facility. The closure design shall assure compliance with the applicable environmental performance standards in 401 KAR 47:030 and

shall reflect consideration of:
1. The type and amount of waste in the facility;
2. The mobility and expected rates of migration of the waste;
3. The site location, topography and surrounding land use, and final site use;
4. The climatic conditions in the area;
5. The characteristics of the cover material including erodability, slope, length of run of slope, and type of vegetation on the cover; and
6. The geological and soil profiles and surface and subsurface hydrology of the site.
(b) All records shall be submitted to the cabinet.
(c) Closure requirements.
1. A residual landfill shall be closed in a manner that shall assure compliance with the environmental performance standards in 401 KAR 47:030. The closure shall include the placement of a final cover over the facility as specified in the approved design of the site;
2. Any necessary corrective work required by the cabinet shall be performed before the residual landfill is accepted as closed and financial responsibility funds released;
3. The owner or operator of a residual landfill shall record a notice that shall in perpetuity notify any potential purchaser of the property of the location and time of the operation of the facility, nature of the waste placed in the site and a caution against future disturbance of the area. Such notice shall be recorded in accordance with state property law prior to acceptance of final closure of the landfill; and
4. Closure care maintenance. A residual landfill shall be maintained for two (2) years following the closure of the site in a manner that complies with the environmental performance standards in 401 KAR 47:030 and in accordance with any approved closure care monitoring and maintenance plan approved by the cabinet.

Section 6. Solid Waste Facility Applications Pending on the Effective Date of This Regulation. (1) Unless the provisions of subsection (3) of this section are applicable, applications pending as of the effective date of this regulation shall be revised to meet all requirements of 401 KAR Chapters 47 and 48 prior to being determined technically complete.
(2) Applications that have been determined to be administratively complete prior to the effective date of this regulation and have published the notices required by KRS 224.855 shall complete the public information process commencing with Section 12(3) of 401 KAR 47:140.
(3) Applications for solid waste sites or facilities upon which a preliminary determination was made and a hearing pursuant to KRS 224.081 commenced prior to the effective date of this regulation shall be subject to and reviewed in accordance with the procedural and substantive [substantial] requirements in effect at the time the preliminary determination was made if prior to the effective date of this regulation the proposed solid waste site or facility had completed construction pursuant to a permit issued by the cabinet. In the event an application processed under this subsection results in issuance of a permit, the permit shall thereafter be subject to all provisions of these regulations applicable to permits issued prior to the effective date of these regulations.

Section 7. Repeal. 401 KAR 47:020, entitled Solid waste permit process, is hereby repealed.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: March 8, 1990
FILED WITH LRC: March 9, 1990 at noon

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

401 KAR 47:100. General provisions for obtaining a solid waste permit.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.886, 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.835, 224.842, 224.855, 224.867
NECESSITY AND FUNCTION: KRS Chapter 224.842 requires that persons who engage in the management, processing, and disposal of waste first obtain a waste facility permit from the cabinet. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities and the standards for certified operators. This regulation establishes the procedures for obtaining a permit for a solid waste facility.

Section 1. Overview of the Solid Waste Site or Facility Permit Program. This regulation sets forth the specific requirements for the solid waste site or facility permitting program. KRS 224.842 requires acquisition of a permit to establish, construct, operate and maintain a waste site or facility. The term waste site or facility is defined in KRS 224.005. Owners or operators of solid waste sites or facilities shall have permits during the active life (including the closure period) of the facility and, for any facility that closes after July 1, 1992, during any closure care period required under 401 KAR Chapter 48.

Section 2. Scope of the Permit Requirements. (1) The permit process is specified in 401 KAR 47:160. A permit application consists of three (3) parts: notice of intent to apply for a solid waste permit (see 401 KAR 47:170 or 401 KAR 48:200), an administrative application (see 401 KAR 47:180), and a technical application (see 401 KAR 47:190). The permit program has separate additional regulations that contain technical requirements. These separate regulations are used by the cabinet to determine whether permits shall be issued and what conditions to those permits are required. These separate regulations are located in this chapter and 401 KAR Chapter 48.
(2) Specific exclusions. The following persons are among those who are not required to obtain a solid waste site or facility permit:
(a) Disposers of agricultural waste, including manures and crop residues returned to the soil as fertilizers or soil conditioners by practices common to soil conditioning, provided the wastes are used on the same farm on which they are generated;
(b) Disposers of mining over-burden, coal mining wastes, refuse, and coal mining

by-products returned to the mine site on the site of generation, including any nonhazardous solid waste generated directly as a result of the mining operation on site;

(c) Owners or operators of injection wells that dispose of solid waste with an underground injection control permit issued by the U.S. EPA, providing they comply with the conditions of that permit;

(d) Users of septic tanks in compliance with KRS 211.972 through 211.982;

(e) Owners or operators of mining surface impoundments and other surface impoundments [used solely for sediment control] with Kentucky Pollution Discharge and Elimination System (KPDES) permits, providing they comply with the conditions of their permit;

(f) Persons managing solid waste during immediate response to any of the following situations:

1. A spill of a solid waste;

2. An imminent and substantial threat of a spill of solid waste; or

3. A spill of a material which, when spilled, becomes a solid waste; and

(g) Owners or operators of surface impoundments receiving solid waste that treat domestic sewage that does not contain any industrial wastewater, or are publicly owned treatment works (POTW) for the treatment of domestic sewage, if the facility complies with the conditions of its KPDES or NPDES permit.

(3) Specific inclusions. Owners and operators of certain facilities with permits under other programs for certain aspects of the facility operation shall also obtain solid waste site or facility permits. The following types of facilities are required to have solid waste site or facility permits:

(a) Solid waste sites or facilities which have or have had a surface mining permit and dispose of wastes other than mine spoils or coal mining solid wastes; and

(b) Any person who initiates or continues solid waste containment or disposal activities after an immediate response deadline is passed is subject to all applicable requirements of this chapter and 401 KAR Chapter 48 for those activities.

(4) Permits for less than an entire facility. The cabinet may issue or deny a permit for one (1) or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. A granted permit-by-rule for any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

Section 3. Considerations of [State and] Federal Law. Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable [state and] federal laws. These laws include but are not limited to:

(1) The Wild and Scenic Rivers Act (1968), as amended through October 1984 [16 U.S.C. 1273, et seq. Section 7 of the Act].

[(2) Kentucky wild rivers system in KRS 146.200 through 146.410 and the implementing regulations.]

(2) [(3)] The National Historic Preservation Act of 1966, as amended through December 1980, [16 U.S.C. 470, et seq. Section 106 of the Act and implementing regulations (36 CFR Part 800).]

(3) [(4)] The Endangered Species Act (1973), as amended through June 1984, [16 U.S.C. 1531, et seq. Section 7 of the Act and implementing regulations (50 CFR Part 402).]

(4) [(5)] The Fish and Wildlife Coordination Act (1934), as amended through July 1965, [16 U.S.C. 661, et seq.]

[(6) The Kentucky Nature Preserves Commission requirements in KRS 146.410 through 146.505 and implementing regulations.]

Section 4. Limitations of a Permit. (1) A permit may be modified, or revoked, during its term for cause as set forth in 401 KAR 47:130 and in 401 KAR Chapter 40.

(2) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local laws or regulations.

Section 5. Prohibition of Use of Unpermitted Facilities. (1) Restrictions. No owner or operator [person] shall manage, process or dispose of solid waste at a solid waste site or facility [deliver solid waste to a facility for management, processing or disposal] unless the owner or operator has:

(a) The ability to qualify for a registered permit-by-rule in accordance with Section 1(1) of 401 KAR 47:110 and submits before October 1, 1990, the registration form to the cabinet; [Submitted a notice of intent to apply for a solid waste permit to the cabinet as an existing solid waste facility in operation on or before the effective date of this regulation;]

(b) Qualified for a permit-by-rule in accordance with 401 KAR 47:150;

(c) Qualified for a registered [granted] permit-by-rule in accordance with Section 1(1) of 401 KAR 47:110; or

(d) Obtained a valid solid waste facility permit issued by the cabinet in accordance with 401 KAR Chapter 47 or holds a permit issued by the cabinet prior to the effective date of this regulation.

(2) Permit required. No person shall engage in the management, processing, or disposal of solid waste at a solid waste site or facility without first obtaining a permit from the cabinet as specified in KRS 224.842.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 47:110. Registered [Granted] permit-by-rule.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842

NECESSITY AND FUNCTION: KRS Chapter 224

requires the cabinet to adopt rules and regulations for the management, processing, and disposal of wastes. KRS 224.842 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities, and the standards for certification of operators. An overview of the permit program is found in Section 1 of 401 KAR 47:080. This regulation establishes requirements for registered [granted] permits-by-rule.

Section 1. Registered [Granted] Permit-by-rule. (1) Any owner or operator of a solid waste site or facility specified in Section 2(6) of 401 KAR 47:080 in existence as of the effective date of this regulation shall notify the cabinet by submitting registration before October 1, 1990, on a form prescribed by the cabinet [before October 1, 1990] [a notice of intent to apply for a granted permit-by-rule]. Then the facility shall be deemed to have a registered [treated as having been granted a] permit-by-rule if the owner or operator [complied with the requirements of Section 2 of 401 KAR 47:170 pertaining to a notification of intent to apply for a solid waste permit by October 1, 1990 and] complies with the environmental performance standards in 401 KAR 47:030.

(2) When the cabinet determines upon examination or reexamination of the registration [notification of intent to apply for a solid waste permit] that it fails to include all of the required information [meet the standards of these regulations], the cabinet shall notify the operator that the registration [application] is deficient and that the operator shall submit [resubmit] the requested information [is, therefore, not entitled to a granted permit-by-rule]. The owner or operator shall [may] [shall then] be subject to enforcement procedures for not submitting the requested information in a timely fashion. Failure to complete the form in a timely fashion is not grounds to revoke a registered permit-by-rule [operating without a permit].

(3) Subsection (1) of this section shall not apply to any facility which has been previously denied a permit or to any facility whose authority to operate under 401 KAR Chapters 47 through 48 and KRS Chapter 224 has been previously terminated.

Section 2. Operation During a Registered [Granted] Permit-by-rule. (1) A facility operating under a registered permit-by-rule, [During the term of a granted permit-by-rule period, the facility,] except as provided in Section 3 of this regulation, shall not:

(a) Store, treat or dispose of solid waste not specified in the registration form [notice of intent to apply for the permit]; or

(b) Exceed the design capacities specified in the registration form [notice of intent to apply for the permit].

(2) [During the term of a granted permit-by-rule,] The owner or operator shall comply with the environmental performance standards in 401 KAR 47:030.

(3) [During the term of a granted permit-by-rule,] The owner or operator shall keep records of the amount, sources and types of municipal solid waste received and other information as required by the cabinet and shall submit a quarterly summary of this information to the cabinet. The quarterly report shall be on a form approved by the cabinet.

(4) Convenience centers, transfer stations, solid waste incinerators, and commercial recyclers shall additionally submit a report to the cabinet annually, no later than January 31st for the previous year. The report shall identify the sources and quantities of waste handled. Additionally, solid waste incinerators shall report volume of ash and the results of weekly extraction procedure tests on the ash.

Section 3. Changes to a Registered [Granted] Permit-by-rule. (1) Solid wastes not previously identified in the registration [notice of intent to apply for a solid waste permit] may be stored, treated, or disposed at a facility if the owner or operator submits a revised registration [notice of intent to apply for a solid waste permit] prior to such a change.

(2) The owner or operator shall submit a revised registration [notice of intent to apply for a solid waste permit] prior to increases in the design capacity of processes used at a facility [including a justification explaining the need for the change].

(3) The owner or operator shall submit a revised registration [notice of intent to apply for a solid waste permit] prior to changes in the processes for the storage, treatment or disposal of solid waste or use of additional processes [including a justification explaining the need for the change].

(4) The owner or operator shall submit a revised registration prior to [notice of intent to apply for a solid waste permit no later than ninety (90) days prior to the scheduled change. This includes] changes in owners or operators.

(5) [No] Changes listed in subsections (1) through (4) of this section may [can] be implemented prior to cabinet acknowledgement of receipt [approval] of the revised registration [notice of intent to apply].

Section 4. Contents of the Registration Form for a Registered Permit-by-rule. The contents of a form prescribed by the cabinet for a registered permit-by-rule shall contain:

(1) A description of the management, processing, or disposal activities;

(2) The name and mailing address of the facility;

(3) The location of the waste site or facility; and

(4) The type of waste managed at the facility, an estimate of the quantity of such wastes to be managed annually, and a general description of the methods of management for each waste.

[Deadlines for Submission of Administrative and Technical Permit Applications. The cabinet may require submission of the administrative and technical application at any time. All granted permit-by-rule sites or facilities which have submitted a notice of intent to apply for a solid waste permit shall be required to submit an administrative and technical application within six (6) months of the cabinet's decision to require such submittal, according to Section 2 of 401 KAR 47:160.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary

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

401 KAR 47:130. Changes to solid waste permits; expiration of solid waste permits.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888, 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842
NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the management, processing, or disposal of wastes. KRS 224.842 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities, and the standards for certification of operators. An overview of the permit program is found in Section 1 of 401 KAR 47:080. This regulation sets forth the requirements for changes to permits and expiration of permits.

Section 1. Transfer of Permits. A permit is not transferable to any person without prior approval of the cabinet. New owners or operators shall submit a complete transfer [permit] application to the cabinet. After a new permit has been issued to incorporate the new owners or operators, the cabinet shall revoke the existing permit.

Section 2. [Major] Modification or Revocation of Permits. (1) When the cabinet receives any information (for example, if the cabinet inspects the facility, receives information submitted by the permittee as required in the permit under Section 1 of 401 KAR 47:120, receives a request for modification or revocation under Section 2 of 401 KAR 47:140, or conducts a review of the permit file), the cabinet shall determine whether or not one (1) or more of the causes for a [major] modification or revocation [or revocation] exist as listed in subsection (2) of this section and [, or for a minor modification under] [and] Sections 3 and [, or for revocation under Section] [and] 4 of this regulation. If cause exists, the cabinet shall modify or revoke the permit accordingly, and shall request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked, the owner or operator may reapply. If cause does not exist, the cabinet shall not modify or revoke the permit. If a permit modification satisfies the criteria in Section 3 of this regulation for minor modifications, the permit shall be modified without a notice to the public. Otherwise, a proposed permit shall be prepared and procedures in 401 KAR 47:140 followed.

(2) Causes for modification. Paragraphs (a) through (e) of this subsection are causes for modification but not revocation of permits by the cabinet.

(a) Alterations. There are material and substantial alterations or additions to the permitted solid waste site or facility or activity that occurred after permit issuance and which justify the application of permit conditions that are different or absent in the existing permit.

(b) Information. The cabinet has received new information.

(c) Compliance schedules. The cabinet determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials, shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy (see also Section 3 of this regulation on minor modifications).

(d) The cabinet shall modify a permit:

1. When modification of a closure plan is required under 401 KAR Chapter 48;

2. When the cabinet receives notification of expected closure and finds that any of the previous granted permit conditions are no longer warranted;

3. When the cabinet adjusts the level of financial responsibility required;

4. When the corrective action program specified in the permit under 401 KAR Chapter 48 has not brought the regulated unit into compliance with the groundwater protection standards within a reasonable period of time;

5. To include a monitoring program meeting the requirements of 401 KAR 48:300;

6. When a permit requires a monitoring plan under Section 401 KAR 48:300, but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard;

7. To include conditions applicable in new or amended standards or regulations;

8. When modification is necessary to protect human health or the environment; or

9. To include conditions applicable as a result of a hearing or enforcement action as specified in 401 KAR Chapter 40.

(e) Notwithstanding any other provision in this section, when a permit is reviewed by the cabinet, the cabinet shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in 401 KAR Chapters 47 and 48.

(3) Owners or operators of a waste site or facility may request a hearing pursuant to KRS 224.081 upon modification of the permit by the cabinet.

Section 3. Major and Minor [Minor] Modifications of Permits. Upon the request of the permittee, and receipt of an administrative and technically complete submission to the cabinet, the cabinet may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, including [without following] the procedures of 401 KAR 47:140. Any permit modification not processed as a major [minor] modification under this section shall be considered a minor [major] change and shall not require a 401 KAR 47:140 public notice prior to approval. A determination may be made by the cabinet upon filing of the modification application that the modification requested is a major modification. A modification shall be major if the proposed change is of the 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 modifications [revisions] shall include, but shall not be limited to: [Minor modifications shall only:]

(1) It is a variance requested pursuant to 401 KAR 30:020, Section 2. [Correct typographical errors;]

(2) It would increase the area authorized for waste disposal of any unit as represented by the waste boundary as specified by 401 KAR 30:010. This type action is a horizontal expansion. [Require more frequent monitoring or reporting by the permittee;]

(3) It would increase the landfill capacity that extends the life of the facility by more than two (2) years and is not a horizontal expansion. This type action is a vertical expansion. [Change the lists of site operational equipment, operating procedures and sequence of filing;]

(4) It would add a source of solid waste [for continuous receipt] such that the operating life of the facility would be less than five (5) years. [Change estimates of expected year of closure or schedules for final closure under 401 KAR Chapter 48;]

(5) It would transfer ownership to a person other than that named on the permit. [Add or delete nonhazardous waste or a geographic area that is a source of solid waste accepted at the facility that does not reduce the facility life to less than five (5) years design capacity. This provision does not include wastes that have been listed as a hazardous waste and have been subsequently delisted or hazardous wastes that are treated to be nonhazardous waste.]

(6) It is an approval of the corrective action plan required by 401 KAR 48:300, Section 8(9) by the cabinet. The public notice requirements of 401 KAR 47:140 shall not preclude the cabinet from taking actions necessary to mitigate conditions that are an immediate threat to human health or the environment. [Provide for a one (1) time vertical expansion that does not increase the life of the site by more than two (2) years and is needed for drainage improvement;]

(7) Add a geographic area that is a source of solid waste accepted at the facility.

[(7) Provide for modifications to leachate collection systems, methane gas systems, groundwater monitoring, sediment ponds or dust control; or]

[(8) Authorize the use of areas for operation as amendments to operating permits.]

Section 4. Revocation of Permits. (1) The cabinet may revoke a permit during its term or deny a permit renewal application for the following causes:

(a) Noncompliance by the permittee with a [any] condition of the permit resulting in failure to protect human health or the environment;

(b) The permittee's failure in the application or during the permit issuance process to disclose all information required by the cabinet [relevant facts,] or the permittee's misrepresentation of any such information [relevant facts] at any time;

(c) A determination that the permitted activity endangers human health or the environment and can only be enforced in accordance with the requirements of KRS Chapter 224 by permit modification or revocation; [regulated to acceptable levels by permit modification or revocation;]

(d) A violation of any requirement of KRS Chapter 224 or the respective regulations promulgated pursuant thereto; or

(e) The cabinet has received notification that a facility has been [is being] transferred to another person without proper prior approval by the cabinet.

(2) The cabinet shall follow the applicable procedures in this regulation and in 401 KAR 47:140 and 401 KAR Chapter 40 in revoking any permit under this section.

(3) Owners or operators of solid waste sites or facilities may file a request for a hearing pursuant to KRS 224.081 upon revocation of the permit or receipt of a notice of violation from the cabinet.

Section 5. Termination of Permits. A permit shall automatically terminate on the expiration date unless the cabinet has reissued the permit or continuation in accordance with Section 7 of this regulation.

Section 6. Duration of Construction and Construction/Operation Permits. (1) Term of permit. Solid waste site or facility construction and construction/operation permits shall be effective for a fixed term not to exceed ten (10) [five (5)] years. The cabinet shall review the conditions of the permit after five (5) years and modify the permit as necessary.

(2) Modification of term of permit. Except as provided in Section 7 of this regulation, the term of a permit shall not be extended by modification beyond the maximum duration specified in subsection (1) of this section.

(3) Reduced term of permit. The cabinet may issue any permit for a duration that is less than the full allowable term under subsection (1) of this section.

Section 7. Continuation of Expiring Permits. (1) The conditions of an expired permit shall continue in force at the discretion of the cabinet in order to ensure the safe disposal of waste until the effective date of a new permit if:

(a) The permittee has submitted a timely application for renewal of a permit under 401 KAR 47:160 through 401 KAR 47:190. Such applications shall be complete and the applicant shall have paid the appropriate fees due under 401 KAR 47:060 or 401 KAR 47:090;

(b) The cabinet, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints); and

(c) Where appropriate on-site engineering oversight is assured.

(2) Effect. Permits continued under this section remain fully effective and enforceable.

(3) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the cabinet may choose to do any or all of the following:

(a) Initiate enforcement action based upon the permit which has been continued;

(b) Issue a notice of intent to deny the new

permit under Section 3 of 401 KAR 47:140. If the permit is denied, the owner or operator shall cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(c) Issue a new permit with appropriate conditions; or

(d) Take other actions authorized by 401 KAR Chapters 47 and 48.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 47:160. Application procedures.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.886, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the management, processing or disposal of solid wastes. KRS 224.842 requires that persons engaging in the management, processing and disposal of waste obtain a permit. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all waste sites or facilities, and the standards for certification of operators. An overview of the permit program is found in Section 1 of 401 KAR 47:080. This regulation sets forth the requirements for application procedures.

Section 1. General Application Requirements. (1) Permit application. A permit application consists of three (3) parts: notice of intent to apply for a solid waste permit; administrative application; and technical application. Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign and submit an application to the cabinet as described in 401 KAR 47:170 through 401 KAR 47:190 and 401 KAR Chapter 48.

(2) Completeness. The cabinet shall not issue a permit before receiving a complete application for a permit except for permits-by-rule or emergency permits. An application for a permit is complete when the cabinet receives an application, including any supplemental information, which shall be completed to the satisfaction of the cabinet.

(3) Information requirements. All applicants for permits shall provide the applicable information in compliance with 401 KAR 47:170 through 401 KAR 47:190 and 401 KAR Chapter 48 to the cabinet, using the application forms provided by the cabinet.

(4) Number of copies.

(a) For the purpose of reviews, three (3) [two (2)] original copies of the application shall be submitted to the cabinet. The application shall be compiled such that it conforms to an eight and one-half (8.5) by eleven (11) inch document. The applicant shall submit two (2) rolled sets of full scale engineering drawings [and one (1) set of one-half (0.5) scale engineering drawings].

(b) For issuance of the permit, the applicant shall provide one (1) original application and four (4) [three (3)] copies, incorporating all changes, bound such that they conform to an eight and one-half (8.5) by eleven (11) inch document. The applicant shall also submit the following sets of engineering drawings:

1. Two (2) full scale sets folded to eight and one-half (8.5) by eleven (11) inches;
2. Two (2) full scale sets rolled;
3. Two (2) one-half (0.5) scale sets.

Section 2. Existing Solid Waste Sites or Facilities and Registered [Granted] Permits-by-rule. [(1) Any time after promulgation of the appropriate technical regulatory requirements, the owner or operator of a solid waste site or facility with a granted permit-by-rule may be required to submit an administrative and technical application. Any owner or operator shall be allowed at least six (6) months from the date of request to submit the administrative and technical application. Any owner or operator of a solid waste site or facility with a granted permit-by-rule may voluntarily submit the administrative and technical application at any time.]

[(2) Failure to furnish a requested administrative and technical application on time, or to furnish in full the information required by the administrative and technical application, is grounds for revocation of the granted permit-by-rule.]

[(3)] Owners or operators of solid waste sites or facilities in existence on the effective date of this regulation which close under a registered [granted] permit-by-rule [without submitting an administrative and technical application] shall, at a minimum, comply with the corrective action requirements in 401 KAR 48:300.

Section 3. New Solid Waste Sites or Facilities. (1) No person shall begin physical construction of a new solid waste site or facility without having submitted a permit application and received a solid waste permit.

(2) An applicant for a solid waste landfill or landfarming permit after the effective date of this regulation shall submit to the cabinet a notice of intent to apply for a solid waste permit which contains the information specified in 401 KAR 47:170 or 401 KAR 48:200 [prior to submittal of an administrative or technical application].

(3) The applicant shall submit an administrative application for a solid waste site or facility in accordance with the approved notice of intent to apply for a solid waste permit and the implementation of the approved site investigation plan. The administrative application shall contain the information as specified in 401 KAR 47:180.

(4) The applicant shall submit a technical application in accordance with the approved administrative application and the requirements of 401 KAR 47:190 and Chapter 48.

(5) [Upon approval by the cabinet for the applicant to submit a technical application,] The site shall be designed in accordance with the approved conceptual design, any variances given preliminary approval, and the applicable

requirements of 401 KAR 47:190 and 401 KAR Chapter 48.

(6) If at any time the cabinet determines that the proposed site cannot meet the requirements of 401 KAR Chapters 47 and 48, the cabinet may deny the permit.

(7) The cabinet shall take action on applications for solid waste sites and facilities within the following time frames as appropriate:

(a) Notice of intent to apply thirty (30) working days;

(b) Administrative application sixty (60) working days; and

(c) Technical application ninety (90) working days.

(8) If the application is incomplete, the cabinet shall notify the applicant in writing of the deficiencies. Failure to submit the required information within 180 days shall be grounds for denial. Periods of deficiency correction shall not be counted against the review time frames specified in [this] subsection (7) of this section [which are available to the cabinet].

Section 4. Issuance of a Solid Waste Site or Facility Permit. (1) The cabinet shall issue a construction permit for no more than five (5) years if, after completing the review of a complete solid waste site or facility permit application, it finds that the applicant for the permit has met all the requirements for application and the requirements of KRS 224.855 and 401 KAR Chapters 47 and 48.

(2) The applicant shall maintain a construction permit in full force and effect until all facilities have been constructed and approved by the cabinet, including closure of the facility.

(3) A construction/operation permit shall be issued by the cabinet when:

(a) The applicant notifies the cabinet, in writing, that liner system and facility construction has been completed;

(b) A representative of the cabinet inspects the site and verifies in writing within thirty (30) days of the inspection that the site has been developed according to plans and that necessary equipment is available to operate the site;

(c) The required financial responsibility in 401 KAR 48:310 for closure has been established using any of the mechanisms [, by posting a bond or establishing an escrow account as] required by KRS 224.846 in an amount determined by an approved closure plan and cost estimate; [and]

(d) The applicant submits a certification by an engineer registered in Kentucky that the site liner system and facilities are [is] constructed in accordance with the approved plans and specifications; and

(e) A notice has been published as required by KRS 224.855 and 401 KAR 47:140.

(4) The cabinet may issue a permit subject to special conditions which include, but are not limited to, types of wastes which may be accepted or disposed, source of waste, special operating conditions, schedules for compliance for corrective actions, and the issuance of other applicable permits of the cabinet.

Section 5. Expiration and Renewal of Permits. (1) The construction/operation permit shall be issued for no more than ten (10) [five (5)] years. A shorter period may be specified. A permit-by-rule shall be perpetual until modified or revoked by the cabinet. A registered [granted] permit-by-rule shall be perpetual until modified or revoked by the cabinet [unless a specified term is provided in the permit as granted]. The site may continue operation past the expiration date of a permit only if the owner or operator has complied with the requirements of Section 7 of 401 KAR 47:130. For permits of longer than five (5) year terms issued under this regulation, the cabinet may review the permit during the term. Issued permits may be reevaluated in accordance with the requirements of KRS Chapters 47 and 48 including reevaluation of the bond. After reevaluation of the permit, the cabinet may require modifications of the permit pursuant to Section 2 of 401 KAR 47:140.

(2) Any solid waste site or facility with an effective construction or construction/operation permit shall submit an application for renewal at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted in writing by the cabinet.

(3) Applications to renew construction and construction/operation permits will be subject to all requirements of 401 KAR Chapters 47 and 48 upon application renewal and shall be subject to public notice pursuant to KRS 224.855 and 401 KAR 47:140.

(4) The cabinet, in issuing a renewal, shall consider whether all conditions of the original permit and modifications of permit conditions by agreed order or otherwise have been met. The cabinet may request updated information necessary for reevaluating the permit's suitability for reissuance and impose additional or modified permit conditions when deemed appropriate.

Section 6. Signatures to Permit Applications and Reports. (1) Applications. All permit applications and modifications shall be signed as follows:

(a) For a corporation, by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or

2. The manager of one (1) or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars); or

(b) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

1. The chief executive officer of the agency; or

2. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) Reports. All reports required by permits, and other information requested by the cabinet,

shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person shall be a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(c) The written authorization is submitted to the cabinet.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section shall be submitted to the cabinet prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsections (1) or (2) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for such violations."

Section 7. Confidentiality of Information. (1) Claims of confidentiality. Any information submitted to the cabinet pursuant to these regulations may be claimed as confidential by the submitter. Any such claim shall be asserted at the time of submission in accordance with KRS 224.035 and 400 KAR 1:060. If no claim is made in accordance with 400 KAR 1:060, the cabinet may make the information available to the public without further notice.

(2) Denial of claims of confidentiality. Claims that the name and address of any permit applicant or permittee is confidential shall be denied.

Section 8. General Contents and Application Specifications. (1) An application for a solid waste permit shall be on a form provided by the cabinet and contain:

(a) A letter detailing the desired cabinet action or response;

(b) A table of contents listing all sections of the submittal; and

(c) Appropriate maps, figures, photographs, and tables to clarify information or conclusions. All material shall be legible.

(2) All maps, plan sheets, drawings, isometrics, cross-sections, and aerial photographs shall meet the following requirements:

(a) Be of appropriate scale to clearly show all required detail;

(b) Be numbered, referenced in the narrative, titled, have a legend of all symbols used, contain horizontal and vertical scales (where applicable), and specify drafting or origination dates;

(c) Use uniform scales;

(d) Contain a north arrow;

(e) Use USGS data as a reference for all elevations;

(f) Contain a survey grid with maximum dimension of 1,000 feet square [200 square feet] based on monuments established in the field which shall be referenced to an established site specific bench mark [state plan coordinates];

(g) Show original topography and the grid system on plan sheets showing construction, operation, or closure topography; and

(h) Show survey grid location and reference major plan sheets on all cross-sections.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: March 8, 1990
FILED WITH LRC: March 9, 1990 at noon

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

401 KAR 47:170. Notice of intent to apply for a solid waste permit.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the management, processing or disposal of wastes. KRS 224.842 requires that persons engaging in the management, processing or disposal of waste obtain a permit. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities, and the standards for certification of operators. An overview of the permit program is found in Section 1 of 401 KAR 47:080. This regulation sets forth the requirements for a notice of intent to apply for a solid waste permit.

Section 1. The Objectives and Requirements of the Notice of Intent to Apply for a Solid Waste Permit. All applicants for a solid waste permit [or a granted permit-by-rule] shall submit a notice of intent to apply for a solid waste permit that shall contain the information specified in Section 2 of this regulation. An applicant for a solid waste construction/demolition debris, contained, or residual landfill permit shall additionally submit the geotechnical information contained in Section 3 of this regulation. An applicant for a landfarming permit shall submit a notice of intent to apply for a solid waste permit in accordance with 401 KAR 48:200. The notice of

intent to apply for a solid waste permit makes the cabinet aware of the potential location for a new site or site expansion; allows for review of existing information for suitability of the site relative to 401 KAR 47:030, 401 KAR 47:100, and 401 KAR Chapter 48; allows for review and approval of the proposed field investigations to supplement the existing information; allows the cabinet to determine the relationship of a proposed facility to the approved solid waste management area plan; and identifies any provisions of local government that pertain to the proposed facility. The notice of intent to apply contains information that is part of a complete application as required by KRS 224.855. [The notice of intent to apply shall be accurate and complete at the time the cabinet makes its preliminary determination to issue a solid waste permit.]

Section 2. Notice of Intent to Apply for a Solid Waste Permit. All notices of intent to apply for a solid waste permit shall include the following information:

(1) The management, processing, or disposal activities that require a solid waste permit under KRS Chapter 224;

(2) The name and mailing address of the proposed facility;

(3) The location, including latitude and longitude, of the center of the proposed waste disposal area(s);

(4) A list of the anticipated sources that generate wastes to be disposed at the site;

(5) For industrial facilities seeking a permit, the major applicable United States Department of Commerce Standard Industrial Classification Codes (SIC) and a description of the process in sufficient detail to allow determination of the materials used for production and the resultant chemical, physical, and hazardous character of the wastes. Hazardous waste characterization shall be consistent with 401 KAR Chapter 31;

(6) The operator's name, address, and telephone number;

(7) The name, address, and telephone number of the owner of the property [facility] and a copy of the current deed to the property;

(8) Written directions to the site, using roads or highways, from a commonly known landmark;

(9) A general county highway map eleven (11) inches by fourteen (14) inches as published by the Kentucky Transportation Cabinet for the county[(ies)] showing the location of the proposed site;

(10) A description of the portions of the property to be used for waste management, processing, or disposal to include the area in acres, and anticipated peak capacity; and average rate of operation in cubic yards and tons per day;

(11) The source by county[(ies)] or facility[(ies)] as appropriate; the chemical, physical, and biological characteristics of the solid wastes to be managed at the facility; an estimate of the quantity of such wastes to be managed annually; and a general description of the methods of management for each waste;

(12) A listing of all permits or construction approvals anticipated, applied for, or received under any of the following programs that relate specifically to the proposed facility;

(a) Solid and hazardous waste management program under the Resource Conservation and Recovery Act and KRS Chapter 224 as specified in 401 KAR Chapters 30 through 48;

(b) Underground injection control program under the Safe Drinking Water Act; and

(c) NPDES program under the Clean Water Act, or the KPDES program under KRS Chapter 224 as specified in 401 KAR 5:050 through 5:085;

(13) For existing facilities, the following additional information shall be included:

(a) A drawing of the facility showing the location of all past, present, and proposed future waste management areas;

(b) Photographs of the facility clearly delineating all existing structures, existing waste management areas, primary operating components, and sites of future waste management;

(c) A report describing the permitting and compliance history that relates to the existing sites and the owner's abilities to meet the environmental performance standards of 401 KAR 47:030. This report shall include the financial requirements to modify the site or facility to meet the environmental performance standards;

(d) A written description of compliance with the Prevention of Significant Deterioration (PSD) program under KRS Chapter 224 as specified in 401 KAR 51:017;

(e) A written description of compliance with the nonattainment program under KRS Chapter 224 and as specified in 401 KAR 51:052;

(f) Water quality certification as required by Section 401 of the Clean Water Act;

(g) All permits issued for mineral or coal extraction under the Surface Mining and Reclamation Act and KRS Chapter 350; and

(h) Other relevant environmental permits.

(14) A review of all pertinent published information [and reconnaissance efforts] pertaining to the proposed solid waste site or facility concerning federally protected threatened and endangered species and their critical habitat, historical properties, archeological sites, and wetlands; and

(15) Any other information that may be required to determine that the respected permit conforms to the requirements for solid waste sites or facilities.

Section 3. Geotechnical Information. The notice of intent to apply for a solid waste landfill permit shall contain a geotechnical report and site investigation plan including:

(1) An original current USGS seven and one-half (7.5) minute topographic quadrangle map showing the proposed waste boundaries and the property boundaries. The map shall show the following items that are located within one (1) mile of the proposed waste boundary:

(a) All surface water intake and discharge structures;

(b) All waste management, processing, or disposal facilities;

(c) All wells where fluids are injected underground; and

(d) All wells, springs, ephemeral, intermittent, and perennial streams, other surface water bodies, and drinking water wells, [listed in public records or otherwise known to exist;]

(2) A review of all pertinent existing and published information pertaining to:

(a) Geology (karst features, structural features, and lithologic description);

(b) Hydrogeology of the groundwater resources and aquifers that shall be monitored;
(c) Hydrology (streams, wetlands and, other surface water bodies); and
(d) Caves and excavations including mined or quarried areas;
(3) A written plan addressing the determination of specific requirements of 401 KAR 47:030, 401 KAR 47:180, 401 KAR 48:050 through 401 KAR 48:080, and 401 KAR 48:170 as appropriate;
(4) A rock core boring plan that shall:
(a) Provide the data needed to evaluate the geologic features to the level of the first confining layer below the uppermost aquifer, and all geologic units hydraulically connected to the uppermost aquifer;
(b) Provide the data needed to determine the features of the liner system for the appropriate landfill class;
(c) Provide data to describe the site geology, the local aquifers that are hydrogeologically associated with the site, and the transmissivity of the aquifers; and
(d) Include relevant field data and appropriate test methods for determining hydrogeologic parameters;
(5) A soil boring plan that shall address the field and laboratory methods to be used. The soil boring plan shall include:
(a) The procedures to be used for field observations during solid borings and the criteria for selecting soils to be examined in the laboratory and a procedure for all soil borings to be field classified by a person qualified to make distinctions on characteristics relative to the engineering classification of soils;
(b) An analysis plan for at least one (1) soil sample for each soil type within each soil examination block. Each soil examination block shall be no larger than 1000 feet by 1000 feet and include a narrative describing the soils to be selected for laboratory examination using a test method approved by the cabinet; and [. The method of testing shall be approved by the cabinet;]
(c) The proposed depth of soil borings and their depth relationship to the limits of proposed excavation. [A procedure for all soil borings to be field classified by a person qualified to make distinctions on characteristics relative to the engineering classification of soils;]
[(d) A narrative describing the soils selected for laboratory examination. The method of testing shall be approved by the cabinet;]
(6) Directions for closure of the rock core borings using grout and closure of the soil borings. The closure of the investigative excavations shall be acknowledged in writing by a qualified engineering geotechnical investigation professional;
(7) The methods and accuracy to be used to determine the location of the rock core borings and the soil borings during the subsurface investigation;
(8) A site geotechnical investigation map prepared at a scale of one (1) inch equals 400 feet showing the limits of all areas that may be used for soil borrow or waste disposal, site topography, and the USDA SCS soil group mapping. The site map shall have the following shown:
(a) A regular grid (soil examination block) of 1,000 feet by 1,000 feet spacing;
(b) USDA SCS soil groups;
(c) Within each soil examination block [cell] of the grid, the placement of at least one (1) soil boring for each soil type; and
(d) Additional soil boring locations such that a minimum of nine (9) soil borings shall be taken in each soil examination block. [the distance between any soil boring is no greater than 200 feet;]
(9) A procedure for written documentation when the location of actual subsurface excavations (borings or corings) are adjusted in the field. The adjusted excavation locations shall achieve the criteria of this section and shall be subject to concurrence by the cabinet;
(10) Additional information for each classification of landfill as outlined below:
(a) For construction/demolition debris landfills, the geotechnical investigation map shall be annotated to show the proposed location of a minimum of three (3) [two (2)] rock core borings. The number and placement of the rock core borings shall be determined based on the size and geologic complexity of the site;
(b) For contained landfills, the geotechnical investigation map shall show the proposed location of a minimum of four (4) rock core borings. For sites with more than fifty (50) acres, an additional rock core boring shall be required for each additional twenty-five (25) acres or part thereof. The placement of the rock core borings shall be dependent on site geologic features of the proposed site. Additional rock core borings may be required for sites with complex geologic attributes; and
(c) For residual landfills, additional geotechnical information or samples may be required; and
(11) Other informational sources to be researched for site specific attributes. The sources shall include, at a minimum, surface mining permits, subsurface excavation and mining permits, and records of the Kentucky Geologic Survey and the Kentucky Department of Mines and Minerals.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: March 8, 1990
FILED WITH LRC: March 9, 1990 at noon

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

401 KAR 47:180. Contents of the administrative application for solid waste landfills.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888, 224.994, 50 CFR Part 424
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842
NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the management, processing or disposal of wastes. KRS 224.842 requires that persons engaging in the management, processing or disposal of waste obtain a permit. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or

facilities, and the standards for certification of operators. An overview of the permit program is found in Section 1 of 401 KAR 47:080. This regulation sets forth the general contents of the administrative application for solid waste landfills excluding landfarming.

Section 1. Objective and General Requirements. The objectives of the administrative application for solid waste facilities are to allow the cabinet to determine if the proposed permit is consistent with local solid waste management area requirements and to review potential effects on human health and the environment if the proposed landfill is permitted. The information required for an administrative application for solid waste management facilities includes, but shall not be limited to, ownership documents, documentation of past performance, results from the geotechnical investigation specified in the approved notice of intent to apply for a solid waste permit, and the proposed design plan. The information provided shall be sufficient to allow the cabinet to evaluate the data detailing the site characteristics and the proposed design in the administrative application compared with the requirements for each type of site or facility, the waste to be disposed, and the ability to meet environmental performance standards. Information required in the administrative application shall be submitted to the cabinet in a format approved by the cabinet and signed in accordance with requirements in Section 6 of 401 KAR 47.160. Design drawings, specifications, and engineering studies shall be sealed by a professional engineer registered in Kentucky. The contents of the administrative application contain information that is part of a complete application as required by KRS 224.855. The contents of the administrative application shall be accurate and complete at the time the cabinet makes its preliminary determination to issue a solid waste permit.

Section 2. Notice of Intent to Apply. The owner or operator shall state the name of the applicant and list the date of submittal of the notice of intent to apply for a solid waste permit as required by 401 KAR 47:170. [Any relevant information contained in the notice of intent to apply that is incomplete or inaccurate as previously filed shall be corrected and filed with the cabinet.]

Section 3. Compliance with the Area Plan. (1) The applicant shall describe how the proposed new solid waste site or facility or expansion to the existing solid waste site or facility complies with or relates to relevant [area] solid waste management area plan[(s)]. If the proposed site or expansion is in an area with an approved area plan, the cabinet shall review the application for compliance with the solid waste management area plan. If the proposed facility does not comply with the approved area plan[(s)], the cabinet may deny the permit application unless a revision or amendment to the plans are completed by the solid waste management areas and approved by the cabinet.

(2) Modification of facilities. When an application for a modification to a solid waste site or facility is for an increase in the quantity of waste, the cabinet may deny the application when the additional quantity shall reduce the projected operating life to less than five (5) years. If an application for a modification to a solid waste site or facility reduces the projected operating life of the site or facility to less than five (5) years, the cabinet shall notify the affected solid waste management areas.

Section 4. General Information Requirements. (1) The applicant is to describe the potential impact of operating the facility on the following:

(a) Transportation facilities;

(b) Prime agricultural lands; and

(c) Water resources.

(2) Historic properties. The application shall include a review of the site features or structures of historical significance.

(3) Endangered or threatened species. The application shall include an inventory of any federally listed endangered or threatened species and the habitat critical to any endangered or threatened species consistent with the requirements of 50 CFR Part **424 as of October 1984** [402]. [A letter from the Kentucky Nature Preserves Commission and the Kentucky Department of Fish and Wildlife Resources with concurrence that the proposed facility shall not adversely affect endangered or threatened species shall be provided.]

(4) Variances. The applicant shall describe any anticipated variance requests pursuant to Section 2 of 401 KAR 30:020, including the regulation from which relief is sought. The variance request shall describe the ability of the applicant to meet the environmental performance standards of 401 KAR 47:030 if the variance is granted.

(5) The applicant shall provide a statement that the facility complies with any local planning and zoning laws. [, on a form furnished by the cabinet, written certification from the chairman of the local planning and zoning board, formed pursuant to KRS Chapter 100, stating that the site meets all local planning and zoning requirements of the area, or a statement from the county judge/executive that the area does not have local zoning.]

(6) The applicant shall provide a statement [,from the county judge/executive or local KRS Chapter 109 waste management district(s), when one exists for the area(s),] that the proposed facility does not conflict with the solid waste management area plan(s) or requirements of the district or county.

(7) The applicant shall provide a copy of the deed to the property and a copy of the lease or proposed lease showing a thirty (30) year right of reentry following closure of the facility if the landowner is not the applicant. The proposed lease or option shall be executed prior to permit issuance. The applicant shall also provide the names of the owners of mineral rights beneath the property. [The property shall be owned in fee simple.]

(8) The applicant shall provide a statement that describes what assistance the [report from the appropriate fire chief addressing the capability of the] local fire district shall provide. [to fight fire at the facility, a certification showing the name of the fire agency, the contact person, phone number, and address, and a statement that the agency has jurisdiction in the area that the facility shall

be located.]

Section 5. Topographic Map and Site Information. The administrative application shall contain:

(1) An existing conditions topographic map at a suitable scale to depict the anticipated buffer zones and limits of waste on an engineering drawing twenty-four (24) inches by thirty-six (36) inches. The contour intervals on the map shall be two (2) feet. The map shall clearly show the following:

(a) Legend with a bar scale, date of preparation, and last update;

(b) Orientation of the map (north arrow);

(c) 100 year flood plain area and, if applicable, floodway;

(d) Surface waters, including ephemeral, intermittent and perennial streams; [blue line and intermittent streams;]

(e) Surrounding land uses (residential, commercial, agricultural, recreational, etc.). For areas with zoning, the land use map shall conform to the local zoning agency's land use mapping system;

(f) A wind rose (i.e., prevailing wind-speed and direction);

(g) Property lines;

(h) The location of areas which are proposed to be excavated to obtain earthen material for the construction of the facility and for cover material;

(i) The zones that reflect the area of expected subsidence or critical draw if subsurface mines, caves or excavations subside;

(j) Proposed limits of the waste;

(k) The actual elevation referenced to a United States Geological Survey mean sea level datum and location of test borings and core samplings;

(l) Injection and withdrawal wells; [and]

(m) Any existing structures; and

(n) Alternate map and drawing scales [sections] may be approved by the cabinet.

(2) Site information. The applicant shall provide the following information regarding the potential site:

(a) Total acres of site;

(b) Acres of the site to be designed for disposal areas;

(c) Approximate waste volume based on a minimum of four (4) equally spaced cross-sections;

(d) Planned life of facility;

(e) A description of title, deed, or usage restrictions affecting the proposed permit area including a scaled drawing showing the current boundaries of all property proposed for development and buffer zones, and the ownership of these properties and all adjacent property; and

(f) The presence of any abandoned, reclaimed, active or inactive surface or subsurface mines or natural caves on the site.

Section 6. Geologic and Hydrogeologic Information. (1) The administrative application shall include the following geologic information:

(a) A description of the type, texture, thickness and range in thickness of unconsolidated materials;

(b) A description of the regional bedrock geologic structure to include the regional stratigraphic strike and dip, the locations and attitudes of regional faults and folds and regional jointing trends;

(c) A description of the site specific geologic structure to include site specific stratigraphic strike and dip, the locations and attitudes of any faults or folds intersecting the site and the attitudes and spacing of joints;

(d) A brief description of the influence that fracture zones have on the movement of infiltrated water and groundwater;

(e) A minimum of two (2) geologic cross sections, using published data, bedrock outcrops and rock core boring information which shall be depicted on scaled drawings with vertical exaggeration, to adequately illustrate the geology of the site. The cross sections shall include:

1. The seasonal high groundwater table; and
2. Rock outcrop occurrences.

(f) A list of any extractable coal seams or other minerals beneath the site;

(g) A description of any active or inactive deep mines located beneath the site or within 1,500 feet of the site including depth to mined area, aerial extent of mined area and type of minerals mined (if coal, give the names of seams); and

(h) A map depicting the property, the proposed limits of waste and the area at least 1,500 feet from the limits of waste at a scale of one (1) inch equals 400 feet that shows the following:

1. Geologic units and rock outcrop occurrences;
2. Surface depressions, sinkholes and spring occurrences;
3. Location of wells used for water withdrawal and injection of fluids;
4. Location of rock core borings; and
5. Surface contours.

(2) The administrative application shall include the following hydrogeologic characterization:

(a) The hydrologic characteristics of the uppermost aquifer and the geologic units hydraulically connected to it, including field test data for hydraulic conductivity, storage coefficient and transmissivity, and groundwater hydraulic gradient and velocity. The description of these characteristics shall be based on multiple well aquifer tests, piezometer nest evaluation, [and] core evaluation and other appropriate methods approved by the cabinet. In karst environments both diffuse and discrete flow conditions shall be characterized. The water quality characterization as specified in Section 11 of 401 KAR 48:300 shall be included. The application shall include data and the procedures and calculations used to determine these characteristics;

(b) Tracer studies. Where sites overlie fractured bedrock, weathered limestone or dolomite bedrock or where karst environments cannot be avoided, the cabinet may require tracer studies before finalizing the groundwater monitoring plan; and

(c) A survey and listing of residential springs and water wells within one (1) mile of the proposed waste boundaries. The survey shall determine the location of springs and wells which shall be shown on a map with their approximate elevation and depth, name of owner, age and usage of the spring or well, stratigraphic unit that the spring is located in or is constructed in, well construction, static well levels, spring or well yield, perceived water quality, and any other relevant data which can be obtained.

Section 7. Soils Information. The administrative application for a solid waste landfill shall contain a soils inventory consisting of a description of the total volume and source of borrow material available, and total estimated volume and source of required daily cover, interim cover, long term cover, final cover, and low permeability soils required by 401 KAR 48:060, 401 KAR 48:070, 401 KAR 48:080, 401 KAR 48:090, and 401 KAR 48:170. The administrative application shall include the following soils data as determined by the approved site investigation: location, depth, thickness, classification of soils for engineering purposes [engineering classification], particle size distribution, atterburg limits, optimum moisture, permeability, and recoverable volume in compacted cubic yards for each soil classification and permeability. The administrative application shall include a map at a scale of one (1) inch equals 400 feet depicting the distribution of the soils that is keyed to a list of the soils by engineering classification. The approximate volume and depth of each type of soil shall be recorded on the map.

Section 8. Siting Restrictions and Design Report for Landfills. The administrative application for landfills shall contain a report describing the [proposed] design the applicant proposes for the facility to meet [to comply with each of] the siting, design and operating requirement restrictions in 401 KAR 47:030, 401 KAR 48:050, 401 KAR 48:060, 401 KAR 48:070, 401 KAR 48:080, 401 KAR 48:090 [and] 401 KAR 48:170 and be consistent with Section 4 of this regulation. The report shall include a description of the engineering drawings to be developed by type and the proposed scale for each. The report shall include the proposed points of compliance as required in accordance with 401 KAR 48:300, Section 3. The design report shall address the proposed liner and cap design.

Section 9. Executive Summary. The administrative application shall include an executive summary pursuant to KRS 224.855.

(1) The written portion of the executive summary shall be in a format that may be understood by the average citizen and shall contain:

(a) The applicant's name and address;

(b) Directions to the site;

(c) Zoning requirements;

(d) Purpose of the application;

(e) Type of landfill, i.e., construction/demolition debris, residual, or contained;

(f) Acreage of the property and the area to be filled;

(g) Volume of fill stated in cubic yards;

(h) Source of waste by county[(ies)] or facility[(ies)] as appropriate, both in-state and out-of-state;

(i) A description of all waste, other than residential, to be disposed at the site;

(j) Anticipated operating life of the proposed landfill site reported in years;

(k) A description and the source of soils to be used for liner[(s)], cover material, and other purposes;

(l) General geology, i.e., limestone, coal field, etc., of the proposed site area;

(m) A description of the groundwater resources (aquifers and flow patterns);

(n) Approximate depth to groundwater and general groundwater use in the area;

(o) A description of surface water control measures;

(p) A description of the liner and cap;

(q) Leachate management methodology to include treatment and or disposal; and

(r) Any other information considered to be pertinent to the public interest or of concern to the solid waste management planning area, the applicant, or the cabinet.

(2) An area map, twenty-four (24) inches by thirty-six (36) inches, shall be provided depicting the proposed development plan. The map shall be prepared to include the facility plus 1,500 feet from the boundary of the proposed waste cells. The map shall show the following:

(a) Major highways and features;

(b) Site boundaries and waste limits;

(c) Adjacent land use and zoning;

(d) Any water supply intake shall be either shown or noted;

(e) Federally listed endangered and threatened species or candidate species and their habitat as identified by the Kentucky Nature Preserves Commission and the Kentucky Department for Fish and Wildlife Resources;

(f) The direction of groundwater flow;

(g) Location of groundwater users; and

(h) Property boundaries where they occur on the map showing the adjacent land owner's name.

(3) Graphics or engineering drawings shall be provided to show the following:

(a) Proposed landfill site prior to development;

(b) Anticipated landfill units and phases; [Landfill development and sequence of operations;]

(c) Environmental protection measures including liners, cap, groundwater monitoring, surface water monitoring, silt ponds, etc.;

(d) Geologic setting of the site; and

(e) Proposed site entrance.

Section 10. Ownership Information. The administrative application shall contain a showing of the past compliance [bonding] [compliance] record for both the applicant and any other individual or entity designated to own or operate the facility by submitting the following:

(1) Organizational structure;

(a) If the applicant is a proprietorship, the applicant shall provide a detailed listing of:

1. The proprietors and their respective interests, whether ownership or otherwise; and

2. Any partnerships (general or limited), joint venture, or corporation in which the applicant holds a twenty-five (25) percent or more interest (whether ownership or otherwise);

(b) If the applicant is a partnership, either general or limited, the applicant shall provide a detailed listing of:

1. Each of the partners and their respective interests, whether ownership or otherwise;

2. Any corporation, joint venture, partnership (general or limited), or proprietorship in which any of the constituent partners of the applicant holds twenty-five (25) percent or more interest (whether ownership or otherwise); and

3. Any corporation, joint venture, proprietorship, or partnership (general or limited) which holds a twenty-five (25) percent

or more interest (whether ownership or otherwise) in any of the nonindividual constituent partners comprising the applicant;

(c) If the applicant is a corporation, the applicant shall provide a detailed listing of:

1. The officers, directors, and major stockholders;

2. Any corporation of which the applicant is either a subsidiary or which holds twenty-five (25) percent or more interest (either in stock or assets) in the applicant;

3. Any corporations which are either subsidiaries of the applicant or in which the applicant holds a twenty-five (25) percent or more interest (either in stock or assets); and

4. Any proprietorship, partnership (general or limited), or joint venture in which the applicant holds a twenty-five (25) percent or more interest, whether ownership or otherwise;

(d) If the applicant is a joint venture, a detailed listing of:

1. All other joint ventures, and the respective interests (whether ownership or otherwise) of each; and

2. Any proprietorship, partnership (general or limited), joint venture or corporation in which the applicant holds a twenty-five (25) percent or more interest (whether ownership or otherwise); and

[(2) For every individual or other entity listed in subsection (1) of this section, a detailed listing of violations of federal or state laws, rules or regulations (whether either judicial or administrative proceedings are pending or completed) that have resulted or shall result in either criminal convictions or civil or administrative fines as much as or more than $1,000. This subsection shall apply to the requirements of the Clean Air Act, the Clean Water Act P.L. 92-500 et seq., the Surface Mine Reclamation Act, the Resource Conservation and Recovery Act, the Occupational Safety and Health Act, KRS Chapters 224, 350 and 352; and]

(2) For every individual or other entity listed in subsection (1) of this section, a detailed listing of violations of federal or state laws, rules or regulation, whether judicial or administrative, where proceedings are completed and have resulted in criminal convictions or civil or administrative fines as much as or more than $1000. The status of any pending action, whether judicial or administrative, shall also be submitted. This subsection shall apply to the requirements of the Clean Air Act (1955) as amended through December 1987, the Clean Water Act (1977) as amended through November 1988, the Surface Mine Reclamation Act (1977) as amended through July 1987, the Resource Conservation and Recovery Act (1976) as amended through November 1988, the Occupational Safety and Health Act (1970) as amended through November 1984, KRS Chapter 224, KRS Chapter 350 and KRS Chapter 352; and

(3) [(2)] [(3)] For each and every individual or other entity listed in subsection (1) of this section, a current financial statement prepared by a certified public accountant.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: March 8, 1990
FILED WITH LRC: March 9, 1990 at noon

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

401 KAR 47:190. Contents of the technical application for solid waste landfills.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the management, processing or disposal of wastes. KRS 224.842 requires that persons engaging in the management, processing or disposal of waste obtain a permit. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities, and the standards for certification of operators. An overview of the permit program is found in Section 1 of 401 KAR 47:080. This regulation sets forth the general content requirements for a technical application for a solid waste landfill.

Section 1. Objective and General Requirements. The objectives of the technical application are to specify technical standards. The technical application contains the facility design and narrative. The cabinet shall evaluate the application for compliance with the environmental performance standards in 401 KAR 47:030 and other applicable regulations. The applicant shall submit the technical application in a format approved by the cabinet and signed in accordance with Section 6 of 401 KAR 47:160. Engineering drawings, specifications and studies shall be signed and sealed [certified] by a professional engineer registered in Kentucky. The contents of the technical application contains information that is part of a complete application as required by KRS 224.855. The contents of the technical application shall be accurate and complete at the time the cabinet makes its preliminary determination to issue a solid waste permit.

Section 2. Design Plans. (1) An applicant for a solid waste landfill permit shall submit engineering plans showing the design of the site. The engineering plans shall meet the design requirements of 401 KAR 48:060 for construction/demolition debris landfills, 401 KAR 48:070 and 401 KAR 48:080 for contained landfills or 401 KAR 48:170 for residual landfills. The applicant shall submit copies of the application including engineering drawings in accordance with Section 1(4) of 401 KAR 47:160.

(2) At a minimum, each drawing set in the [Each] application shall include the following drawings:

(a) A drawing of the entire site on one (1) sheet showing:

1. Current site conditions;

2. Site development plan including buffer zones;

3. Location of environmental monitoring points for surface water, groundwater and methane; and

4. Baselines.

(b) Site plans drawn to a scale of one (1)

inch equals 100 feet unless an alternative scale has been approved showing:

1. Development plan;

2. Location of environmental monitoring points for surface water, groundwater and methane; and

3. Baseline or off-set baseline;

(c) Cross-sections at 100 foot intervals of each baseline at a scale of one (1) inch equals ten (10) feet vertically and one (1) inch equals 100 feet horizontally;

(d) Drawing of the profile along each baseline; and

(e) Other drawings as needed to properly depict the site's proposed development and details of construction design and construction.

(3) The applicant shall use the terminology [standard convention] of this subsection to name and label elements of the solid waste landfills. The plans and reports shall be organized and referenced using the following [standards]:

(a) Facility shall be the total area under permit;

(b) Unit shall be the highest named element within the facility;

(c) Phase shall be a subdivision of a unit and shall be the smallest element designated for the purpose of financial assurance as required by KRS 224.846; and

(d) Working area shall be a subdivision of a phase.

(4) Typical details shall be included in the plans showing the features of cell, lifts, liners, daily cover, interim cover, long-term cover and final cover.

(5) The plans shall show the working areas, phases and units and the order that each shall be filled. The plan shall include volume data for each phase and unit.

Section 3. Narrative. (1) An applicant for a solid waste landfill permit shall submit a design narrative. The narrative shall address how the application meets the requirements of 401 KAR 47:030, 401 KAR 48:050, and 401 KAR 48:060 for construction/demolition debris landfills; 401 KAR 47:030, 401 KAR 48:050, 401 KAR 48:070 and 401 KAR 48:080 for contained landfills; or 401 KAR 47:030, 401 KAR 48:050 and 401 KAR 48:170 for residual landfills. The narrative shall also include the construction quality control plan required by Section 6 of this regulation and the quarterly report specifications required by Section 8 of this regulation.

(2) An applicant for a solid waste landfill permit shall submit an operations narrative describing how the operational requirements of 401 KAR 48:060 for a construction/demolition debris landfill, 401 KAR 48:090 for a contained landfill or 401 KAR 48:170 for a residual landfill shall be met.

Section 4. Closure, Closure Care and Performance Bond. (1) An applicant for a solid waste landfill permit shall submit closure and closure care plans meeting the requirements of 401 KAR 48:060 for a construction/demolition debris landfill, 401 KAR 48:070 through 401 KAR 48:090 for a contained landfill and 401 KAR 48:170 for a residual landfill. Design specifications for the cap shall be included.

(2) The applicant shall submit a closure and closure care cost estimate for the plans in subsection (1) of this section consistent with the requirements of 401 KAR 48:310.

(3) Upon approval of the permit application and before the issuance of the construction/operating permit, the applicant shall submit the performance bond for closure and closure case which meets the requirements of 401 KAR 48:310.

Section 5. Surface Water and Groundwater Monitoring and Corrective Action Plan. An applicant for a solid waste landfill permit shall submit a surface water and groundwater monitoring plan meeting the requirements of 401 KAR 48:300.

Section 6. Construction Quality Control Plan. (1) An applicant for a solid waste landfill permit shall submit a construction quality control plan that shall ensure the site or facility is constructed in a manner conforming to the requirements in Sections 7 and 8 of this regulation and containing the following elements:

(a) The persons responsible for each part of the quality control plan;

(b) Frequencies and specifications for inspections and tests;

(c) Forms to be used;

(d) Survey control system of plan views and cross-sections for such inspections and tests; and

(e) A statement to be used for certifying that the quality control plan was followed by the owner or operator.

(2)(a) The construction quality control plan shall provide assurance that the layers of the homogeneous low permeability soil liners are compacted using nonvibratory compactors with full depth penetrating feet [sheepsfoot rollers] with a minimum of six (6) passes per soil layer [lift]. The compactor [sheepsfoot roller] ballast shall be varied to prevent reaching the desired proctor density with less than six (6) passes. The feet length shall be one (1) inch longer than the loose soil layer thickness.

(b) Smooth rollers may be used at the end of each work period to seal the surface from rain infiltration.

Section 7. Landfill Liner Requirements. An applicant for a solid waste landfill permit shall submit liner designs in accordance with 401 KAR 48:080 for contained landfills, 401 KAR 48:060 for construction/demolition debris and 401 KAR 48:170 for residual landfills.

Section 8. Landfill Recordkeeping and Reporting. An applicant for a solid waste landfill permit shall submit plans for a recordkeeping and reporting system. The plan shall meet the following requirements:

(1) A quarterly report shall be submitted to the cabinet on a form approved by the cabinet no later than the 15th of the month following the end of each quarter year. The quarters shall end on March 31, June 30, September 30 and December 31 of each year. The report shall contain the following:

(a) Description [Documentation] of construction activities during the quarter;

(b) Monthly volume of waste received from each source;

(c) Description of compliance with cover requirements; [Documentation of cover requirements;]

(d) Environmental monitoring results including surface water, groundwater, methane, and other

permit conditions; and

(e) The quantity and concentration of leachate removed from the site, where [generated and] disposed, and the [with] method of disposal. The concentration shall be determined using appropriate parameters from [listed in] Section 10(2) of 401 KAR 48:300 for construction/demolition debris landfills and Section 10(3) of 401 KAR 48:300 for contained landfills.

(2)(a) An annual survey shall be conducted by the owner operator to determine remaining landfill volume which may be used for waste disposal. The quantity of waste disposed per day shall be determined by dividing the total waste received in one (1) year by 365 calendar days. The survey shall be conducted annually and the results shall be submitted to the cabinet no later than sixty (60) [thirty (30)] days following the actual survey. When aerial photography is used, the survey results shall be provided within ninety (90) days of the aerial photography. This survey shall bear the seal and signature of the registered professional land surveyor or professional engineer who performed the survey. The owner or operator shall notify the cabinet no less than fifteen (15) calendar days prior to the date the survey shall be conducted.

(b) The [An] annual survey shall be made between January 1 and May 1 each year and shall be submitted to the cabinet within sixty (60) days. The annual survey [by May 1 of each year and] shall contain the following information:

1. Cross-sections on 100 foot intervals showing current waste placement and proposed final contours; and
2. Remaining capacity in cubic yards.

(3) Surface water and groundwater sample shall be collected and analyzed according to the following criteria:

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The owner or operator shall retain records of all monitoring information, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three (3) years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the cabinet at any time. In addition, the owner or operator shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations, for the active life of the facility, and for the closure care period as well.

(c) Records of monitoring information shall include:

1. Date, exact place, and time of sampling or measurements;
2. Individual who performed the sampling or measurements;
3. Date analyses were performed;
4. Individual who performed the analyses;
5. Analytical techniques or methods used; and
6. Results of such analyses.

(4) All waste entering a contained landfill shall be weighed prior to disposal.

(5) The owner or operator of a contained landfill shall keep permanent records of the source, disposal location and quantity of any spill residues and limited quantity generator hazardous wastes, and records as to the source and quantity of all other wastes disposed of at the contained landfill. These records shall be available for cabinet inspection and shall be summarized in a report and submitted to the cabinet with the annual report or request for permit renewal.

Section 9. Alternative Specifications. Alternative specifications may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer that they will result in performance with regard to safety, stability and environmental protection equal to or better than that resulting from designs complying with the specifications of this regulation.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
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NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 48:050. Siting requirements for solid waste landfills.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888 [889], 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the management, processing or disposal of wastes. KRS 224.842 requires that persons engaging in the storage, treatment, recycling and disposal of waste obtain a permit. This chapter establishes the minimum technical standards for solid waste sites or facilities. This regulation sets forth the siting requirements for new construction/demolition debris, contained, and residual landfills.

Section 1. Buffer Zones. Wastes shall not be placed:

(1) Within 250 feet of an intermittent or perennial [a blue-line] stream unless a 401 water quality certification has been issued pursuant to 401 KAR 5:029 through 401 KAR 5:031.

[(2) Within 1,000 feet of the nearest edge of the right-of-way of any toll road, parkway, interstate, or other state primary road as classified by the Kentucky Transportation Cabinet's functional classification system, or the boundary of any public park unless the facility is screened by natural objects, plantings, fences or other appropriate means so that it is not noticeably visible from the highway or park;]

(2) [(3)] Within the zone of collapse of deep-mine workings or within the critical angle of draw of such workings;

(3) [(4)] Within 250 feet of a feature of karst terrain;

(4) [(5)] Within 250 feet of the property line;

(5) [(6)] Within 250 feet of a residence;

(6) [(7)] Within fifty (50) feet of a gas, sewer or water line; and

(7) [(8)] Within 250 feet of a unplugged well except monitoring wells.

Section 2. Seasonal High Groundwater Table. (1) The lowest component of the bottom liner of new units of a landfill shall be at least four (4) feet above the seasonal high groundwater table.

(2) Wastes that leach heavy metals in concentrations exceeding the primary drinking water standards when analyzed using the extraction procedure toxicity test shall be placed no closer than five (5) feet above the seasonal high groundwater level.

Section 3. Flood Plains. (1) No person shall be issued a permit to construct a new contained landfill in the 100-year flood plain.

(2) Waste disposed in residual or construction/demolition debris landfills shall not be placed within the 100 year flood plain of the waters of the Commonwealth unless the applicant complies with Section 2 of 401 KAR 47:030 of the Environmental Performance Standards concerning base flow restriction, temporary water storage capacity reduction, and waste washout. Where available, empirical data shall be used to determine the frequency of flood exposure. Where data are not available, the frequency of flood exposure shall be established by the unit hydrograph technique.

Section 4. Airport Location Criteria. A solid waste landfill [that] shall **not** be operated in a manner that may attract birds and is located within 10,000 feet of any airport runway used by turbojet aircraft or within 5,000 feet of any airport runway used by only piston-type aircraft **and** shall not pose a bird hazard to aircraft.

Section 5. Fault Areas. Waste cells of a solid waste landfill shall not be located within 200 feet of a fault that has had displacement in holocene time.

Section 6. Site Suitability. Landfills shall not be permitted in any area unless the applicant can demonstrate to the satisfaction of the cabinet that:

(1) The uppermost aquifer is capable of being monitored in a manner that detects the presence of any constituent listed in Section 10 of 401 KAR 48:300; and

(2) Corrective action of the uppermost aquifer is capable of being performed in accordance with 401 KAR 48:300.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
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NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 48:060. Technical requirements for construction/demolition debris landfill.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888, 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842
NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the management, processing or disposal of wastes. KRS 224.842 requires that persons engaging in the management, processing and disposal of waste obtain a permit. This chapter establishes the minimum technical standards for solid waste sites or facilities. An overview of the permit program is found in Section 1 of 401 KAR 47:080. This regulation sets forth the technical requirements for construction/demolition debris landfills that are not already classified under permit-by-rule and granted permit-by-rule.

Section 1. Design Requirements. (1) A construction/demolition debris landfill shall be designed to keep surface water flows and leachate separate. The design shall include:

(a) Surface contours to minimize surface water running onto or through the operational or completed fill area;

(b) Surface water run-on and run-off diversion ditches and structures designed to pass a 100 year, twenty-four (24) hour storm flow; and

(c) Surface water sediment basins designed to meet the following criteria:

1. The minimum retarding storage volume and the principal spillway discharge shall be such that a discharge through the emergency spillway shall not occur during the twenty-five (25) year, twenty-four (24) hour storm event;

2. The emergency spillway shall be capable of passing a 100 year twenty-four (24) hour storm event with no flow exceeding the design freeboard of the structure;

3. The sediment storage volume and projected operating period shall be stated. The minimum sediment storage volume shall provide for one (1) year of operation. A shorter period may be approved consistent with a maintenance plan for the sediment basin;

4. The sediment clean out elevation shall be specified; and

5. All designs shall be verified by a unit hydrograph method of calculation, or a method approved by the cabinet.

(2) The liner and leachate collection system shall be designed as follows:

(a) The bottom liner shall be constructed of soil with a minimum thickness of twelve (12) inches. In addition, a low permeability soil component shall include a minimum of twelve (12) contiguous inches of 1×10^{-7} centimeters per second maximum permeability material, or its equivalent. The liner shall cover the bottom and sidewalls of the facility. The minimum bottom slope shall be three (3) percent toward a leachate collection line and one (1) percent along leachate collection lines;

(b) The liner shall be overlain by a drainage layer of twelve (12) inches of material with a minimum permeability of 1×10^{-3} centimeters per second, or its equivalent, in areas of the liner system with a slope of less than twenty-five (25) percent;

(c) The leachate collection system shall contain a perforated piping system capable of removing leachate from the top surface of the low permeability solid component, and conveying it to a collection point. The drainage system shall meet the following requirements:

1. Main leachate collection pipes shall have a minimum diameter of eight (8) inches and shall be designed to withstand static and dynamic loads that may be encountered;

2. The maximum hydraulic head for design of the leachate drainage layer shall be one (1) foot [sheet flow drainage distances to the lateral drainage pipes shall not exceed fifty (50) feet];

3. The lateral pipes shall be installed primarily perpendicular to flow;

4. The minimum diameter of lateral perforated pipes shall be four (4) inches and shall be designed to withstand static and dynamic loads that may be encountered. The materials used shall at a minimum conform to the specifications for ASTM schedule eighty (80) pipe; and

5. The minimum slope for the piping system shall be one (1) percent;

(d) The leachate collection tank shall be a minimum of 1,000 gallons. Additional capacity shall be provided to store leachate for a minimum of fifteen (15) days production at peak production rates during operation and closure;

(e) The method of leachate disposal shall be described. When it is discharged to the sediment structure, a treatment plant is proposed or other method of discharge is proposed, the KPDES permit shall reflect this provision. When an off-site wastewater treatment plant is used, the applicant shall provide written documentation showing the acceptance of the waste. The criteria for disposal at the wastewater treatment plant shall be stated. The leachate collection system shall have a method to measure the quantity of leachate managed at the site.

(f) The drainage layer shall be overlain by a layer of either filter fabric or material approved by the cabinet to protect the integrity of the drainage layer;

(g) The filter fabric shall be overlain by a twelve (12) inch granular material with a 1×10^{-3} centimeters per second minimum permeability.

(3) Adequate soil material shall be available to provide one (1) foot of compacted cover on lifts of every 10,000 square feet, at the end of each working week, or at intervals sufficient to reduce fire hazards, prevent an unsightly appearance, and eliminate disease vectors.

(4) All designs shall include an environmental monitoring plan to meet the requirements of 401 KAR 48:300.

(5) All compaction equipment to be used for site operation shall have a minimum weight of 30,000 pounds and a minimum 130 horsepower motor. Sufficient equipment shall be listed on the application to handle the cover requirements in subsection (3) of this section as well as the working cell grading and compaction.

(6) The design shall include a separate area for handling hot or smoldering loads, or any other construction/demolition wastes which present special handling problems.

(7) The design shall include a shelter with screened windows, heat, lighting, potable water and sanitary facilities for operating personnel.

(8) A closure plan shall be developed to include the following information:

(a) A description of the procedures and schedule for final closure;

(b) If the facility shall close in phases, a description that shall reflect the sequence of phased closure; and

(c) A description of the final cover designed to meet the following requirements:

1. The waste cells shall be graded to achieve a final slope of more than five (5) percent and less than twenty-five (25) percent;

2. The twelve (12) inch cover layer required by Section 2(14) of this regulation shall be overlain by a minimum of twelve (12) inches of a 1×10^{-7} centimeters per second maximum permeability cap or its equivalent;

3. The cap shall be covered by a six (6) inch drainage layer of 1×10^{-3} centimeters per second permeability material or its equivalent on slopes less than fifteen (15) percent;

4. A system of field drainage tiles shall be provided to relieve water collected by the drainage layer;

5. The drainage layer shall be protected with an overlaying filter fabric or material approved by the cabinet;

6. A minimum of three (3) feet of vegetative soil shall cover the drainage layer; and

7. Diversion berms shall be provided where surface runoff exceeds the capability of the final cover to sustain the flow without excessive erosion.

(9) The owner or operator shall develop a closure care plan which includes the following information:

(a) A narrative description and schedule of measures that are proposed to be carried out after closure at the facility. This shall include:

1. Surface and groundwater [Water] quality monitoring;

2. Leachate collection and treatment;

3. Erosion and sedimentation control;

4. Revegetation and regrading, including maintenance of the final cover; and

5. Access control.

(b) The proposed closure care land use, the method of achievement and the necessary support activities which may be needed to achieve the proposed land use.

(c) The name, address and telephone number at which the owner and operator can be reached during the closure care period.

(d) A final cover maintenance program for a period of not less than two (2) years beyond closure, to include erosion control, reseeding, refertilization, growth control, environmental monitoring, and leachate management.

(10) When the applicant restricts the waste to be construction/demolition debris, nonputrescible wastes and wastes that shall not leach [leak] such that the environmental performance standards shall be exceeded, the design may [shall] be modified as follows:

(a) The requirement for the liner shall be a minimum of two (2) feet of soil recompacted to ninety (90) percent of standard proctor; and

(b) The final cover shall be a minimum of three (3) feet of vegetative soil.

Section 2. Operating Requirements. (1) The owner or operator of a construction/demolition debris landfill shall operate the facility in accordance with the requirements of KRS Chapter 224 and the regulations promulgated thereto, and the conditions of the solid waste permit issued by the cabinet.

(2) Landfill operators shall not permit or engage in open burning of waste. Any open burning shall be immediately extinguished. Wastes which are burning or smoldering shall not be deposited in the fill. Such materials shall be deposited at a location safely removed from the normal fill area.

(3) No waste containing free liquids or hazardous wastes shall be discharged to or

placed in a landfill.

(4) The grounds in and about a landfill shall not be allowed to become a nuisance. The owner or operator shall properly control [prevent] dust on haul [from] roads and other areas to prevent a nuisance to surrounding areas [, cover, and wastes from leaving the site]. When necessary, interior fences may be required to prevent litter from blowing from the landfill. The permitted area shall be policed on a routine basis to collect all scattered material.

(5) Signs and access control.

(a) An owner or operator of a construction/demolition debris landfill shall post and maintain a sign for the active life of the facility which is clearly visible at the junction of the landfill access road and public road;

(b) A sign shall be posted at the entrance to the landfill that shows the name of the owner, the name of the operator, an emergency telephone number, the operating hours of the facility and the permit number authorizing operation of the facility. The sign shall be constructed of a durable, weather-resistant material and the letters and numbers shall be a minimum height of three (3) inches; and

(c) A certified operator shall be on duty when the site is open for use by persons other than the owner or his employee or agents.

(6) Scavenging shall be prohibited. Salvage and recycling operations shall not be allowed in conjunction with a landfill operation without prior approval by the cabinet.

(7) Landfill operators shall not allow uncontrolled public access that would expose the public to potential health and safety hazards.

(8) All-weather roads shall be provided within the site for vehicular movement. Separate areas within the site may be provided to allow for wet or dry weather operation and access. When necessary to prevent a dust nuisance, roads within the site shall be surfaced or treated.

(9) A shelter shall be provided which is accessible to operating personnel. The shelter shall be screened and provided with heat, lighting, potable water and sanitary facilities. Safe drinking water, sanitary hand washing and toilet facilities shall be available at or near the site.

(10) A fire safety and response plan shall be developed and maintained. The plan shall identify measures that shall reduce the risk of fire at the facility, identify the equipment and procedures to respond to a fire and supplement the local fire department's capabilities.

(11) Adequate communication facilities shall be provided for emergency purposes.

(12) Operating equipment shall be on site during operating hours and capable of spreading and compacting the volume of waste received at the site. Back-up equipment shall be available within one (1) week of primary equipment breakdown.

(13) Construction/demolition debris waste shall be spread and compacted in thin layers sufficient to minimize void spaces during placement of lifts. No lift shall be greater than eight (8) feet in depth or the depth approved in the application.

(14) The owner or operator shall apply a twelve (12) inch soil cover such that the area of exposed waste does not exceed 10,000 square feet in area and all exposed wastes shall be covered at least once each week.

(15) Disease vector control measures in addition to cover may be required by the cabinet when necessary.

(16) The entire site, including the area of the landfill being actively worked, shall be maintained as necessary to prevent erosion or washing of the fill, to drain precipitation from the fill area, to prevent surface water run-on, and to prevent standing water.

(17) Surfaces that shall not receive an additional depth of refuse or final cover within ninety (90) days shall be temporarily revegetated or otherwise protected against erosion.

(18) The site shall have an operator certified as specified in 401 KAR 47:070.

(19) Records and reports shall be maintained in accordance with the requirements of Section 8 of 401 KAR 47:190.

(20) Any person operating a construction/demolition debris landfill shall implement the groundwater monitoring program in the approved permit.

(21) Leachate shall be disposed using the method described in the approved permit.

(22) The owner or operator shall implement a program at the facility for detecting and preventing the disposal of unauthorized wastes. This program shall include at a minimum:

(a) Observance by the operator of all loads during dumping and spreading;

(b) Training of facility personnel to recognize unauthorized waste; and

(c) Procedures for notifying the proper authorities if an unauthorized waste is discovered at the facility.

(23) The owner or operator shall keep ditches free of waste and debris and dredge the sediment basin to maintain design capacity. Provisions shall be made for proper disposal of dredge spoils.

(24) The owner or operator shall conspicuously display the current or last permit issued with all applicable conditions at the construction/demolition debris landfill. A copy of the approved application including plans shall be reasonably available for use at the site.

Section 3. Closure and Closure Care Requirements. (1) The owner or operator shall implement the approved closure plan in accordance with the closure schedule and in the following manner:

(a) Those areas of a landfill that shall receive no additional deposits of solid waste within 365 days of the last placement of the waste shall receive final cover. The minimum final cover shall include the components described in Section 1(8) of this regulation and shall have a [minimum] thickness as specified in Section 1 of this regulation [of four and one-half (4.5) feet] in addition to any other cover required;

(b) Submit any amendment or modification to the closure plan at least ninety (90) days before the last acceptance of waste;

(c) Grade final cover as provided in the approved closure care plan and prevent ponding;

(d) [(b)] Final cover shall be revegetated. After grading, final cover shall be fertilized as necessary, seeded, or planted with legumes, perennial grasses or other vegetation according to the approved closure plan. The owner or operator shall repeat this process until

adequate vegetation is obtained to ensure soil stabilization;

(e) [(c)] Before earth-moving equipment is removed from the site, an inspection of the entire site shall be made by an authorized representative of the cabinet to determine compliance with approved plans and specifications. The owner or operator shall present the quality control records demonstrating compliance with the permit; [and]

(f) **The owner or operator shall record a notice in the deed that shall in perpetuity notify any potential purchaser of the property of the location and time of operation of the facility, the nature of the waste placed in the site and a caution against future disturbance of the area. Such notice shall be recorded in accordance with KRS Chapter 382 and proof of recording shall be submitted to the cabinet prior to the cabinet's acceptance of certification of closure;** [Record a notice to the deed before the end of the closure care period that shall in perpetuity notify any potential purchaser of the property that the land has been used to dispose of solid waste and should not be disturbed without investigating the potential for adverse effects to the environment or to the proposed use of the property;] and

(g) [(d)] The cabinet may release the closure bond two (2) years following the cabinet's acceptance of the owner's certification of closure. [site bonds in that amount which exceeds the funds necessary to maintain the final cover to correct vegetative growth, erosion, and closure care environmental monitoring for two (2) years.] These funds will be released upon inspection of the permit records and the site to determine that it is in compliance with all regulatory requirements and has at least a ninety (90) percent permanent vegetative cover.

(2) The owner or operator shall implement the approved closure care plan in accordance with the closure care schedule and shall perform other necessary corrective work required by the cabinet, if any, before the landfill closure care certification is accepted. [:]

[(a) Submit any amendment or modification to the closure plan at least ninety (90) days before the last acceptance of waste;]

[(b) Grade final cover as provided in the approved closure care plan and prevent ponding;]

[(c) Record a notice to the deed before the end of the closure care period that shall in perpetuity notify any potential purchaser of the property that the land has been used to dispose of solid waste and should not be disturbed without investigating the potential for adverse effects to the environment or to the proposed use of the property; and]

[(d) Perform other necessary corrective work required by the cabinet, if any, before the landfill closure care certification is accepted and financial responsibility funds are released.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: March 8, 1990
FILED WITH LRC: March 9, 1990 at noon

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

401 KAR 48:070. Design requirements for contained landfills.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888, 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842
NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the management, processing or disposal of wastes. KRS 224.842 requires that persons engaging in the management, processing and disposal of waste obtain a permit. This chapter establishes the minimum technical standards for solid waste sites or facilities. This regulation sets forth the design requirements for contained landfills.

Section 1. General. The owner or operator of a contained landfill shall ensure a design for disposal of solid wastes meeting the requirements of 401 KAR Chapters 47 and 48.

Section 2. Surface Water. Owners or operators shall design landfills to ensure that:

(1) Surface water flows and leachate are separated;

(2) Surface contours minimize surface water running onto or through the operational or completed fill area;

(3) Surface run-on and run-off ditches pass [control] a 100 year twenty-four (24) hour storm flow;

(4) Surface water sediment basins meet the following criteria:

(a) The minimum retarding storage volume and the principal spillway discharge shall be such that emergency spillway discharge shall not occur during the twenty-five (25) year twenty-four (24) hour storm event;

(b) The emergency spillway shall be capable of passing [controlling] a 100 year twenty-four (24) hour storm event with no flow overtopping the structure; and

(c) The sediment storage volume and project operating period shall be stated. The minimum storage volume shall provide for one (1) year of operation. A shorter period may be approved when a maintenance program is included to restore the sediment storage volume. [The sediment storage capacity shall be for a minimum of one (1) year of operation. The criteria for determining when the pond is to be cleaned shall be stated in the design plan.]

(5) All designs shall be verified by the unit hydrograph method of calculation unless another method is approved by the cabinet.

(6) The edge of the downhill toe of the slope of a sediment pond dam is at least fifty (50) feet from the property line.

Section 3. Seismic Impact Zones. At a new contained solid waste landfill unit located in a seismic impact zone, all containment structures, including liners, leachate collection systems, and surface water control systems shall be designed to resist the maximum anticipated horizontal acceleration in lithified material for the site.

Section 4. Unstable Areas. The owner or operator of a contained solid waste landfill unit located in an unstable area shall demonstrate to the cabinet that engineering measures have been incorporated into the unit's design to ensure the stability of the liners, leachate collection systems, final cover, run-on and run-off systems, and any other component necessary for the protection of human health and the environment. The owner or operator shall consider the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features (both surface and subsurface).

Section 5. Separate Areas for Handling Nonresidential Wastes. The applicant shall design an area separate from the daily working face to allow the safe handling of certain wastes. Separate areas are required for the handling of:

(1) Loads containing burning waste;

(2) Wastes from pick-up trucks and automobiles; and

[(3) Construction/demolition debris destined for a seperate unit at the landfill meeting the requirements of 401 KAR 48:060; and]

(3) [(4)] Salvageable and recyclable materials when the facility intends to manage these materials.

Section 6. Equipment Requirements. (1) Sufficient equipment shall be available to spread and compact all wastes within two (2) hours of receipt.

(2) Steel-wheeled compactors designed for landfill operation shall be specified for residential solid waste compaction.

(3) The owner or operator shall provide the landfill equipment required to:

(a) Handle all daily, interim, long-term and final cover requirements;

(b) Maintain all roads and drainage features;

(c) Provide dust suppression;

(d) Maintain leachate and methane gas systems; and

(e) Properly compact waste at peak receipt rates. These rates shall be determined in tons per hour and kept on file with the cabinet.

(4) Back-up equipment shall be available for waste spreading and compaction, application of daily cover and maintenance of leachate systems within twenty-four (24) hours of primary equipment incapacitation.

(5) Landfill compactors shall have a minimum gross ground pressure of 325 pounds per linear inch of wheel width.

(6) Any equipment used for compaction shall have a minimum gross weight of 30,000 pounds and a minimum of 130 engine horsepower.

(7) The primary working face equipment used for waste spreading and compaction [Each piece of equipment] shall have the standard landfill guard package offered by the manufacturer, or an otherwise reasonable adaptation, to provide protection from waste damage hazards and other landfill operating hazards.

[(8) Each piece of landfill equipment shall comply with the Occupational Safety and Health Standards in Title 803 of the Kentucky Administrative Regulations.]

(8) [(9)] The operator shall propose an equipment operating and maintenance recordkeeping system. The system shall, at a minimum, track the availability of each piece of equipment in subsections (1) and (4) of this section.

[(10) Each piece of landfill equipment to be used for primary compaction and cover purchased after the effective date of this regulation shall have enclosed, pressurized cabs with heating and cooling.]

(9) [(11)] Any equipment used for waste compaction shall have a specified maximum rated capacity.

Section 7. Compaction. For residential solid waste, the in-place waste density goal shall be to achieve greater than 1200 pounds per cubic yard in the completed cells. The density shall be determined by dividing the total weight of waste received by the cubic yards of airspace used. The landfill density shall be computed annually.

Section 8. Soil Requirements. The design of borrow areas and disposal cells shall ensure that enough soil is available to meet the requirements for liner and cap construction in 401 KAR 48:080 and the requirements for cover in 401 KAR 48:090.

Section 9. Personnel and Equipment Buildings.

(1) Each landfill shall have buildings for its employees which provide the following:

(a) Air conditioning or tight, insect repelling screens on all doors and windows. Screen access doors shall have automatic closures. Screened buildings shall have proper mechanical ventilation;

(b) Safe drinking water;

(c) Sanitary facilities; and

(d) Heat.

(2) Each landfill site shall include a building for maintenance of the equipment. The building shall be large enough to hold the largest piece of equipment required for site operation. The building shall be heated for winter repair operations.

(3) Each building shall have an alarm installed in accordance with the manufacturer's recommendations to detect the presence of explosive gases.

Section 10. Explosive Gas Program. (1) The application for a contained landfill unit shall include a quarterly methane monitoring program to ensure that the standards of Section 11 of 401 KAR 47:030 are met.

(2) The methane monitoring system shall be developed based on the following factors:

(a) Soil transmissivity;

(b) The hydrogeologic conditions surrounding the disposal site;

(c) The hydraulic conditions surrounding the disposal site; and

(d) The location of facility structures and property boundaries.

(3) The minimum frequency of monitoring shall be quarterly.

(4) A [passive] gas venting system shall be designed for all landfills. A minimum of one (1) [passive] vent shall be required per acre of landfill to be filled unless otherwise approved by the cabinet.

Section 11. Roads. (1) The owner or operator shall design a road from the publicly maintained highway to the landfill, if one does not exist.

(2) Each landfill shall have an all weather [a] perimeter road around all waste disposal areas and to all monitoring and sediment control structures.

(3) Internal roads shall be all weather and designed for construction to within 200 feet of the daily working face.

(4) Narrow roads shall have properly spaced sections of sufficient width to allow passage of two (2) vehicles in the opposite direction.

(5) Roads shall be designed to carry the normal traffic and to properly drain.

(6) Enough space on the landfill property shall be provided for trucks awaiting entry. The landfill shall be designed to ensure that trucks can enter the site without delay from public roadways.

Section 12. Safety and Communication Plan. The landfill safety and communication plan shall contain:

(1) The safe operating and maintenance procedures for heavy equipment;

(2) Procedures to protect employees in a manner complying with the Kentucky Labor Cabinet OSHA requirements;

(3) A description of equipment to achieve emergency communication. At a minimum the applicant shall specify an on-site telephone or a two-way radio connection to an off-site telephone. The radio base station shall be monitored during landfill operations; and

(4) A fire fighting contingency plan containing a topographic map denoting the location of the landfill, a site map and an emergency contact. The operator shall mail a copy of the safety and communications plan to the local fire chief. The plan shall include the location of fire fighting water sources, roads, and major site features.

Section 13. Scales. Scales shall be provided to weigh all incoming wastes.

Section 14. Leachate Storage Tanks. In addition to the requirements set forth in this regulation, 401 KAR 47:180 and 401 KAR 47:190, an application for a permit to construct a contained landfill that includes a tank for leachate storage shall contain:

(1) The estimated volume of leachate to be generated and a proposed system to record actual quantities stored and removed;

(2) A schedule of liquid removal;

(3) A description of the final treatment and disposal of the liquid stored;

(4) A description of the liquid storage facility design;

(5) A method to measure the quantity of leachate extracted or removed [generated] and disposed;

(6) A closure plan for the tanks; and

(7) Design criteria to ensure that on-ground, in-ground, underground, and above ground tanks are constructed of materials, and installed in such a manner, that the tank system shall contain the stored liquid for the active life of the site to include closure care. A procedure for periodic testing of the tank system shall be employed to assure the tank system does not leak.

Section 15. Closure. (1) The operator of a contained solid waste landfill shall close each landfill unit and phase in a manner that minimizes the need for further maintenance and minimizes the closure care formation and release of leachate and explosive gases to air, groundwater, or surface water to the extent necessary to protect human health and the environment as required by 401 KAR 47:030 and 401 KAR 48:300.

(2) The owner or operator shall prepare a closure plan that describes the steps necessary to close all units and phases of the contained solid waste landfill at any point during its active life in accordance with the closure performance standard in subsection (1) of this section. The closure plan shall contain:

(a) An overall description of the methods, procedures, and processes that shall be used to close each unit and phase of a contained solid waste landfill in accordance with the closure performance standard in subsection (1) of this section and the final cap system requirements in Section 9 of 401 KAR 48:080;

(b) An estimate of the maximum extent of operation that shall be open at any time during the active life of the landfill; and

(c) A schedule for completing all activities necessary to satisfy the closure performance standard.

(3) Any modification to the closure plan shall be approved by the cabinet. A copy of the most recent approved closure plan shall be kept at the facility until closure of the contained landfill has been certified in accordance with subsection (5) of this section and the owner or operator has been released from financial assurance requirements for closure under 401 KAR 48:310.

(4) The owner or operator shall begin closure activities of each landfill unit, in accordance with the approved closure plan, no later than thirty (30) days following the final receipt of wastes at that landfill unit. Closure of each unit shall be completed within 180 days of final receipt of waste. Extensions may be approved by the cabinet if the delay in closure is due to adverse weather conditions.

(5) Following closure of each contained solid waste landfill unit, the owner or operator shall submit to the cabinet a certification by a professional engineer that closure has been completed in accordance with the approved closure plan.

Section 16. Alternative Specifications. Alternative specifications may be used only after approval by the cabinet upon a demonstration by a qualifed registered professional engineer that they shall result in performance with regard to safety, stability and environmental protection equal to or better than that resulting from designs complying with the specifications of this regulation.

Section 17. [16.] 401 KAR 47:040, entitled Sanitary landfills, is hereby repealed.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
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NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 48:080. Liner and cap design requirements for contained landfills.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888 [889], 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842
NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the managing, processing, or disposal of solid wastes. KRS 224.842 requires that persons engaging in the managing, processing, or disposal of waste obtain a permit. This chapter establishes the minimum technical standards for solid waste sites or facilities. This regulation sets forth the liner and cap design requirements for contained landfills.

Section 1. Liners for Contained Landfills. At a minimum all contained landfills shall have:
(1) A primary composite liner as specified in Sections 2 and 7 of this regulation; and
(2) A secondary composite liner that:
(a) Meets the secondary liner criteria specified in Sections 2 and 7 of this regulation; or
(b) Is a naturally occurring material provided that such natural material:
1. Shall be equivalent to material with [have] a minimum thickness of twenty (20) feet with [and shall have] a maximum permeability of 1×10^{-7} centimeters per second;
2. Shall lie above the uppermost aquifer; and
3. Shall continuously underlie the landfill site or facility and be demonstrated to have sufficient integrity to protect the uppermost aquifer from contamination in the event of a breech of the primary composite liner.

Section 2. Components of Contained Landfill Liner Systems. Once the subgrade is established, the primary and secondary liner systems shall consist of the layers, listed in subsections (1) through (3) of this section.
(1) The secondary liner system shall consist of the following layers, listed from bottom to top:
(a) A twelve (12) inch soil layer with a permeability of 1×10^{-7} centimeters per second as specified in Section 4 of this regulation;
(b) A secondary synthetic liner as specified in Section 5 of this regulation; [and]
(c) A twelve (12) inch drainage layer with a permeability of 1×10^{-3} centimeters per second; and [or layer of equivalent performance.]
(d) A filter fabric or other material approved by the cabinet.
(2) The secondary liner layer specified in subsection (1)(a) and (b) of this section [system] may be substituted for by a naturally occurring material as specified in Section 1(2) of this regulation.
(3) The primary liner shall consist of the following layers, listed from bottom to top:
[(a) A filter fabric or other material approved by the cabinet if a secondary liner system as specified in subsection (1) of this section is used;]
(a) [(b)] A thirty-six (36) inch clay layer with a permeability of 1×10^{-7} centimeters per second as specified in Sections 4, 6 and 7 of this regulation;
(b) [(c)] A primary synthetic liner as specified in Section 5 of this regulation;
(c) [(d)] A twelve (12) inch drainage layer with permeability of 1×10^{-2} centimeters per second or a layer of equivalent performance as specified in Section 6 of this regulation; and
(d) [(e)] A filter fabric or other material approved by the cabinet to protect the integrity of the drainage layer.

Section 3. Specific Landfill Subgrade Requirement. The landfill subgrade is the uppermost in situ rock layer, in situ soil layer or select fill that shall be graded and prepared for landfill construction. For lateral expansions adjacent to existing landfills, the cabinet may approve encroachment upon the existing landfill's side slope if a leachate barrier system is designed and construction to intercept leachate and prevent its migration into the existing landfill.
(1) Materials required. The landfill subgrade material shall be free of organic material and consist of [in situ] bedrock, on-site soils, or any select fill with the structural ability to support the landfill maximum load with a factor of safety of two (2.0).
(2) Construction requirements. The landfill subgrade shall be graded in accordance with the requirements of the approved engineering plans, report, and specifications. The material shall be sufficiently dry and structurally sound to ensure that the first lift and all succeeding lifts of soil placed over the landfill subgrade can be adequately compacted to the design requirements.
(3) Certification requirements. At a minimum, the subgrade surface shall be inspected in accordance with the following requirements:
(a) Before placing any material over the subgrade, the project engineer shall visually inspect the exposed surface to evaluate the suitability of the subgrade and ensure that the surface is properly compacted, smooth, uniform, and has positive surface drainage;
(b) Soil subgrade shall be proof-rolled using a minimum 100,000 pound loaded four (4) tire scraper (twenty (20) cubic yard size) or equivalent procedure and equipment approved by the cabinet;
(c) Soil subgrade shall be tested for density and moisture content at a minimum frequency of nine (9) tests per acre. The subgrade shall be compacted to a density of at least ninety (90) percent of the standard proctor [maximum density as determined by the cabinet]; and
(d) Sufficient cross sections shall be taken showing the finished elevation of the completed subgrade, referenced to existing site control. These cross sections shall serve as documentation and reference data for all future volume calculations.

Section 4. Specific Soil Component Requirements of Landfill Liner Systems. The soil component of the landfill liner system shall be a continuous layer of low permeability soil constructed to control fluid migration.
(1) Low permeability soil components shall have a maximum remolded coefficient of

permeability of 1 x 10^{-7} centimeters per second. The soil shall be placed without damaging any collection and removal system components. The soil material shall be substantially free of tree roots, wood or other decayable materials and large rock [particles greater than three (3) inches in any dimension]. The soils shall be compacted to a minimum of ninety-two (92) percent of the standard proctor density.

(2) Construction requirements. The project engineer shall ensure that the soil component of the liner system installation conforms to the following minimum requirements:

(a) The soil component of the liner system shall be placed on a slope of no less than three (3) percent toward the main leachate collection line and one (1) percent along the main leachate collection line to promote positive drainage across the liner surface and at a maximum slope not greater than fifty (50) percent.

(b) Compaction shall be performed by properly controlling the moisture content, lift thickness, and other necessary details to obtain the density, moisture and permeability characteristics specified in 401 KAR Chapter 48. The maximum final compacted thickness of each lift of soil material shall be six (6) inches or the thickness necessary to protect the integrity of underlying components and achieve the required liner performance standards.

(c) During construction the moisture content of the soil component of the liner system shall be maintained within the range identified in accordance with the certification requirements to ensure that the remolded lift attains the required permeability.

(3) Certification requirements. The project engineer shall include in the construction certification report a discussion of all required quality assurance and quality control testing. The testing procedures and protocols shall be submitted and approved by the cabinet. The results of all testing shall be included in the construction certification report including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance with the following requirements:

(a) The project engineer shall certify the results of the quality control testing of any soil liner materials. The intent of the quality control testing is to ensure that the specified material meets the permeability requirements of subsection (1) of this section. Before and during construction of the soil component of the liner system, the following minimum testing and classification shall be performed:

1. Determination of the classification of soils for engineering purposes using test methods approved by the cabinet for each 10,000 cubic yards of soil material placed and each time significant soil material changes are noted:

2. [a.] One (1) analysis of soil particle size for every 2,000 cubic yards of soil liner material placed from the same source. Additional analyses shall be performed if the source of material is changed or if a different soil type is encountered from the same source.

3. [b.] One (1) Atterberg limits analysis of plastic and liquid limit and plasticity index as approved by the cabinet for every 2,000 cubic yards of soil liner material placed;

4. [2.] One (1) moisture content test for every 2,000 cubic yards of material placed; and

5. [3.] A minimum of one (1) comparison of the moisture-density-permeability relation for every 20,000 cubic yards of material placed and one (1) each time soil material changes are noted. A minimum of three (3) laboratory permeability tests shall be performed using a triaxial cell with backpressure. The specimen used for each permeability test shall be remolded at the same moisture content which shall be equal to or not greater than four (4) percent above the optimum moisture content. The comparison shall be based on a semilog plot of percent maximum density versus permeability with at least one (1) point below and one (1) point above the target permeability value.

(b) Quality assurance testing included in this paragraph shall be compared to and evaluated against the quality control testing of paragraph (a) of this subsection where applicable. Quality assurance testing shall include:

1. At least nine (9) density tests per acre per lift of soil material placed;

2. A minimum of nine (9) moisture content tests per acre per lift of soil material placed; and

3. All moisture-density testing performed using nuclear methods.

Section 5. Specific Synthetic Liner Requirements. A synthetic liner is a low permeability manmade material having a maximum coefficient of permeability of 1 x 10^{-12} centimeters per second and is used to control fluid migration from landfills.

(1) Materials required. The synthetic liner material shall have a demonstrated hydraulic conductivity less than 1 x 10^{-12} centimeters per second and chemical and physical resistance not adversely affected by waste placement or leachate generated and a maximum water vapor transmission rate of 0.04 grams per square meter per day for forty (40) mil nominal thickness material and 0.03 grams per square meter per day for sixty (60) mil nominal thickness material. Documentation shall be submitted to ensure chemical compatibility of the synthetic liner material chosen or, in absence of the appropriate documentation, chemical compatibility testing shall be performed using a test method acceptable to the cabinet.

(2) Construction requirements. Synthetic liners shall be installed in accordance with the requirements of the approved engineering plans, report, and specifications and manufacturer's recommendations. The project engineer shall ensure that the synthetic liner installation, at a minimum, shall conform with the following:

(a) The synthetic liner shall have a nominal [minimum] thickness of sixty (60) mils;

(b) The synthetic liner shall be installed on a subgrade that has a minimum three (3) percent slope to promote positive drainage;

(c) Synthetic liners installed on slopes greater than twenty-five (25) percent shall be designed to withstand the calculated tensile forces acting upon the synthetic material, and shall ensure that overall slope stability is maintained;

(d) The surface of the supporting soil above [below] which the synthetic liner shall be installed shall be reasonably free of stones, organic matter, irregularities, protrusions, loose soil, and any abrupt changes in grade that may damage the synthetic liner. The supporting

soil shall conform to the requirements of Section 4 of this regulation;

(e) The anchor trench shall be excavated to the length and width prescribed on the approved design drawings;

(f) Field seams shall be oriented parallel to the line of maximum slope, i.e., oriented along, not across the slope. In corners and irregularly-shaped locations, the number of field seams shall be minimized;

(g) The materials shall be seamed using an appropriate method acceptable to the cabinet. Seam testing shall be in accordance with the requirements of subsection (3) of this section;

(h) The seam area shall be free of moisture, dust, dirt, debris, and foreign material of any kind before seaming; and

(i) Field seaming shall be prohibited when the conditions including ambient air, temperature, precipitation, and wind do not meet the engineers recommendations based upon the suppliers specifications [is below five (5) degrees celsius, above forty (40) degrees celsius, during precipitation, or when winds are in excess of twenty (20) miles per hour].

(3) Certification requirements. The project engineer shall include in the construction certification report a discussion of the approved data resulting from the quality assurance and quality control testing required in this paragraph. The results of all testing shall be included in the construction certification report including documentation of any failed test results, descriptions of the procedures used to correct the failed material, and statements of all retesting performed.

(a) The project engineer shall certify the quality control testing of the synthetic liner ensuring that the material and workmanship meet the requirements of the approved engineering plans, reports, and specifications. Before installing a synthetic liner, the following information shall be available to the project engineer for approval:

1. Origin and identification of the raw materials used to manufacture the synthetic liner;

2. Copies of quality control certificates issued by the producer of the raw materials used to manufacture the synthetic liner; and

3. Reports of tests conducted to verify the quality of the raw materials used to manufacture the synthetic liner. Tests for specific gravity, melt flow index, and percent carbon black shall be performed using a method acceptable to the cabinet.

(b) The project engineer shall verify through appropriate documentation that the quality control testing of any synthetic rolls fabricated into blankets at the factory took place in accordance with the following requirements:

1. The synthetic liner was continuously inspected for uniformity, damage, imperfections, holes, cracks, thin spots, and foreign materials. Additionally, the synthetic liner shall be inspected for tears, punctures, and blisters. Any imperfections shall be immediately repaired and reinspected;

2. Nondestructive seam testing was performed on all fabricated seams over their full length using a test method acceptable to the cabinet; and

3. A destructive seam testing was performed on a minimum of two (2) samples per blanket. The samples shall be taken from extra material at the beginning or end of blanket seams such that the blanket is not damaged and the blanket geometry is not altered. The size of the sample taken shall be large enough to perform the required testing. An independent laboratory acceptable to the cabinet shall perform the required testing on the samples taken. If a sample fails a destructive test, the entire seam length shall be reconstructed or repaired using a method acceptable to the cabinet and retested using nondestructive seam testing over its full length using a test method acceptable to the cabinet.

(c) Quality assurance testing performed in the field under the supervision of the project engineer shall assure conformity of the synthetic liner installation with the engineering plans, reports, and specifications submitted in accordance with the following requirements:

1. During the construction phase, the synthetic liner shall be inspected for uniformity, damage, and imperfections. The liner shall be inspected for tears, punctures, or blisters. Any imperfections shall be immediately repaired and reinspected;

2. All field seams shall be nondestructively tested in accordance with the procedures listed in this clause using a test method acceptable to the cabinet. The project engineer shall supervise all nondestructive testing; record the location, date, test unit number, name of tester, and results of all testing; inform the installer of any required repairs; and overlay all seams which cannot be nondestructively tested with the same synthetic liner. The seaming and patching operation shall be inspected by the project engineer for uniformity and completeness; and

3. Destructive testing shall be performed on the synthetic liner seam sections in accordance with the following requirements and using test methods acceptable to the cabinet. Seam samples for testing shall be taken as follows: a minimum of one (1) test per every 500 feet of seam length unless a more frequent testing protocol is agreed upon by the installer and project engineer; additional test locations may be determined during seaming at the project engineer's discretion; and all test locations shall be appropriately documented. The project engineer shall approve the sample size to be taken. The sample size shall be predetermined as being large enough to perform the required testing. An independent laboratory acceptable to the cabinet shall perform the required testing which shall include, as a minimum, testing for seam strength and peel adhesion using testing procedures acceptable to the cabinet. If a sample fails destructive testing the project engineer shall ensure that the seam is reconstructed between the location of the sample which failed and the location of the next acceptable sample; or the welding path is retraced to an intermediate location at least ten (10) feet from the location of the sample which failed the test, and a second sample is taken for an additional field test. If this second test sample passes, the seam shall then be reconstructed between the location of the second test and the original sampled location. If the second sample fails, this process shall be repeated. All acceptable seams shall lie between two (2) locations where samples passed

the required test procedures of this section and include one (1) test location along the reconstructed seam.

Section 6. Primary Liner System. The liner shall be designed using the following specifications:

(1) A thirty-six (36) inch thick low permeability soil layer having a remolded coefficient of permeability of 1×10^{-7} centimeters per second and compacted to a minimum of ninety-two (92) percent standard proctor density;

(2) A sixty (60) mil thick synthetic liner having a maximum coefficient of permeability of 1×10^{-12} centimeters per second and not adversely affected by the leachate or loading from the operational landfill;

(3) A leachate collection and removal system consisting of a twelve (12) inch thick granular material layer with a leachate collection pipe network. This collection system shall be designed to achieve a maximum hydraulic head on the primary composite liner no greater than twelve (12) inches. The granular material shall have a minimum coefficient of permeability of 1×10^{-2} centimeters per second. The physical and chemical properties of the granular material and pipe shall not be adversely affected by the loads or leachate generated by the operations of the landfill. Alternate materials proposed to function as a substitute for the granular soil layer shall be demonstrated to be equivalent in performance for leachate drainage and load bearing properties; and

(4) The leachate collection system shall contain a perforated piping system capable of removing leachate from the top surface of the low permeability solid component, and conveying it to a collection point. The drainage system shall meet the following requirements:

(a) Main leachate collection pipes shall have a minimum diameter of eight (8) inches and shall be designed to withstand static and dynamic loads that may be encountered;

(b) The sheet flow drainage distances to the lateral drainage pipes shall not exceed fifty (50) feet;

(c) The lateral pipes shall be installed primarily perpendicular to flow;

(d) The minimum diameter of lateral perforated pipes shall be four (4) inches and shall be designed to withstand static and dynamic loads that may be encountered. The materials used shall at a minimum conform to the specifications for ASTM schedule eighty (80) pipe;

(e) The minimum slope for the piping system shall be one (1) percent;

(f) The leachate collection tank shall be a minimum of 1,000 gallons. Additional capacity shall be provided to store leachate for a minimum of fifteen (15) days production at peak production rates during operation and closure;

(g) The method of leachate disposal shall be described. When it is discharged to the sediment structure, a treatment plant is proposed or other method of discharge is proposed, the KPDES permit shall reflect this provision. When an off-site wastewater treatment plant is used, the applicant shall provide written documentation showing the acceptance of the waste. The criteria for disposal at the wastewater treatment plant shall be stated. The leachate collection system shall have a method to measure the quantity of leachate managed at the site; [and]

(h) The leachate collection pipe system shall be designed to allow internal inspection, cleaning and maintenance; and

(i) The maximum design head of the leachate collection system shall be one (1) foot.

(5) A geosynthetic filter fabric or other suitable material shall be placed above the drainage layer to prevent clogging.

Section 7. Slope Considerations. (1) For bottom slopes of less than or equal to ten (10) [twenty-five (25)] percent, the owner or operator shall have a liner system meeting the requirements of Section 1 of this regulation.

(2) For bottom slopes of ten (10) to [more than] twenty-five (25) percent, the owner or operator shall have a liner system meeting the requirements of Section 2(3) [1] of this regulation, except that[:

(a)] the owner or operator may replace the granular soil layers in the leachate collection and hydraulic relief systems with synthetic drainage netting. [designed and constructed to have an equivalent transmissivity to that of a twelve (12) inch gravel layer with a minimum coefficient of permeability of 1×10^{-2} centimeters per second and shall be not adversely affected by leachate generated by the landfill; or]

[(b) The owner and operator shall demonstrate the stability of the composite liner, the lower construction foundation layer and the underlying supporting natural subsoils.]

(3) For bottom slopes of more than twenty-five (25) percent, the thickness of the soil required in Sections 2(3)(a) and (6)(1) of this regulation shall be reduced by no more than twelve (12) inches.

Section 8. Final Cap System. At a minimum the final cap shall consist of a layered system. Each layer shall have the same slope of between five (5) and twenty-five (25) percent. The components, listed from bottom to top, are:

(1) A filter fabric or other material approved by the cabinet;

(2) A twelve (12) inch sand gas venting system with a minimum hydraulic permeability of 1×10^{-3};

(3) A filter fabric or other material approved by the cabinet;

(4) An eighteen (18) inch clay layer with a maximum permeability of 1×10^{-7} centimeters per second;

(5) For areas of the final cap with a slope of less than fifteen (15) percent, a twelve (12) inch drainage layer with a minimum permeability of 1×10^{-3} centimeters per second; and

(6) A thirty-six (36) inch vegetative soil layer.

Section 9. Final Cap System Specifications. The specifications for final cap component layers are:

(1) A low permeability clay layer listed in Section 8(4) of this regulation shall be compacted to a minimum of ninety-two (92) percent of the standard proctor density;

(2) A drainage layer specified in Section 8(5) of this regulation shall be compacted to a minimum of eighty-five (85) percent of the standard proctor density. Field tile drainage shall be specified as necessary to relieve water captured by this drainage layer;

(3) A vegetative soil layer as specified in Section 8(6) of this regulation shall be sufficient to sustain vegetative growth and prevent root penetration of the underlying layers. A thicker layer may be required by the cabinet to properly retain moisture or meet closure care requirements.

(4) Drainage berms of at least one (1) foot in height or two (2) feet in width shall be placed at the following intervals for the following slopes:

(a) 150 feet at greater than ten (10) percent slope;

(b) 200 feet at slope between five (5) and ten (10) percent. In lieu of drainage berms, the owner or operator may substitute a design with a horizontal terrace of at least fifteen (15) feet width on the slope for every twenty-five (25) feet maximum rise in elevations on the slope. The slope of the terrace shall be five (5) percent into the fill and drainage ditches shall be designed for each terrace to convey precipitation flows. The maximum slope between terraces shall not exceed twenty-five (25) percent; or

(c) The applicant shall may adjust the drainage berm specifications with design calculations based upon characteristics of soils and cover [to support alternate designs].

(5) A synthetic liner with a minimum thickness of forty (40) mils and a maximum coefficient of permeability of 1×10^{-12} centimeters per second may be substituted for the low-permeability soil cover in Section 8(4) of this section.

(6)(a) The final cover shall be revegetated.

(b) The soil-water pH shall be adjusted and the soil fertilized based upon current soil test results.

(c) The seed bed shall be prepared and temporary nurse crops and permanent grasses planted in accordance with the approved closure plan within thirty (30) days of completion of final cover grading.

(d) The owner or operator shall repeat the above as necessary to achieve permanent vegetation.

[(e) The owner or operator shall achieve a minimum of ninety-five (95) percent ground cover by the end of August, two (2) years after application of the final cover.]

(e) [(f)] Erosion controls shall be addressed in the closure plan and constructed as required. All slopes over three (3) percent shall have controls applied at the time of seeding.

(f) [(g)] The owner or operator shall inspect all areas and perform maintenance and revegetation. At a minimum, the site shall be initially inspected according to this table:

Seeding Date	Follow-up Inspection Date	Complete Revegetation By
Aug. 16-Oct. 15	April 1	June 15
Oct. 16-Mar. 15	June 1	June 30
Mar. 16-Jun. 15	September 1	October 15
Jun. 16-Aug. 15	October 1	October 30

After the initial inspection, follow-up inspections shall be made on April 1, and September 1, with revegetation completed by June 15 and October 15.

(g) [(h)] After one (1) year, all areas larger than 100 square feet with less than forty (40) percent vegetation shall be tested to determine required revegetation, which shall be completed by September 30.

Section 10. Structural Integrity of Cap and Liner. The design engineer shall analyze the structural integrity of the site, the subbase, each component of the composite liner, each component of the final cover, the composite liner system and the final cap as a system. Modifications to the design shall be provided where necessary, to achieve a minimum factor of safety of two (2) for the subbase, one and one-fourth (1.25) for the structural design of the facility liner components, and one and one-half (1.5) for the final cover system. Synthetic liner material and structural synthetic materials shall be designed for a maximum elongation of ten (10) percent.

Section 11. Alternative Specifications. Alternative specifications may be used only after approval by the cabinet upon a dmonstration by a qualified registered professional engineer that they shall result in performance with regard to safety, stability and environmental protection equal to or better than that resulting from designs complying with the specifications of this regulation.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: March 8, 1990
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NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 48:090. Operating requirements for contained landfills.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888 [889], 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842
NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the management, processing, or disposal of solid wastes. KRS 224.842 requires that persons engaging in the management, processing, and disposal of solid waste obtain a permit. This chapter establishes the minimum technical standards for solid waste sites or facilities. This regulation sets forth the requirements for contained landfills.

Section 1. General. The owner or operator of a contained landfill shall operate the facility in accordance with the requirements of KRS Chapter 224 and the regulations promulgated pursuant thereto, the conditions of the solid waste permit issued by the cabinet, and the approved application filed with the cabinet.

Section 2. Procedures for Excluding the Receipt of Hazardous Waste. (1) The owner or operator of a solid waste contained landfill shall implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes as defined in 401 KAR Chapter 31 and polychlorinated biphenyls (PCB)

wastes as defined in 40 CFR Part 761. This program shall include, at a minimum:

(a) Random inspections of incoming loads;

(b) Inspection of suspicious loads;

(c) Records of any inspections;

(d) Training of facility personnel to recognize regulated hazardous waste; and

(e) Procedures for notifying the proper authorities if a regulated hazardous waste is discovered at the facility; and

(f) Employee safety, health, training and equipment to be used in inspection.

(2) The owner or operator shall implement the following additional inspection standards to meet the requirements of subsection (1) of this section:

(a) The owner or operator shall have a program, approved by the cabinet, to inspect all waste entering a contained landfill. The program to exclude hazardous wastes shall include [the following]:

[1. Each landfill shall perform a detailed, manual inspection of one (1) truck load of waste per week. The entire load shall be inspected by hand and each individual discarded item inspected for unauthorized waste. If the truck is from a transfer station and contains more than twenty (20) tons or seventy (70) cubic yards, the employee shall inspect only forty (40) cubic yards from the load. Individual bales, plastic bags, and cardboard boxes shall be opened except for those containers marked asbestos or infectious wastes. The operator shall have equipment, trained personnel, and a location to safely inspect asbestos and infectious waste packages for unauthorized material and shall weekly inspect such materials;]

1. [2.] Random [The] inspections [shall be random] in time, but uniformly distributed to all waste sources based on volume; and

2. [3.] Identification data concerning the hauler [shall be placed] on the operating inspection record including name of the driver, name of the hauler, address, source, volume, and waste characteristics. The owner or operator shall maintain a record of the inspections in accordance with the approved recordkeeping requirements.

(b) Upon discovery of hazardous waste, the owner or operator of a contained landfill shall isolate the load and notify the cabinet immediately.

Section 3. Cover Material and Disease Vector Control Requirements. (1) Daily cover.

(a) The owner or operator shall place a minimum of six (6) inches of cover over all exposed solid waste at the end of each working day or, for continuously operating landfills, once every twenty-four (24) hours. The purpose of this cover shall be to control disease, fires, blowing litter and disease vectors. [Daily cover shall not contain hard rock with a maximum thickness over three (3) inches and shall contain sufficient clay soils to properly seal the surface.] The owner or operator shall only use soil or properly weathered or crushed shales, siltstones or other materials as approved by the cabinet;

(b) The daily cover shall not have any protruding waste, except for the occasional litter embedded into the surface, which shall not exceed ten (10) percent of the cover area;

(c) Daily cover shall be compacted upon application and provide positive drainage. The owner or operator shall place daily cover to allow for proper drainage and shall immediately compact and grade the soil;

(d) The owner or operator may remove [up to twenty (20) percent of the] daily cover to facilitate the vertical passage of methane gas and leachate and shall recover the exposed areas within eight (8) hours of exposure; and

(e) The owner or operator shall dispose of any daily cover removed under subsection (1)(d) of this section as solid waste.

(2) Interim cover period. The owner or operator shall:

(a) Place an additional six (6) inches of interim cover over any area that shall not receive additional solid waste within thirty (30) calendar days of the last waste placement. [The sequence of waste placement in the permit shall predict such areas.] With the daily cover applied in accordance with subsection (1) of the section, the additional interim cover shall increase the total cover depth to twelve (12) inches;

(b) On the day waste is to be placed over an area that is covered with daily and interim cover, an owner or operator may remove a maximum depth of six (6) inches of interim cover over the area of the cell for that day's operation;

(c) Place, compact and grade the interim cover to effect proper drainage; and

(d) Apply temporary erosion controls at the time of placing interim cover.

(3) Long term cover. The owner or operator:

(a) Shall apply an additional eighteen (18) inches of long-term cover over all areas that shall not receive additional waste within four (4) months by September 15 of each year. With the daily and interim cover, the total thickness of the cover in these areas shall be thirty (30) inches;

(b) May remove a maximum of eighteen (18) inches of the thirty (30) inches of cover in this subsection within the seven (7) calendar days prior to additional waste placement. The owner or operator may remove remaining soil leaving no less than six (6) inches of daily cover from the daily cell area on the day additional waste is to be placed;

(c) Shall place, compact and grade the long term cover to effect proper drainage; and

(d) Shall complete erosion controls and proper seeding of interim and long-term cover during the fall seeding season [by October 15 each year].

(4) Final cover. The owner shall initiate the application of final cover:

(a) Within thirty (30) days of filling a completed phase of the landfill to final design grade; and

(b) Annually such that the final cap is in place by September 15 in all areas of the landfill that have reached final grade by August 15 of each year.

(c) An alternate schedule may be approved by the cabinet when construction techniques shall preclude construction by the above referenced dates.

(5) Cover report. The owner or operator shall record, on a form approved by the cabinet, the daily cell locations, and dates of cover applications at the landfill including: daily usage area, daily, interim, long term and final cap installation dates and certification reports.

Section 4. Explosive Gases Control. (1) The owner or operator of a contained solid waste landfill shall ensure that:

(a) The concentration of methane gas generated by the facility does not exceed twenty-five (25) percent of the lower explosive limits (LEL) for methane in facility structures (excluding gas control or recovery system components); and

(b) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.

(2) The owner or operator of a contained landfill shall quarterly monitor for explosive gas at the following locations:

(a) Underneath or in the low area of each on-site building;

(b) At locations along the boundary as shown in the permit;

(c) At each gas passive vent installed under the final closure cap;

(d) At any potential gas problem areas, as revealed by dead vegetation or other indicators; and

(e) At any other points required by the permit.

(3) The owner or operator shall record the date, time, location, percent lower explosive limit and other pertinent information on the recordkeeping form approved by the cabinet.

(4) The owner or operator shall install, operate and maintain a gas detector with an alarm set at twenty-five (25) percent of the lower explosive limit in each on-site building.

(5) If methane gas levels exceeding the limits specified in subsection (1) of this section are detected, the owner or operator shall:

(a) Take all necessary steps to ensure immediate protection of human health;

(b) Immediately notify the cabinet of the methane gas levels detected and the immediate steps taken to protect human health; and

(c) Within fourteen (14) days, submit to the cabinet for approval a remediation plan for the methane gas releases. The plan shall describe the nature and extent of the problem and the proposed remedy. The plan shall be implemented upon approval by the cabinet.

Section 5. Air Criteria. (1) The owner or operators of contained landfills shall not permit or engage in open burning of waste. Any open burning shall be immediately extinguished. Wastes that are burning or smoldering shall not be deposited in the fill. Such materials shall be deposited in a hot load area designated in the permit. The cabinet may grant emergency permission to burn in accordance with 401 KAR 47:150. The owner or operator shall follow the plan approved for such purposes.

(2) The owner or operator shall properly control dust on haul roads and other areas to prevent a nuisance to surrounding areas.

Section 6. Access Requirements. (1) The owner or operator of a contained solid waste landfill shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes to protect human health and the environment. The owner or operator shall use artificial barriers, natural barriers, or both, as appropriate. Each access point shall be controlled by lockable entrance ways.

(2) The owner or operator shall construct and maintain:

(a) Lockable entrance ways at all access points;

(b) The major access road from a publicly maintained highway to the landfill;

(c) The perimeter road; and

(d) An all-weather road to within 200 feet of the working face.

(3) The owner or operator of a contained landfill shall remove debris, mud, and waste from vehicles before leaving the site. The owner or operator shall be responsible for removing landfill debris mud and waste from off-site roadways.

Section 7. Water Controls. The owner or operator of a contained solid waste landfill shall:

(1) Maintain the site as necessary to prevent erosion or washing of the fill, and grade as necessary to drain rain water from the fill area and to prevent standing water.

(2) Maintain all run-on and run-off control systems as necessary to maintain original design capacity as required by Section 2 of 401 KAR 48:070. This includes, but shall not be limited to:

(a) Removal of sediment from run-off control structures. The site design shall specify the method to be used to determine when cleanout shall occur;

(b) Removal of debris, wastes and soil from diversion and run-off ditches to maintain the design capacity [to carry a 100 year twenty-four (24) hour storm];

(c) Construction and maintenance of temporary diversion ditches around the current working face. The owner or operator shall specify the location of the temporary ditches in the operational plan required by 401 KAR 47:190 and the ditches shall be approved by a professional engineer registered in the Commonwealth of Kentucky.

Section 8. Waste Restrictions. (1) The owner or operator of a contained landfill shall only dispose of wastes that:

(a) Are not hazardous wastes regulated pursuant to 401 KAR Chapters 30 through 40, except for limited quantity hazardous wastes and exempt spill residues;

(b) Do not contain free liquids as determined by the cabinet; and

(c) Are specified in the approved permit application.

(2) The owner or operator shall comply with the recordkeeping and reporting requirement of Section 11 of this regulation pertaining to the location of disposed limited quantity hazardous waste and exempt spill residues.

Section 9. Working Face Requirements. (1) Within two (2) hours of receipt, the owner or operator shall spread wastes in loose layers not exceeding twenty-four (24) inches in depth and compact it to the maximum practicable density. The owner or operator shall use the equipment specified in the permit for compaction. The operator shall pass the equipment over 100 percent of the waste surface at least four (4) times. Each loose layer shall be fully compacted before any additional waste is placed.

(2) The owner or operator shall not exceed the lift height specified in the permit.

(3) The owner or operator shall not place an initial lift containing any object that may damage the bottom liner. The owner or operator shall protect the liner system with a layer of

dirt, waste or similar blanket placed between operating equipment and the liner.

(4) The daily working face shall be restricted to the smallest area practical for working face operation.

(5) The completed cell shall consist of the solid waste compacted during one (1) working day.

(6) The owner or operator shall prohibit scavenging within 100 feet of the working face. All salvage and recycling shall occur at areas so designated in the permit.

(7) The owner or operator shall only allow access to the landfill when operating personnel are on the site.

(8) The owner or operator shall not accept solid waste at a rate that exceeds the rated capability of the operational compaction and cover equipment available on site.

(9) The owner or operator shall not accept solid waste without landfill personnel present to supervise the unloading.

(10) The grounds in and about a landfill shall not be allowed to become a nuisance. When necessary, interior fences may be required to prevent litter from blowing from the landfill. The permitted area shall be policed on a routine basis to collect all scattered material.

(11) All litter attributable to the site's operation shall be picked up within forty-eight (48) hours.

(12) Unless excluded from the site, large bulky items and other nonresidential wastes shall be deposited in a manner approved by the cabinet.

(13) The owner or operator shall conform to the posted operating hours for receiving waste and shall notify the cabinet of the operating hours before changing them. The entrance sign shall meet the requirements of Section 14(2) of this regulation.

Section 10. Employee Facilities. The owner or operator of a contained landfill shall provide buildings meeting Section 9 of 401 KAR 48:070, for site personnel. The buildings shall be maintained in a safe and sanitary manner. One (1) building shall have a safe drinking water supply.

Section 11. Reports and Recordkeeping. Records and reports shall be maintained and submitted in accordance with Section 8 of 401 KAR 47:190.

Section 12. Groundwater Monitoring. The owner or operator of a contained solid waste landfill shall implement the groundwater monitoring program in the approved application.

Section 13. Closure and Closure Care Requirements. (1) [Following the two (2) year closure period for each contained landfill phase,] The owner or operator shall comply with [conduct] the following closure requirements:

(a) The owner/operator of a contained landfill shall prepare a written closure plan that describes the closure activities for each unit including the following: [The first phase shall be for a minimum of thirty (30) years and consist of at least the following:]

1. The methods to be employed to maintain [Maintaining] the integrity and effectiveness of any final cap, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cap;

2. Maintenance and operation of [Maintaining and operating] the leachate collection system in accordance with the requirements, if applicable, until leachate no longer is generated;

3. [Monitoring the] Groundwater monitoring in accordance with the requirements of 401 KAR 48:300 and maintaining the groundwater monitoring system; and

4. Maintenance and operation of [Maintaining and operating] the explosive gas monitoring system in accordance with the requirements of Section 4 of this regulation.

(b) The closure period shall be at least two (2) years following the cabinet's acceptance of the owners certification of closure. [Following the period described in subsection (a) of this section, the owner or operator shall conduct a second phase of closure care at each contained solid waste landfill unit that consists of, at a minimum, groundwater and explosive gas monitoring. The length of this period shall be sufficient to protect human health and the environment. This phase shall be extended to include the period of time required for corrective action in accordance with 401 KAR 48:300.]

(2) The owner or operator of a contained landfill shall prepare and implement a written closure care plan that describes monitoring and routine maintenance activities that shall be carried out during the [each phase of the] closure care period of at least thirty (30) years [in accordance with the requirements of subsection (1) of this section]. The closure care plan shall include, at a minimum, the following information:

(a) A description of the monitoring and maintenance activities for each unit [required in subsection (1) of this section for each unit,] and the frequency at which these activities shall be performed;

(b) Name, address and telephone number of the person or office to contact about the facility during [both phases of] the closure care period; and

(c) A description of the planned uses of the property during [both phases of] the closure care period. Closure care use of the property shall not be allowed to disturb the integrity of the final cap, liner(s), or any other components of the containment system, or the function of the monitoring systems, unless upon demonstration by the owner or operator, the cabinet determines that the activities shall not increase the potential threat to human health or the environment or the disturbance is necessary to reduce a threat to human health or the environment. The owner or operator shall obtain approval from the cabinet in order to remove any wastes or waste residues, the liner, or contaminated soils from the land.

(3) The closure care plan shall be submitted with the permit application and shall be approved by the cabinet. Any subsequent modification to the closure care plan also shall be proved by the cabinet. A copy of the most recently approved closure care plan shall be kept at the facility until completion of the closure care period has been certified in accordance with subsection (5) of this section [and the owner or operator has been released from financial assurance requirements for closure care under Section 1 of 401 KAR 48:310].

(4) The owner or operator shall record a notice in the deed that shall in perpetuity notify any potential purchaser of the property of the location and time of operation of the facility, the nature of the waste placed in the site and a caution against future disturbance of the area. Such notice shall be recorded in accordance with KRS Chapter 382 and proof of recording shall be submitted to the cabinet prior to the cabinet's acceptance of certification of closure. [Following closure of the entire contained landfill, the owner or operator shall record a notation on the deed to the landfill property, or some other instrument that is normally examined during title search. The notation on the deed shall in perpetuity notify any potential purchaser of the property that:]

[(a) The land has been used as a contained landfill; and]

[(b) Its use is restricted under subsection (2)(c) of this section.]

(5) Following completion of all closure and closure care periods for each unit, the owner or operator of a contained landfill shall submit to the cabinet certification by a professional engineer, verifying that all phases of closure and closure care have been completed in accordance with the approved plans and the requirements of KRS Chapter 224.

Section 14. Signs. (1) Warning signs shall be visible at all landfill access points. The warning signs shall be readable at a distance of 100 feet. The signs shall give warnings of all site hazards, including but not limited to: explosive gases, heavy equipment movement and heavy truck movements.

(2) Entrance signs shall be visible, located at the public entrances and all entrances used by waste hauling vehicles. The signs shall be readable from 100 feet. They shall indicate landfill name, name of the owner, name of the operator, the hours of receiving wastes, the permit number and an emergency telephone number.

Section 15. Alternative Specifications. Alternative specifications may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer that they shall result in performance, with regard to safety, stability and environmental protection, equal to or better than that resulting from designs complying with the specifications of this regulation.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
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NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 48:170. Technical requirements for residual landfills.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888 [889], 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the management, processing or disposal of wastes. KRS 224.842 requires that persons engaging in the management, processing and disposal of waste obtain a permit. This chapter establishes the minimum technical standards for solid waste sites or facilities. This regulation sets forth the technical requirements for residual landfills.

Section 1. Design Requirements. The engineering design shall demonstrate compliance with the environmental performance standards in 401 KAR 47:030 and the siting standards of 401 KAR 48:050 considering the following:

(1) The physical and chemical characteristics of the waste, including compatibility of the waste with the liner and cover materials and water that may come in contact with the waste;

(2) Volume of waste;

(3) The climatic conditions in the area;

(4) The permeability of the liner material. The liner, if required, shall assure containment of the waste on site and compliance with the environmental performance standards of 401 KAR 47:030;

(5) The properties of the soil underlying the facility;

(6) Hydrogeologic characteristics of the facility including quality, quantity, current use and direction of groundwater flow;

(7) The design of the facility leachate control system, run-off control system, and gas migration control, if required, as it relates to the physical and chemical characteristics of the waste, the climatic conditions of the specific location, the volume of leachate and contaminated run-off collected at the facility;

(8) The proximity to surface water and groundwater;

(9) The potential for gas emissions and odors;

(10) Any additional requirements specified by the cabinet.

Section 2. Operating Requirements. (1) The owner or operator of a residual landfill shall operate the facility in accordance with the requirements of KRS Chapter 224 and the waste management regulations, the conditions of the solid waste permit issued by the cabinet, and the operational plan filed with and approved by the cabinet.

(2) The owner or operator of a residual landfill shall operate the facility in such a manner as to ensure compliance with the environmental performance standards in 401 KAR 47:030.

(3) The owner or operator of the facility shall inspect the site and operation at a sufficient frequency to ensure compliance with the applicable environmental performance standards in 401 KAR 47:030.

(4) The owner or operator shall have a sign located at the entrance. The sign shall indicate the landfill name, the names of the owner and the operator, the hours that the landfill is accepting wastes, the permit number, the contact person and the emergency telephone number.

(5) Records and reports shall be maintained and submitted in accordance with the requirements of 401 KAR 47:190, Section 8.

(6) The cabinet may place additional requirements on the owner or operator of a residual landfill in addition to those stated

where necessary to ensure compliance with the applicable environmental performance standards in 401 KAR 47:030.

Section 3. Closure and Closure Care Requirements. (1) A residual landfill shall be closed in a manner that shall ensure compliance with the applicable environmental performance standards in 401 KAR 47:030. The closure shall include the placement of a final cover over the facility as specified in the approved design of the site.

(2) Any necessary corrective work required by the cabinet shall be performed before the residual landfill is accepted as closed and closure financial responsibility funds are released.

(3) The closure plan shall be prepared to specify the function and design of the final cover for the facility. The closure design shall ensure compliance with the environmental performance standards in 401 KAR 47:030 considering:

(a) The type and amount of waste in the facility;

(b) The mobility and expected rates of migration of the waste or leachate constituents;

(c) The site location, topography, surrounding land use, and final site use;

(d) The climatic conditions in the area;

(e) The characteristics of the cover material including its chemical and physical composition, erodibility, slope stability, final surface contours, thickness, porosity, permeability, slope, length of run of slope, and type of vegetation on the cover; and

(f) The geologic and soil profiles and surface and subsurface hydrology of the site.

(4) [Closure care maintenance.] A residual landfill shall be maintained for a minimum of two (2) years following the closure of the site in a manner that complies with the applicable environmental performance standards in 401 KAR 47:030 and in accordance with any approved closure [care monitoring and maintenance] plan approved by the cabinet.

(5) The owner or operator of a residual landfill shall record a notice **in the deed** that shall in perpetuity notify any potential purchaser of the property of the location and time of the operation of the facility, the nature of the waste placed in the site and a caution against future disturbance of the area. Such notice shall be recorded in accordance with **KRS Chapter 382 and proof of recording shall be submitted to the cabinet** [state property law] prior to **the cabinet's** acceptance of **certification of closure** [final closure of the landfill].

(6) The cabinet may release the closure bonds two (2) years following the cabinet's acceptance of the owner's certification of closure. [site bonds in that amount which exceeds the funds necessary to maintain the final cover to correct vegetative growth, erosion, and closure care environmental monitoring for two (2) years.] These funds shall be released upon inspection of the permit records and the site to determine that it is in compliance with all regulatory requirements and has at least a ninety (90) percent permanent vegetative cover.

(7) The owner or operator shall implement the approved closure care plan in accordance with the closure care schedule and shall perform other necessary corrective work required by the cabinet, if any, before the landfill closure care certification is accepted.

Section 4. Display of Permit. One (1) copy of the permit application shall be returned to the permittee. The permit with all applicable conditions shall be conspicuously displayed at the solid waste site or facility for the duration of the permit. A copy of the approved application, including plans, shall be available at the site.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: March 8, 1990
FILED WITH LRC: March 9, 1990 at noon

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

401 KAR 48:200. Landfarming and composting.

RELATES TO: KRS 224.005, 224.830 through 224.860, 224.868, 224.869, 224.994
STATUTORY AUTHORITY: KRS 13A.210, 224.033
NECESSITY AND FUNCTION: KRS 224.033 and the waste management provisions of KRS Chapter 224 require the Natural Resources and Environmental Protection Cabinet to adopt regulations for the disposal of solid waste. This chapter establishes standards for solid waste sites or facilities. This regulation sets forth the permit application requirements and general design and operating requirements for landfarming facilities, composting, and sludge giveaway programs.

Section 1. Applicability. (1) The requirements in this regulation apply to any person disposing of solid waste by landfarming and composting.

(2) The cabinet shall not permit the land application of a solid waste that may present a threat to human health and the environment. The land application suitability of solid wastes shall be evaluated by the cabinet on a case-by-case basis. The applicant shall submit a request for a determination of waste classification with the submittal of a notice of intent to apply. The cabinet may base a decision as to the land application suitability of a particular waste upon the ability of the waste to biodegrade in the environment, the potential for the waste to be managed in a manner consistent with 401 KAR 47:030, the likelihood that waste constituents shall contaminate surface water or groundwater, the potential for nuisances from odors or unsightly conditions, and the potential for the waste to harm human health or the environment.

(a) Municipal water treatment sludges, municipal wastewater treatment sludges, or food service industry wastes shall be classified according to the maximum dry weight concentration of heavy metals based on the average concentration of metals in a minimum of two (2) consecutive samples taken no closer than thirty (30) days apart. The cabinet may deny the landfarming of a solid waste based upon health considerations in addition to the presence in the waste of excessive concentration of the five (5) heavy metals listed below. The sludges shall

be placed in classes based on the concentration of the following heavy metals:
1. Cadmium;
2. Copper;
3. Lead;
4. Nickel; and
5. Zinc.

(b) Sludges or solid wastes other than municipal water treatment sludges, municipal wastewater treatment sludges, or food services industry solid wastes [sludges] shall be classified using additional parameters based upon the source, chemical and physical characteristics of the waste and their potential for adverse impact on human health or the environment.

(3) The concentration for heavy metals in each class of sludge or solid waste shall be those indicated in Table 1 of this subsection. A single metal parameter shall be sufficient to require a solid waste to be classified as Class II or III.

Table 1. Heavy Metal Concentrations

Parameters for Class I Concentration

Cadmium	Less than or equal to 10 mg/kg
Copper	Less than or equal to 450 mg/kg
Lead	Less than or equal to 250 mg/kg
Nickel	Less than or equal to 50 mg/kg
Zinc	Less than or equal to 900 mg/kg

Parameters for Class II Concentration

Cadmium	Greater than 10 mg/kg and less than or equal to 30 mg/kg
Copper	Greater than 450 mg/kg and less than or equal to 900 mg/kg
Lead	Greater than 250 mg/kg and less than or equal to 500 mg/kg
Nickel	Greater than 50 mg/kg and less than or equal to 100 mg/kg
Zinc	Greater than 900 mg/kg and less than or equal to 1800 mg/kg

Parameters for Class III Concentration

Cadmium	Greater than 30 mg/kg
Copper	Greater than 900 mg/kg
Lead	Greater than 500 mg/kg
Nickel	Greater than 100 mg/kg
Zinc	Greater than 1800 mg/kg

(4) Sludge or solid waste classifications shall be reevaluated based upon the annual analyses submitted in the annual landfarming review.

(5) A registered [granted] permit-by-rule may be issued based upon the information submitted in the registration on a form prescribed by the cabinet in Section 18 of this regulation [notice of intent to apply phase of the application] for landfarming of solid waste classified as Class I wastes, composted solid waste sludge, or sludge giveaway programs.

(6) A landfarming permit may be issued based upon the information submitted in the application for solid wastes classified as Class II or III.

(7) Solid waste [Sludge] heavy metal concentration values are determined on a dry weight basis. Analysis shall be accomplished by determining the heavy metal concentration of the undried sample and determining the heavy metal content using the solids content of the original sample and computing the heavy metals content of the sludge on a dry weight basis. Results of the laboratory determination shall include the solids content, the wet weight and dry weight content when they are submitted to the cabinet.

Section 2. Notice of Intent to Apply. All applicants for a landfarming permit or a registered [granted] permit-by-rule shall submit a notice of intent to apply for a landfarming permit that shall contain the following information:

(1) Names, addresses, and telephone numbers of the landowner, applicant and waste producer. If the applicant is a government agency, corporation, company or partnership, include the name, address and telephone number of the process agent or contact individual;

(2) Sludge analyses in accordance with Section 1(2)(a) of this regulation to receive a classification rating;

(3) An original, current 7.5 minute United States Geological Survey quadrangle topographic map with the proposed landfarming site boundary clearly marked;

(4) A soil conservation service soils map with the proposed landfarming site boundary clearly marked;

(5) A survey of all groundwater wells and springs within a one-fourth (1/4) mile radius of the proposed landfarming site boundary;

(6) A description of the water or wastewater treatment processes including design capacity, current hydraulic operating conditions, and the sludge treatment systems. A schematic diagram showing the treatment plant processes shall be included. All chemicals used in the treatment process shall be listed by type and amount used;

(7) For publicly owned treatment works with pretreatment programs, a list of facilities which discharge waters to the treatment system and the quantities and characteristics of the wastes that are discharged to the facility;

(8) Any other additional information required by the cabinet; and

[(9) Granted permit-by-rule applicants shall also submit the information specified in Sections 14 and 15 of this regulation.]

Section 3. Contents of Permit Applications. Any person desiring a landfarming facility permit shall submit a complete application to the cabinet. [Granted permit-by-rule facilities shall be treated as having been granted a permit if the owner complied with the requirements of Section 2 of this regulation and has received written approval from the cabinet. The cabinet may require submission of a complete application at any time.] The applications shall be on a form and presented in a manner prescribed by the cabinet, and shall include, but not be limited to the following:

(1) Names, addresses and telephone numbers of the landowner, applicant, waste producer and person who completed the application form. If the applicant is a government agency, corporation, company or partnership, include the name, address and telephone number of process agent or other contact individual;

(2) A written description of the location of the proposed landfarming site and the address of the property on which the proposed landfarming site is located;

(3) A copy of the deed to the property and a

copy of the proposed landfarming lease agreement if the landowner is not the applicant;

(4) A geological report of the site, including:

(a) A physical description of soils in the uppermost five (5) feet identifying the soil texture, erodibility, available moisture capacity, and permeability;

(b) A current soil analysis to determine the soil pH and cation exchange capacity (CEC) value;

(c) A delineation of soil by series on a U.S. Soil Conservation Service soils map, or on a map prepared by the soil conservation officer or a soil scientist; and

(d) A description of the surface and subsurface geology including depth to bedrock, depth to seasonal high groundwater table, karst formations, and names and descriptions of geologic formations.

(5) A description of the solid wastes to be disposed, including the inventory of industrial users and pollutants required in Section 9 [8](7) of 401 KAR 5:055, including:

(a) The type, waste producer and total estimated quantity of solid waste per year to be disposed;

(b) A [brief] description of stabilization methods utilized to reduce pathogens in accordance with Section 11 of this regulation; and

(c) A physical and chemical analysis including: percent total solids; volatile solids; total potassium; total phosphorus; total nitrogen; ammonium nitrogen (NH_4-N); nitrate nitrogen (NO_3-N); pH; and the amount of cadmium, copper, nickel, zinc, lead, chromium, and polychlorinated biphenyls (PCBs).

(6) An original current United States Geological Survey topographic map within the land application unit clearly marked;

(7) An enlargement of a current United States Geological Survey topographic map. The enlarged map shall have a minimum scale of one (1) inch equals 400 feet and the contour interval as published. This map shall contain the following:

(a) The property lines and the boundaries of the proposed site;

(b) Proposed land application unit and subplots, numbered sequentially, with the land application unit;

(c) Access and proposed or existing roads;

(d) [Blue-line and intermittent] Streams, areas of standing water such as lakes, ponds or marshes, and sinkholes on the site and within 1000 feet of the proposed site boundary;

(e) All existing manmade features within 1000 feet of the proposed site boundary including structures, public roads, utilities and water wells;

(f) The boundaries of the 100 year flood plain if applicable;

(g) The delineation of existing site surface water drainage, and existing and proposed run-off/run-on structures;

(h) Steepest slope of each subplot (numerical value) on the proposed landfarming site;

(i) Boundaries of any and all buffer zones with the distance marked; and

(j) Map legend showing all symbols used, total site acreage, and quadrangle name.

(8) The complete application narrative shall include:

(a) A description of the application method(s), equipment, and transportation method from the point of waste production to the proposed site;

(b) Waste storage provisions to be utilized during adverse weather conditions or equipment breakdowns;

(c) Annual application rates per acre based on waste quality as specified in Section 9 of this regulation;

(d) The cropping program for each subplot and the schedule of waste application for each subplot for a period of two (2) years from the date of permit issuance;

(e) A farm management plan for the area to be landfarmed;

(f) A description of the proposed site including any previous waste applications;

(g) Written recommendations of the county agricultural extension agent for crop nitrogen requirements, and any additional fertilizer and soil amendment needed;

(h) A description of how land application units and subplot boundaries shall be marked to ensure that the units and subplots can be identified during the life of the permit;

(i) A description of where the landfarming records shall be maintained and the person who is responsible for their upkeep;

(j) The name, address, phone number, and certification number of the state certified landfarming operator of the proposed landfarming site;

(k) Additional information necessary for the cabinet to make a determination that the proposed activity shall not adversely affect human health or the environment; and

(l) A statement from the owner or operator that the landfarming of solid waste in the county where the landfarm facilities are located is consistent with the requirements of the solid waste management plans pursuant to KRS Chapters 109 and 224. When landfarming is not determined to be consistent with local requirements, the inconsistencies shall be identified. [For counties that have a solid waste management board established pursuant to KRS Chapter 109, a letter indicating that the application is consistent with the approved solid waste management area plan or that the solid waste management area plan shall be revised to be consistent with the permitted sludge disposal activity.]

Section 4. Requirements for Registered Permits-by-rule. Registered permits-by-rule shall complete the registration, prescribed on a form approved by the cabinet, containing the information in Section 18 of this regulation. Owners and operators shall not be required to submit an application as specified in Sections 2, 3, 5 and 6 of this regulation. [Additional Requirements for Class I Sludge Permit Applications. In addition to the notice of intent to apply in Section 2 of this regulation, applicants for landfarming granted permits-by-rule for Class I sludges shall submit in the application the following:]

[(1) A list of all surface water bodies within a one-fourth (1/4) mile radius of the proposed land application unit boundary;]

[(2) The usage of each surface water body listed in accordance with subsection (1) of this section;]

[(3) A list of all groundwater wells, springs and sinkholes within a one-fourth (1/4) mile radius of the proposed land application unit boundary; and]

[(4) The name of the owner of the property on

which the surface water body, well, spring or sinkhole is located.]

Section 5. Additional Requirements for Class II Sludge Permit Applications. In addition to the requirements for an application in Section 3 of this regulation, applicants for landfarming permits for Class II sludge shall submit in the application the following:

(1) A list of all surface water bodies within a one-half (1/2) mile radius of the proposed land application unit boundary;

(2) The usage of each surface water body listed in accordance with subsection (1) of this section;

(3) A list of all groundwater wells, springs and sinkholes within a one-half (1/2) mile radius of the proposed land application unit boundary;

(4) The name of the owner of the property on which the surface water body, well, spring, or sinkhole is located; and

(5)(a) The applicant shall prepare a groundwater quality assurance plan. The plan shall include but not be limited to:

1. A description of the surface and subsurface geology of the site; and

2. A description of the hydrologic characteristics of the site.

(b) Upon examination of geological aspects and other relevant factors by the cabinet, the applicant may be required to prepare a groundwater monitoring plan to include location and specifications of wells, monitoring parameters and monitoring schedules in accordance with 401 KAR 48:300.

Section 6. Additional Requirements for Class III Sludge Permit Applications. In addition to the requirements for an application in Section 3 of this regulation, applicants for landfarming permits for Class III sludge shall submit in the application the following:

(1) A list of all surface water bodies within a one-half (1/2) mile radius of the proposed land application unit boundary;

(2) The usage of each surface water body listed in accordance with subsection (1) of this section;

(3) A list of all groundwater wells, springs and sinkholes within a one-half (1/2) mile radius of the proposed land application unit boundary;

(4) The name of the owner of the property on which the surface water body, well, spring, or sinkhole is located; and

(5)(a) The applicant shall prepare a groundwater quality assurance plan. The plan shall include but not be limited to:

1. A description of the hydrologic characteristics of the site; and

2. A description of the surface and subsurface geology of the site.

(b) The applicant shall submit a groundwater monitoring plan to include location and specifications of wells, monitoring parameters, and monitoring schedules in accordance with 401 KAR 48:300.

Section 7. Siting Considerations. (1) Solid waste shall not be applied in the 100 year flood plain unless the waste is injected or incorporated.

(2) The land application unit shall have a minimum of four (4) feet of soil between the soil surface and both the seasonal high water table and bedrock.

(3) Solid waste application shall not be located on soils with a permeability rate greater than six (6) inches per hour or less than two-tenths (0.2) inches per hour.

(4) Land application units shall not be located on land with a slope greater than fifteen (15) percent.

Section 8. Operating Requirements. (1) The owner or operator shall cause, suffer, or allow all of the requirements, specifications and standards of this section to be met.

(a) Prior to applying sludges to the land, all sludges shall be processed to significantly reduce pathogens. Approved processes to reduce pathogens are aerobic digestion, air drying, anaerobic digestion, composting or lime stabilization as specified in Section 11 of this regulation.

(b) Other methods or operating conditions may be acceptable as processes to significantly reduce pathogens. Such processes shall be deemed equivalent based upon the reduction of pathogens and volatile solids.

(2) A certified landfarming operator shall be available to the landfarming site during sludge application. All sludge applications are to be accomplished under the direction of a certified landfarming operator.

(3) When surface application is used in conjunction with soil incorporation methods, incorporation shall occur within forty-eight (48) hours of sludge application.

(4) Surface application without incorporation into the soil shall not be used on land without established vegetative cover or crop residue of at least seventy-five (75) percent.

(5) No hazardous wastes or mixtures of hazardous and solid waste shall be disposed, discharged to or placed in a landfarming site.

(6) No toxic wastes or mixtures of toxic and nontoxic wastes regulated under the Toxic Substances Control Act shall be disposed, discharged to or placed in a landfarming site.

(7) The following agricultural use restrictions apply:

(a) Land spreading shall not occur on land where leafy vegetables or root crops for human consumption shall be harvested within twelve (12) months;

(b) Land spreading shall not occur on land where crops for direct human consumption, other than leafy vegetables or root crops, are harvested within two (2) months;

(c) Dairy grazing shall be prohibited for six (6) months after land spreading, other livestock grazing shall be prohibited for three (3) months;

(d) When the annual application rate of cadmium exceeds 0.44 pound per acre, food chain crops shall not be utilized in the following cropping season; and

(e) Solid waste shall not be land spread where tobacco is harvested within five (5) years of waste application if the annual application rate of cadmium from the sludge exceeds 0.44 pound per acre at any time during the life of the site.

(8) The general public shall be restricted from the application zone for a period of twelve (12) months after each application.

(9) Solid waste shall not be land spread on frozen, snow-covered, ice-covered, or water-saturated soil, or during any precipitation event.

(10) No solid waste shall be applied in excess of schedules and rates of waste application approved by the cabinet.

(11) No raw or unstabilized solid waste shall be landfarmed. No person shall cause, allow or permit the discharge of air pollutants which cause or contribute to an objectionable odor.

(12) The amount of any single surface application shall not be greater than an average one-half (1/2) inch in thickness.

(13) High pressure spray irrigation of sludge which produces aerosols shall be prohibited.

(14) Subplots determined in Section 3(8)(h) of this regulation shall be staked or otherwise clearly marked in the field.

(15) Buffer zone distances shall be maintained in accordance with Table 2 of this subsection.

Table 2
Required Buffer Zones

Minimum Distance in Feet from the Boundary of the Application Zone

Structure or Object	Surface Injection	All Other Means of Application
Residences & occupied buildings	250	500
Drinking water well	250	500
Surface water body	250	500
Intermittent stream [Blue-line]	250	500
Karst feature	250	500
Public road	30	50
Intermittent stream	30	50
Ephemeral stream	30	50
Property line	30	50

(16) Surface water or solid waste ponding within the application zone shall be prohibited.

(17) Surface run-off/run-on shall be controlled to minimize the possibility of applied solid waste contaminating nearby surface water or adjacent land areas.

(18) The permit or registered [granted] permit-by-rule holder shall maintain records of all landfarming activities on forms provided by the cabinet throughout the operation of the site. The records shall at a minimum contain the schedules and rates of waste application and all laboratory analyses. Records shall be made available to the cabinet upon request.

(19) An annual report of landfarming activities shall be submitted to the cabinet sixty (60) days prior to the anniversary date of the permit or registered [granted] permit-by-rule issuance. The report shall be submitted on forms provided by the cabinet.

(20) Operational monitoring shall be performed on the following schedule:

(a) Soil shall be sampled annually in accordance with the soil monitoring plan in the approved permit [or granted permit-by-rule] application; and

(b) Solid waste from municipal wastewater treatment, municipal water treatment facilities and food service industry wastes shall be sampled in accordance with Table 3 of this paragraph or more frequently if required by the cabinet. Other solid waste shall be sampled in accordance with a schedule approved by the cabinet. Solid waste shall be analyzed for solids content, pH, ammonium nitrogen (NH_4-N), nitrate nitrogen (NO_3-N), total nitrogen, total phosphorus, total potassium, PCBs, chromium, copper, zinc, nickel, lead, and cadmium. Laboratory analysis results shall be reported in milligrams per kilogram wet and dry weight.

Table 3
Required Sampling Schedule

Design Treatment Capacity (gallons per day)	Samples Per Year
Less than 100,000	1
100,001 - 1,000,000	2
1,000,001 - 10,000,000	4
More than 10,000,000	12

(21) Soil pH shall be six and five-tenths (6.5) or greater during crop production, hay production or grazing.

(22) Solid waste containing concentrations of polychlorinated biphenyls greater than one (1) milligram per kilogram shall not be landfarmed.

(23) The maximum amount of metals from solid wastes that may be applied during the life of the site shall be based upon the cation exchange capacity of the soil and shall be those in Table 4 of this subsection.

Table 4
Maximum Amount of Metals

Parameter	Cation Exchange Capacity (meg/100g) 0.5	5-15	15+
Lead	500 lbs/ac.	1000 lbs/ac.	2000 lbs/ac.
Cadmium	4.46 lbs/ac.	8.02 lbs/ac.	17.84 lbs/ac.
Copper	125 lbs/ac.	250 lbs/ac.	500 lbs/ac.
Nickel	50 lbs/ac.	100 lbs/ac.	200 lbs/ac.
Zinc	250 lbs/ac.	500 lbs/ac.	1000 lbs/ac.

The following equation shall be used to determine the maximum number of tons of solid waste per acre that may be land spread without exceeding the above limitations:

Tons waste/acre =

(lbs per acre for each parameter from Table 4)
(dry mg/kg of metal in waste sample) x 0.002

(24) The amount of nitrogen land spread shall not exceed the nitrogen utilization rate of the vegetative cover in the application zone.

(25) If the laboratory analyses and calculations to determine quantities of metals applied to the soil discloses that the cumulative concentration of a contaminant is above the maximum level permitted under subsection (23) of this section, a written notice shall be given to the cabinet within ten (10) days of receipt of the monitoring results. The permittee shall cease further landfarming and submit to the cabinet within forty-five (45) days a report describing proposed corrective actions to be taken by the permittee. A notice shall be recorded on the property deed **within forty-five (45) days of receipt of the monitoring results** stating that the property has received solid waste at concentrations exceeding permitted levels, and that food chain crops shall not be grown due to possible health hazards.

(26) In addition to the operating requirements in this section, an owner or operator who is landfarming Class I sludges shall limit the annual application rate to a maximum of fifteen (15) dry tons of sludge per acre per year.

(27)(a) In addition to the operating requirements in this section, the owner or operator who is landfarming Class II sludge shall sample surface water quarterly. Parameters to be monitored shall include pH, ammonium nitrogen (NH_4-N), fecal coliform bacteria, chromium, biological oxygen demand, total organic carbon, and total dissolved solids. A minimum of one (1) upgradient and one (1) downgradient sampling point is required.

(b) Groundwater monitoring, if required, shall be conducted in accordance with 401 KAR 48:300.

(28)(a) In addition to the operating requirements in this section, the owner or operator who is landfarming Class III sludge shall sample surface water quarterly. Parameters to be monitored shall include pH, ammonium nitrogen (NH_4-N), fecal coliform bacteria, chromium, biological oxygen demand, total organic carbon, and total dissolved solids. A minimum of one (1) upgradient and one (1) downgradient sampling point is required.

(b) Groundwater monitoring shall be conducted in accordance with 401 KAR 48:300.

Section 9. Application Rates. (1) The annual application rate shall be the lesser of the application rates as determined for cadmium and for nitrogen utilization.

(2) Determine the percent of available organic nitrogen in the waste using the following calculation:

Percent available organic N = (percent total N) - (percent NH_4-N) - (percent NO_3-N).

(3) Determine the amount of nitrogen that shall be available for plant uptake at the landfarming site using one (1) of the following calculations depending on the application method:

(a) Incorporation: Lbs available N/ton = (percent NH_4-N x 20) + (percent NO_3-N x 20) + (percent available organic N x 4).

(b) Surface application: Lbs available N/ton = (percent NH_4-N x 10) + (percent NO_3-N x 20) + (percent available organic N x 4).

Tons/acre =

$$\frac{\text{Nitrogen utilization rate of vegetative cover}}{\text{Lbs available organic N/ton}}$$

(4) The annual application rate of cadmium from solid waste shall not exceed 0.44 pounds per acre. The annual application rate shall be determined using the following calculation:

$$\text{Tons/acre} = \frac{\text{pounds of allowable cadmium per acre}}{(\text{mg per kg of cadmium in sample}) \times 0.002}$$

Section 10. Closure. An owner or operator of [who wishes to officially close] a permitted [or granted permit-by-rule] landfarming site shall submit to the cabinet a closure report to include:

(1) The results of final soil samples taken in accordance with the operational permit [or granted permit-by-rule] between twelve (12) and thirteen (13) months following the last application of solid waste [sludge];

(2) The results of final surface water samples taken in accordance with the operational permit between twelve (12) and thirteen (13) months following the last application of solid waste [sludge] for all Class II and Class III permit holders;

(3) A historical summary of all landfarming by subplot showing the allowable and actual rates of solid waste [sludge] application, heavy metals and nitrogen;

(4) When heavy metal applications exceed the amounts listed in Table 4 in Section 8(23) of this regulation, the owner shall **immediately commence closure of the facility and** submit a copy of the notice in the deed that shall advise all future landowners in perpetuity that heavy metal concentrations exceed those allowed by this regulation [and shall immediately commence closure of the facility]; and

(5) The results of final groundwater samples in accordance with the operational permit taken between twelve (12) and thirteen (13) months following the last application of solid waste [sludge] by all Class III and those Class II permits required to monitor groundwater.

Section 11. Processes to Significantly Reduce Pathogens. (1) Aerobic digestion. The process shall be conducted by agitating sludge with air or oxygen to maintain aerobic conditions at residence times ranging from sixty (60) days at fifteen (15) degrees celsius to forty (40) days at twenty (20) degrees celsius, with a volatile solids reduction of at least thirty-eight (38) percent.

(2) Air drying. Liquid sludge shall be allowed to drain or dry on under-drained sand beds, or paved or unpaved basins in which the sludge shall be at a depth of nine (9) inches. Air drying shall be conducted for a minimum of three (3) months, with two (2) months of temperatures which average on a daily basis above zero degrees celsius.

(3) Anaerobic digestion. The process shall be conducted in the absence of air at residence times ranging from sixty (60) days at twenty (20) degrees celsius to fifteen (15) days at thirty-five (35) degrees celsius to fifty-five (55) degrees celsius, with a volatile solids reduction of at least thirty-eight (38) percent.

(4) Composting. Using the within-vessel, static aerated pile or windrow composting methods, the solid waste shall be maintained at minimum operating conditions of forty (40) degrees celsius for five (5) days. For four (4) hours during this period, the temperature shall exceed fifty-five (55) degrees celsius.

(5) Lime stabilization. Sufficient lime shall be added to produce a pH of twelve (12) for two (2) hours of contact time.

(6) Other methods. Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the above methods.

Section 12. Permit Modification. (1) Landfarming permits [and granted permits-by-rule] shall be issued to the operator and may include application zones which are not located contiguously.

(2) Class II and Class III sludge landfarming permit holders may add sites through permit modification procedures with the following

conditions:
(a) The permit holder shall submit the appropriate information in accordance with Section 3 of this regulation; and
(b) A public notice shall be published and no permit modification granted until a minimum of thirty (30) days has passed from the date publication of the notice and the condition of Section 2 of 401 KAR 47:140 and 401 KAR 47:130 have been met.
[(3) Class I landfarming granted permits-by-rule may be modified by submitting the appropriate information in accordance with Section 2 of this regulation.]

Section 13. Distribution of Sludge. (1) A municipal water or wastewater treatment sludge producer may give away Class I or Class II sludge to individuals for subsequent use as a soil conditioner [with written approval from the cabinet]. This program shall be operated under a registered [granted] permit-by-rule in accordance with 401 KAR 47:110. The maximum amount of sludge [waste] that may be distributed [obtained] annually to [by] any individual is limited to 2000 pounds (dry weight).
(2) Producers of Class I or Class II municipal water or wastewater sludge shall submit the following application requirements for [approval of] the sludge giveaway program:
(a) A sludge analysis as required in Section 1 of this regulation that demonstrates the sludge is Class I or II;
(b) A description of the distribution system;
(c) A recordkeeping system to include the name and address of individuals receiving sludge and the total quantity of sludge received; and
(d) A description of the process to significantly reduce pathogens.
(3) During operation of the giveaway program the producer shall:
(a) Maintain a list of names and addresses of all individuals receiving the sludge;
(b) Submit annually to the cabinet the sludge analysis performed in accordance with the schedule contained in Table 3 in Section 8(20) of this regulation;
(c) Provide to individuals receiving waste, copies of the sludge [waste] analyses and a brochure, to be published by the cabinet, explaining the proper procedures to be utilized in the landfarming of sludge; and
(d) Use a process to significantly reduce pathogens in accordance with Section 11 of this regulation.

Section 14. Sludge Composting. Sludge shall be composted under a registered [granted] permit-by-rule in accordance with 401 KAR 47:110.
(1) Producers of Class I or Class II municipal wastewater sludge shall register on a form prescribed by the cabinet containing the following information: [submit the following notice of intent to apply requirements for a granted composting permit-by-rule:]
(a) A sludge analysis as required in Section 1 of this regulation that demonstrates the sludge is a Class I or II;
(b) A [detailed engineering] description of the system and the manufacturer's performance data for mechanical composting systems;
(c) A site layout, including an enlarged topographic map with a scale of one (1) inch equals 400 feet along with calculations for area requirements;
(d) A sludge analysis for the following parameters (by dry weight): percent total solids; volatile solids; total potassium; total phosphorus; total nitrogen; ammonium nitrogen (NH_4-N); nitrate nitrogen (NO_3-N); pH; and total cadmium, copper, nickel, zinc, lead, chromium, and polychlorinated biphenyls (PCBs);
(e) A process design that shall describe:
1. Use of bulking agents, moisture control, or feed amendments;
2. Temperature ranges and residence times;
3. Storage of compost during curing after the primary composting operation;
4. Provision for additional drying and screening;
[(f) Odor and vector control;]
(f) [(g)] A marketing and distribution plan [addressing compliance with subsection (2) of this section];
(g) [(h)] Specifications for the final product;
(h) [(i)] A description of closure procedures [closure plan] for the composting site; and
(i) [(j)] A narrative detailing the methods that the owner or operator shall use to comply [ensure compliance] with the environmental performance standards in 401 KAR 47:030.
(2) Any person who composts wastewater treatment or water treatment sludge shall:
(a) Use only Class I or Class II sludges for composting;
(b) Use a composting process to further reduce pathogens in accordance with subsection (3) of this section;
[(c) Label materials to be marketed in accordance with the Kentucky Fertilizer Law KRS Chapter 250;]
[(d) Label the product with the source of the material and the application rate information;]
(c) [(e)] Keep a record [log] of all recipients who receive more than twenty (20) cubic yards in any given month;
[(f) Monitor on a daily basis the pathogen reduction by tracking residence time and temperature for the chosen composting process and maintain a permanent log of these data;]
[(g) Maintain a permanent log of the amount of waste and the date on which it is initially composted and the amount and date on which the curing process begins;]
(d) [(h)] After the composted sludge [waste] has completed the curing process, distribute or dispose within one (1) year at least seventy-five (75) percent of the compost; and
(e) [(i)] Dispose of any materials that do not meet standards for distribution within one (1) month of such a determination in an approved facility.
[(3) The following processes further reduce pathogens:]
[(a) Composting. Using the within-vessel composting method, the solid waste shall be maintained at operating conditions of fifty-five (55) degrees celsius or greater for three (3) days. Using the static aerated pile composting method, the solid waste shall be maintained at operating conditions of fifty-five (55) degrees celsius or greater for three (3) days. Using the windrow composting method, the solid waste shall attain a temperature of fifty-five (55) degrees celsius or greater for at least fifteen (15) days during the composting period. Also, during the high temperature period, there shall be a minimum of five (5) turnings of the windrow.]
[(b) Heat drying. Dewatered sludge cake shall

be dried by direct or indirect contact with hot gases, and moisture content shall be reduced to ten (10) percent or lower. Sludge particles shall reach temperatures well in excess of eighty (80) degrees celsius, or the wet bulb temperature of the gas stream in contact with the sludge at the point where it leaves the dryer shall be in excess of eighty (80) degrees celsius.]

[(c) Heat treatment. Liquid sludge shall be heated to temperatures of 180 degrees celsius for thirty (30) minutes.]

[(d) Thermophilic aerobic digestion. Liquid sludge shall be agitated with air or oxygen to maintain aerobic conditions at residence times of ten (10) days at a fifty-five (55) degrees celsius to sixty (60) degrees celsius, with a volatile solids reduction of at least thirty-eight (38) percent.]

[(e) Other methods. Other methods or operating conditions may be acceptable if pathogens or vector attraction of the waste (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the methods in paragraphs (a) through (d) of this subsection. Any of the processes listed in paragraphs (a) through (d) of this subsection, if added to the processes described in Section 11 of this regulation further reduce pathogens. Because the processes listed in paragraphs (a) through (d) of this subsection, on their own, do not reduce the attraction of disease vectors, they shall not be used unless used in conjunction with the processes in Section 11 of this regulation.]

[1. Beta ray irradiation. Sludge shall be irradiated with beta rays from an accelerator at dosages of at last one (1) megarad at room temperature which is about twenty (20) degrees celsius.]

[2. Gamma ray irradiation. Sludge shall be irradiated with gamma rays from certain isotopes such as $Cobalt^{60}$ and $Cesium^{137}$, at dosages of at least one (1) megarad at room temperature which is about twenty (20) degrees celsius.]

[3. Pasteurization. Sludge shall be maintained for at least thirty (30) minutes at a minimum temperature of seventy (70) degrees celsius.]

[4. Other methods. Other methods or operating conditions may be acceptable if pathogens are reduced to an extent equivalent to the reduction achieved by any of the above add-on methods.]

Section 15. Solid Waste Composting. Solid [Residual] wastes shall be composted under a registered [granted] permit-by-rule as allowed by [in accordance with] 401 KAR 47:110.

(1) This section shall apply to any and all persons who compost solid waste other than wastewater treatment sludge for distribution.

(2) Owners and operators of registered [Applicants for a granted] permit-by-rule [for] solid waste composting facilities shall register on a form prescribed by the cabinet containing [submit a notice of intent to apply with] the following information:

(a) A complete description of the solid waste to be composted;

(b) A [detailed engineering] description of the system and the manufacturer's performance data for mechanical composting systems;

(c) Site layout, including a[n enlarged topographic] map [with a scale of one (1) inch equals 400 feet along with calculations for area requirements];

(d) A process description [design] which shall include the appropriate items as follows [describe]:

1. Use of bulking agents, moisture control or feed amendments;

2. Temperature ranges and residence times;

3. Storage of compost during curing after the primary composting operation; and

4. Provision for additional drying and screening.

[(e) An odor and vector control plan;]

(e) [(f)] A marketing and distribution plan [addressing compliance with subsection (3) of this section];

(f) [(g)] Specifications for the final product;

(g) [(h)] A plan for the closure of [plan for] the composting site; and

(h) [(i)] A narrative of [detailing] the methods that the owner or operator shall use to comply [ensure compliance] with the environmental performance standards in 401 KAR 47:030.

(3) Any person who composts solid waste [residuals] other than wastewater treatment or water treatment sludge shall:

[(a) Label the materials to be marketed in accordance with the Kentucky Fertilizer Law KRS Chapter 250;]

[(b) Label the product with the source of the material and the application rate information;]

(a) [(c)] Keep a log of recipients who receive more than twenty (20) cubic yards in any given month;

(b) [(d)] Maintain a record [permanent log] of the amount of solid waste that is composted and the date [on which] it is initiated and completed [initially composted and the amount and date on which the curing process begins]; and

(c) [(e)] After the composted solid waste has completed the curing process, distribute or dispose within one (1) year at least seventy-five (75) percent of the compost.

Section 16. Compliance Schedule. This section applies to all persons who were issued a landfarming permit prior to the effective date of this regulation and continue operation of their landfarming facility. Such persons shall do the following:

(1) Comply with the environmental performance standards of 401 KAR 47:030;

(2) Implement the operational requirements of Section 8 of this regulation and continue with the monitoring requirements as prescribed in the landfarming permit;

(3) Submit the annual landfarming review for the landfarming permit sixty (60) days prior to the anniversary date of the permit issuance;

(4) Upon receipt and review of the annual landfarming review, the cabinet shall assign a classification rating to the solid waste and notify the permit holder of any additional information needed to amend the landfarming permit such that it complies with the terms of 401 KAR 48:200.

(5) Any person who qualifies for a registered [holds a granted permit-by-rule or] permit-by-rule for landfarming shall notify the cabinet of his intent to continue operation of the facility by submitting a registration [notice of intent to apply] by October 1, 1990. Failure to submit the registration form shall result in the appropriate enforcement actions pursuant to KRS Chapter 224.

(6) Persons who were issued a permit prior to the effective date of this regulation, except

those qualifying for a registered permit-by-rule, and fail to file the required information or respond to correspondence pertaining to their permit within the dates established in the correspondence, shall no longer hold a permit for landfarming. Prohibited by KRS 224.835, such sites shall be considered to be open dumps, should any additional solid waste be disposed without securing a valid permit.

Section 17. Public Information Process. (1) Once the cabinet has made a preliminary determination to issue or deny a landfarming permit application, the permit applicant shall issue a public notice for approvals. The cabinet shall issue the public notice for denials. This notice shall be distributed by the cabinet as specified in [Section 7(4) of] 401 KAR 47:140. The contents of the public notice shall include those items listed in [Section 7(1)(a) through (i) of] 401 KAR 47:140. The cabinet shall make available a thirty (30) day comment period commencing with the date the notice is published. This section does not apply to registered permits-by-rule.

Section 18. Registration. Persons who landfarm Class I sludge shall file a registration for a registered landfarming permit-by-rule that shall contain the following information:

(1) Names, addresses, and telephone numbers of the landowners, registrant and waste producer. If the applicant is a government agency, corporation, company or partnership, include the name, address and telephone number of the process agent or contact individual;

(2) Solid waste analyses in accordance with Section 1(2)(a) and (b) and Section 3(5)(c) of this regulation to receive a classification rating;

(3) An original, current seven and five-tenths (7.5) minute United States Geological Survey quadrangle topographic map with the proposed landfarming site boundary clearly marked;

(4) A list of all known groundwater wells and springs within a one-fourth (1/4) mile radius of the proposed landfarming site boundary;

(5) A description of the water or wastewater treatment processes including design capacity, current hydraulic operating conditions, and the sludge treatment systems. A schematic diagram showing the treatment plant processes shall be included. All chemicals used in the treatment process shall be listed by type and amount used;

(6) Other additional information required by the cabinet; and

(7) Owners or operators shall submit revisions to the registration form for subsections (1) and (6) of this section, when necessary.

Section 19. [18.] Repeal. 401 KAR 47:050, entitled Landfarming, is hereby repealed.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: March 8, 1990
FILED WITH LRC: March 9, 1990 at noon

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

401 KAR 48:300. Surface and groundwater monitoring and corrective action.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888 [889], 224.994, 40 CFR 302.4 Appendix A
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842
NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the treatment, management, processing or disposal of wastes. KRS 224.842 requires that persons engaging in the management, processing or disposal of waste obtain a permit. This chapter establishes the minimum technical standards for solid waste sites or facilities. This regulation sets forth the standards for groundwater monitoring and corrective action.

Section 1. Applicability. The requirements of this regulation apply to owners and operators of contained, construction/demolition, and residual landfills, Class II and Class III landfarming facilities, other solid waste sites or facilities at which the cabinet determines groundwater monitoring shall be required and solid waste sites or facilities required to accomplish corrective action as a result of documented groundwater contamination. Sections 1 through 7 of this regulation do not apply to landfarming facilities permitted pursuant to 401 KAR 48:200. Landfarming facilities required to accomplish corrective action shall comply with Section 8 of this regulation. The owner or operator shall satisfy the requirements of this regulation for all wastes (or constituents thereof) contained in waste management units at the facility regardless of the time at which waste was placed in such unit.

Section 2. Surface Water Monitoring Plan. A surface water monitoring plan as required in Section 5 of 401 KAR 47:190 shall include:

(1) Documentation that the applicant currently holds or has applied for a KPDES permit for all structures that shall be used to control storm water run-off and all point source discharges.

(2) The location of surface water monitoring points identified on the engineering plans. The surface water monitoring points shall be located such that the sampling shall characterize the quality of water unaffected by the landfills and shall be located such that the sampling shall determine if water leaving the landfill in surface drainage is contaminated with leachate. Sampling protocol shall measure surface water under base flow conditions that continues to drain after storm-induced surface run-off has ceased.

(3) A schedule and list of analytical parameters for the quarterly surface water sampling program. The parameters to be analyzed for the water samples shall include at a minimum: chlorides, sulfate, iron, sodium, total organic carbon or biochemical oxygen demand, chemical oxygen demand, specific conductance, total suspended solids, total dissolved solids, total solids and pH.

(4) A form to record the results of the surface water sample analyses.

(5) Prior to the disturbance of any areas proposed for development in a landfill permit application, the owner shall analyze samples of the surface water points and submit the results to the cabinet. The sampling shall include a minimum of two (2) samples collected at no less than thirty (30) day intervals and shall be sufficient to characterize the existing surface water quality.

Section 3. Groundwater Quality Characterization. A groundwater [quality] characterization as required in 401 KAR 47:180 [190] shall contain the chemical characteristics of the upper most aquifer [each water bearing unit] down to and including the lowest aquifer [unit] that may be affected by the site or facility. This description shall include results of analysis of at least two (2) [grab] samples of groundwater from the site before waste placement for the parameters listed in Section 10 of this regulation.

(1) For facilities permitted before the effective date of this regulation, the data required by this section shall be taken beginning with the first anniversary date of the issuance of the permit after the effective date of this regulation and shall be for the parameters listed in Section 11 of this regulation.

(2) Monitoring wells under this section shall be designed, constructed and maintained according to Section 6 of this regulation. Sampling and analysis shall be conducted in accordance with a plan approved by the cabinet in accordance with the requirements of Section 7 of this regulation.

Section 4. Groundwater Monitoring Plan. A groundwater monitoring plan as required in 401 KAR 47:190 or 401 KAR 48:200 shall include:

(1) The number, location and depth of proposed monitoring points;

(2) Preoperational data showing existing groundwater quality, as required in the groundwater quality characterizaton in Section 3 of this regulation;

(3) A groundwater sampling and analysis plan. The procedures, methods and techniques shall be approved by the cabinet. The plan shall include:

(a) Procedures and techniques designed to accurately measure groundwater quality upgradient, [beneath] and downgradient of the proposed waste disposal area;

(b) Cabinet approved sampling methods including procedures and techniques for sample collection, sample preservation and sample shipment;

(c) Cabinet approved analytical procedures; and

(d) Chain of custody control, field and laboratory quality assurance and quality control. The procedures and methods shall be approved by the cabinet.

(4) For solid waste sites or facilities located in karst regions the following additional hydrogeologic information shall be required:

(a) The nature and extent of karst drainage beneath the solid waste site or facility; and

(b) A description of a proposed groundwater monitoring system capable of completely and accurately monitoring groundwater contamination.

Section 5. Design Requirements for Groundwater Monitoring Systems. The groundwater quality monitoring system to be utilized in the groundwater monitoring plan shall accurately analyze groundwater quality and characterize [regional and] local groundwater flow and flow systems. The system shall consist, at a minimum, of the following:

(1) At least one (1) reference or background well at a point hydraulically upgradient from the disposal area in the direction of increasing static head that is capable of providing data representative of groundwater not affected by the solid waste site or facility. When the solid waste site or facility occupies the most upgradient position in the flow system, sufficient downgradient or side gradient monitoring wells shall be placed to accurately characterize the groundwater quality and regional and local groundwater flow and flow systems. Reference wells shall be located so that they shall not be affected by groundwater contamination from the disposal area; and

(2) At least three (3) monitoring wells at points hydraulically connected [downgradient] in the direction of decreasing static head from the area in which solid waste has been or shall be disposed. In addition to three (3) downgradient wells, the cabinet may allow one (1) or more springs for monitoring points if the springs are hydraulically downgradient from the area in which solid waste has been or shall be disposed, if the springs are sampled [developed and protected] in a manner approved by the cabinet, and if the springs otherwise meet the requirements of the cabinet. Downgradient monitoring wells shall be located so that they shall provide early detection of groundwater contamination and progressive monitoring of the phases and units of the site or facility.

Section 6. Requirements for Monitoring Well Construction. (1) Precautions shall be taken during drilling and construction of monitoring wells to avoid introducing contaminants into a borehole. Only potable water shall be used in drilling monitoring wells unless otherwise approved by the cabinet. Drilling muds shall not be used except with prior approval of the cabinet. Air systems and drilling lubricants shall not introduce contaminants into the boreholes.

(2) Decontamination of all equipment to be placed into the boring shall be performed before use at the site and between boreholes. Where possible, upgradient wells shall be drilled first.

(3) Monitoring wells shall be cased as follows:

(a) To maintain the integrity of the monitoring well borehole by isolating water bearing units which are sampled by each well;

(b) With a minimum casing diameter of four (4) inches unless otherwise approved by the cabinet in writing;

(c) With screens and appropriate [or perforated and packed with] gravel or sand packing where necessary, to enable collection of samples at depts where appropriate aquifer flow zones exist;

(d) To allow the casing to protrude at least one (1) foot above ground;

(e) To provide a drill hole diameter that is a minimum of four (4) inches larger than the outside diameter of the well casing;

(f) To produce an annular space above the

sampling depth that is sealed to prevent contamination of samples and the groundwater; and

(g) If plastic casing is used, it shall be threaded and gasket sealed to preclude potential sample contamination from solvent welded joints, unless otherwise provided by the cabinet in the permit.

(4) Monitoring well casings shall be enclosed in a protective cover that shall:

(a) Be sufficient to reliably protect the well from damage. This shall include a protective barrier around the well; [Be of sufficient strength to protect the well from damage by heavy equipment and vandalism;]

(b) Be installed into firm rock unless otherwise approved by the cabinet in writing;

[(c) Prevent the intrusion and nesting of insects inside the protective cover;]

(c) [(d)] Be grouted and placed with a cement collar below the frost line to hold it firmly in position unless otherwise approved by the cabinet;

(d) [(e)] Be numbered and painted in a highly visible color;

(e) [(f)] Protrude at least one (1) inch higher above grade than the monitoring well casing;

(f) [(g)] Have a locked cap; and

(g) [(h)] Be made of steel or any other material of equivalent strength.

(5) Each monitoring well shall have a concrete pad extending two (2) feet around the well and sloped away from the well.

Section 7. Sampling and Analysis. (1) Parameters Listing. Owners or operators of solid waste sites or facilities that require groundwater monitoring shall conduct sampling and analysis from each monitoring well for the parameters listed in Section 11 of this regulation.

(2) Reporting of analysis results. Analyses of data required by this section shall be submitted to the cabinet on a form provided by the cabinet within sixty (60) days of sampling or fifteen (15) days after receipt [completion] of analyses, whichever is sooner, unless the cabinet approves another time period in the permit. Frequency of sampling shall be as indicated in Section 11 of this regulation.

(3) If analysis of the sample results indicates contamination, the owner or operator shall notify the cabinet within forty-eight (48) hours of receiving the analysis results and shall arrange for the cabinet to split a sample no later than ten (10) days from the receipt of the results.

Section 8. Groundwater Contamination Assessment and Corrective Action. (1) The operator of a solid waste site or facility shall be required to prepare and submit a groundwater assessment plan if laboratory analyses of one (1) or more [public or private water supplies or] monitoring wells at the site or facility shows the presence of one (1) or more parameters listed in 40 CFR 302.4, Appendix A **as of October 1988,** above the maximum containment level (MCL) as specified in 401 KAR 47:030 or significant increase over naturally occurring background levels for parameters that have no MCL. For parameters that have no maximum contaminant levels a significant increase over background shall be determined using a statistical test as specified in Section 9 of this regulation.

(2) Confirmation sampling. The owner or operator of a solid waste site or facility shall not be required to submit an assessment plan if the following conditions are met:

(a) Within ten (10) days after receipt of sample results showing groundwater contamination the owner or operator resamples the affected wells; and

(b) Analysis from resampling shows to the cabinet's satisfaction that groundwater contamination has not occurred.

(3) The owner or operator of a solid waste site or facility shall be required to provide alternate water supplies to affected parties within twenty-four (24) hours of notification of the cabinet that sample results indicate contamination of a drinking water supply if it has been determined that the landfill is the probable source of contamination.

(4) The assessment plan shall be submitted to the cabinet within thirty (30) days of the occurrence of the conditions described in subsection (1) of this section.

(a) The assessment plan shall specify the manner in which the owner or operator shall determine the existence, quality, quantity, areal extent and depth of groundwater degradation, and the rate and direction of migration of contaminants in the groundwater. The assessment plan shall be prepared by a qualified professional [in the field of hydrogeology] and shall be implemented upon approval by the cabinet in accordance with the approved implementation schedule. The assessment plan shall be implemented within sixty (60) days after approval by the cabinet. The plan shall contain, at a minimum all of the following information:

1. The number, location, size, casing type and depth of wells, lysimeters, borings, pits, piezometers and other assessment structures or devices to be used;

2. Sampling and analytical methods for the parameters to be evaluated;

3. Analyses of all parameters listed in Section 10(3) of this regulation and any other parameter determined by the cabinet; and

4. Evaluation procedures, including the use of previously gathered groundwater quality information, to determine the concentration, rate and extent of groundwater degradation or pollution from the facility.

(5) For public or private water supplies which may be adversely affected by the facility, the owner or operator shall submit a detailed hydrogeologic study addressing the potential effect of the site or facility on said water supply.

(6) If the cabinet determines that the assessment plan is inadequate, it may modify the plan and approve the plan as modified.

(7) Within ninety (90) days after the implementation of the groundwater assessment plan, the operator shall submit a groundwater assessment report containing the new data collected, analysis of the data and recommendations on the necessity for abatement.

(8) The cabinet may require abatement measures prior to approval of the groundwater assessment plan in the event that a determination has been made that there is an immediate threat to human health or the environment.

(9) Within ninety (90) days of the cabinet approval of the groundwater assessment report,

but in no event later than one (1) year from the event specified in subsection (1) of this section, the owner or operator shall submit a remedial action plan to include the following:

(a) The specific methods or techniques to be used to abate groundwater contamination from the facility;

(b) The specific methods or techniques to be used to prevent further groundwater contamination from the facility; and

(c) A description of the means used to restore or replace public or private water supplies affected by contamination from the solid waste facility.

(10) The owner or operator of a solid waste site or facility shall take any other steps deemed necessary by the cabinet to ensure protection of human health and the environment.

(11) Corrective action measures under this regulation shall be initiated and completed within a period of time as specified by the cabinet considering the extent of contamination.

(12) Corrective action measures under this regulation may be terminated upon approval of the cabinet when the owner or operator demonstrates that concentrations have been reduced to levels below the maximum contaminant level or naturally occurring background.

Section 9. Statistical Methods for Groundwater Analysis. (1) The owner or operator of a solid waste site or facility shall use statistical procedures approved by the cabinet in determining whether background values have been significantly exceeded.

(2) The owner or operator shall demonstrate that the procedure is appropriate for conditions at that facility and shall demonstrate that the procedure:

(a) Is protective of human health and the environment;

(b) Includes statistical distributions of each parameter or constituent listed;

(c) Has a low probability of indicating contamination when it is not present and of failing to detect contamination that is actually there;

(d) Is appropriate for the hydrogeologic setting and the physical layout of the monitoring system;

(e) Describes how observations below the quantifiable limit shall be handled; and

(f) Considers or controls for seasonal and spatial variability and temporal correlation.

Section 10. Groundwater Quality Characterization Parameters. For solid waste sites or facilities that require groundwater monitoring, the following parameters are to be analyzed for groundwater quality characterization as required in Section 2 of this regulation:

(1) For all Class II and III landfarming facilities required to monitor groundwater, the characterization shall be based on the following parameters:

(a) Specific conductance, chemical oxygen demand, total organic carbon, chloride, iron, manganese, sodium, total nitrogen, nitrate nitrogen, chromium, cadmium, coliform bacteria, pH, calcium, magnesium, potassium, sulfate, bicarbonate, carbonate.

(b) Groundwater elevation in monitoring wells recorded as a distance from the elevation at the wellhead referenced to mean sea level based on a United States Geological Survey (USGS) datum.

(2) For residual and construction/demolition debris landfills, the characterization shall be based on the following parameters:

(a) Chloride, chemical oxygen demand, total dissolved solids, [total organic carbon,] specific conductance, pH, iron, sodium, arsenic, barium, cadmium, lead, mercury, nitrate, selenium, silver, pH, calcium, magnesium, potassium, sulfate, bicarbonate, carbonate.

(b) Groundwater elevations recorded as a distance from the elevation at the wellhead referenced to mean sea level based on a United States Geological Survey (USGS) datum.

(3) For contained landfills, the characterization shall be based on the following parameters:

(a) Indicators: Specific conductance, chemical oxygen demand, total dissolved solids, total organic carbon, pH, chloride, iron, manganese, sodium, bicarbonate, calcium, sulfate, magnesium, potassium, carbonate.

(b) Hazardous Constituents.

Systematic Name	CAS RN	Common Name
Acenaphthylene	206-96-8	Acenaphthalene
Acenaphthylene, 1,2-dihydro-	83-32-9	Acenaphthene
Acetamide, N-(4-ethoxyphenyl)-H	62-44-2	Phenacetin
Acetamide, N-9H-fluoren-2-yl	53-96-3	2-Acetylamino-fluorene
Acetic acid ethenyl ester	106-05-4	Vinyl acetate
Acetic acid (2,4-5-trichlorophenoxy)-	93-76-5	2,4,5-T
Acetic acid (2,4-dichlorophenoxy)-	94-75-7	2,4-Dichlorophe-noxy- acetic acid
Acetonitrile	75-05-8	Acetonitrile
Aluminum	7429-90-5	Aluminum (total)
Anthracene	120-12-7	Anthracene
Antimony	7440-36-0	Antimony (total)
Aroclor 1016	12674-11-2	Aroclor 1016
Aroclor 1221	11104-28-2	Aroclor 1221
Aroclor 1232	11141-16-5	Aroclor 1232
Aroclor 1242	53469-21-9	Aroclor 1242
Aroclor 1248	12672-29-6	Aroclor 1248
Aroclor 1254	11097-69-1	Aroclor 1254
Aroclor 1260	11096-82-5	Aroclor 1260
Arsenic	7440-38-2	Arsenic (total)
Barium	7440-39-3	Barium (total)
Benz(a)anthracene,7,12,-dimethyl	57-97-6	7,12-Dimethyl-benz(a)-anthracene
Benz(j)aceanthrylene, 1,2-dihydro-3-methyl	56-49-5	3-Methylchol-anthrene
Benz(e)acephenan-thrylene	205-99-2	Benzo(b)fluor-anthene
Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950-58-5	Pronamide
Benz(a)anthracene	56-55-3	Benz(a)anthra-cene
Benzenamine	62-53-3	Aniline
Benzenamine, 2-methyl-5-nitro	99-55-8	5-Nitro-o-toluidine
Benzenamine, 2-nitro	88-74-4	2-Nitroaniline
Benzenamine, 3-nitro	99-09-2	3-Nitroaniline
Benzenamine, 4-chloro	106-47-8	p-Chloroaniline
Benzenamine, 4-nitro-	100-01-6	p-nitroaniline
Benzenamine,4,4'-methylenebis (2-chloro	101-14-4	4,4'-Methylene-bis (2-chloro-aniline)

Benzenamine, N-nitroso-N-phenyl	86-30-6	N-Nitrosodiphenylmamine
Benzenamine, N-phenyl-	122-39-4	Diphenylamine
Benzenamine, N,N-dimethyl-4-(phenylazo)-	60-11-7	p-Dimethylaminoazobenzene
Benzene	71-43-2	Benzene
Benzene, 1-bromo-4-phenoxy-	101-55-3	4-Bromophenyl phenyl ether
Benzene, 1-chloro-4-phenoxy-	7005-72-3	4-Chlorophenyl phenyl ether
Benzene, 1-methyl-2,4-dinitro	121-14-2	2,4-Dinitrotoluene
Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-chloro-	50-29-3	DDT
Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-methoxy-	72-43-5	Methoxychlor
Benzene 1,1'-(2,2-dichloroethylidene)bis(4-chloro-	72-54-8	DDD
Benzene 1,1'-(2,2-dichloroethenylidene)bis(4-chloro-	72-55-9	DDE
Benzene 1,2-dichloro	95-50-1	o-Dichlorobenzene
Benzene 1,2,4-trichloro	120-82-1	1,2,4-trichlorobenzene
Benzene 1,2,4,5-tetrachloro	95-94-3	1,2,4,5-Tetrachlorobenzene
Benzene 1,3-dichloro-	541-73-1	M-Dichlorobenzene
Benzene 1,4-dichloro-	106-46-7	p-Dichlorobenzene
Benzene 1,4-dinitro-	100-25-4	meta-Dinitrobenzene
Benzene, 2-methyl-1,3-dinitro	606-20-2	2,6-Dinitrotoluene
Benzene, chloro-	108-90-7	Chlorobenzene
Benzene, dimethyl-	1330-20-7	Xylene (total)
Benzene, ethenyl-	100-42-5	Styrene
Benzene, ethyl-	100-41-4	Ethyl benzene
Benzene, hexachloro	118-74-1	Hexachlorobenzene
Benzene, methyl	106-88-3	Toluene
Benzene, nitro	96-95-3	Nitrobenzene
Benzene, pentachloro-	608-93-5	Pentachlorobenzene
Benzene, pentachloro-nitro-	82-68-8	Pentachloronitrobenzene
Benzeneacetic acid, 4-chloro-a-(4-chlorophenyl)-a-hydroxy-, ethyl ester	510-15-6	Chlorobenzilate
1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester	117-81-7	Bis(2-ethylhexyl)phthalate
1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	85-68-7	Butyl benzyl phthalate
1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2	Di-n-butyl phthalate
1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2	Diethyl phthalate
1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3	Dimethyl phthalate
1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0	Di-n-octyl phthalate
1,3-Benzenediol	106-46-3	Resorcinol
Benzeneethanamine, a,a-dimethyl-	122-09-8	alpha, alpha-dimethylphenethylamine
Benzenemethanol	100-51-8	Benzyl alcohol
Benzenethiol	106-98-5	Benzenethiol
1,3-Benodioxole, 5-(1-propenyl)-	120-58-1	Isosafrole
1,3-Benzodioxole, 5-(2-propenyl)-	94-59-7	Safrole
Benzo(k)fluoranthene	207-08-9	Benzo(k)fluoranthene
Benzoic acid	65-85-0	Benzoic acid
Benzo(rst)pentaphene	189-55-9	Dibenzo(a,i)pyrene
Benzo(ghi)perylene	191-24-2	Benzo(ghi)perylene
Benzo(a)pyrene	50-32-8	Benzo(a)pyrene
Beryllium	7440-41-7	Beryllium (total)
1,1-Biphen(yi)4,4'-diamine, 3,3'-dichloro-	91-94-1	3,3'-Dichlorobenzidine
1,1-Biphen(yi)-4,4'-diamine, 3,3'-dimethoxy-	119-90-4	3,3'-Dimethoxybenzidine
1,1'Biphen(yi)-4,4'-diamine, 3,3' dimethyl-	119-93-7	3,3'-Dimethylbenzidine
1,1'-Biphenyl(-4-amine	92-67-1	4-Aminobiphenyl
1,1'-Biphenyl(-4-4-amine	92-87-5	Benzidine
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3	Hexachlorobutadiene
1,3-Butadiene, 2-chloro-	126-99-8	2-Chloro-1,3-butadiene
1-Butanamine, N-butyl-N-nitroso-	924-16-3	N-Nitrosodi-n-butylamine
2-Butanone	78-93-3	Methyl ethyl ketone
2-Butene, 1,4-dichloro-, (E)-	110-57-6	trans-1,4-Dichloro-2-butene
Cadmium	7440-43-9	Cadmium (total)
Calcium	7440-70-2	Calcium (total)
Carbon disulfide	75-15-0	Carbon disulfide
Chromium	7440-47-3	Chromium (total)
Chrysene	218-01-9	Chrysene
Cobalt	7440-48-4	Cobalt (total)
Copper	7440-50-8	Copper (total)
Cyanide	57-12-5	Cyanide
2,5-Cyclohexadiene-1,4-dione	106-51-4	p-Benzoquinone
Cyclohexane, 1,2,3,4,5,6-hexachloro- (1a,2a,3B,4a,5B,6B)-	319-84-6	alpha-BHC
Cyclohexane, 1,2,3,4,5,6-hexachloro- (1a,2B,3a,4B,5a,6B)-	319-85-7	beta-BHC
Cyclohexane, 1,2,3,4,5,6-hexachloro- (1a,2a,3a,4B,5a,6B)-	319-86-8	delta-BHC
Cyclohexane, 1,2,3,4,5,6-hexachloro- (1a,2a,3B,4a,5a,6B)-	58-89-9	gamma-BHC
2-Cyclohexene-1-one, 3,5,5-trimethyl	78-59-1	Isophorone
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77-47-4	Hexachlorocyclopentadiene
Dibenz(a,h)anthracene	53-70-3	Dibenz(a,h)anthracene
Dibenzo(b,e)(1,4)dioxin, 2,3,7,8-tetrachloro-	1746-01-06	2,3,7,8-Tetrachlorodibenzo-p-dioxin; Hexachlorodiben-

		zo-p-dioxin; Pentachlorodibenzo-p-dioxins; Tetrachlorodibenzo-p-dioxins
Dibenzo(b,def)chrysene	189-64-0	Dibenzo(a,h)pyrene
Dibenzofuran	132-64-9	Dibenzofuran, Hexachlorodibenzofurans; Pentachlorodibenzofurans; Tetrachlorodibenzofurans.
2,7:3,6-Dimethanonaphth (2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro, 1aa,2B,2aa,3B,6B,6aa,7B,7aa)-	60-57-1	Dieldrin
2,7:3,6-Dimethanonaphth (2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro, 1aa,2B,2aB,3a,6a,6aB,7B,7aa)-	72-20-8	Endrin
1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-,1aa,4a,4aB,5a,8a,8aB)-	309-00-2	Aldrin
1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-,1aa,4a,4aB,5B,8B,8aB)-	465-73-6	Isodrin
1,4-Dioxane	123-91-1	1,4-Dioxane
Ethanamine, N-ethyl-N-nitroso	55-18-5	N-Nitrosodiethylamine
Ethanamine, N-methyl-N-nitroso	10595-95-6	N-Nitrosomethylethyl amine
Ethane, 1,1-dichloro-	75-34-3	1,1-Dichloroethane
Ethane, 1,1'-(methylenebis(oxy))bis(2-chloro-	111-91-1	Bis(2-chloroethoxy) methane
Ethane, 1,1'-oxybis (2-chloro-	111-44-4	Bis(2-chloroethyl) ether
Ethane, 1,1'tri-chloro-	71-55-6	1,1,1-Trichloroethane
Ethane, 1,1,1,2-tetrachloro-	630-20-6	1,1,1,2-Tetrachloroethane
Ethane, 1,1,2-trichloro-	79-00-5	1,1,2-Trichloroethane
Ethane, 1,1,2,2-tetrachloro-	79-34-5	1,1,2,2-Tetrachloro ethane
Ethane, 1,2-dibromo	106-93-4	1,2-Dibromoethane
Ethane, 1,2-dichloro	107-06-2	1,2-Dichloroethane
Ethane, chloro-	75-00-3	Chloroethane
Ethane, hexachloro-	67-72-1	Hexachloroethane
Ethane, pentachloro-	76-01-7	Pentachloroethane
1,2-Ethanediamine, N,N-dimethyl-N'-'2-pyridinyl-n'-(2-thienylmethyl)-	91-80-5	Methapyrilene
Ethanone, 1-phenyl-	98-86-2	Acetophenone
Ethene, (2-chloroethoxy)-	110-75-8	2-Chloroethyl vinyl ether
Ethene, 1,1-dichloro-	75-35-4	1,1-Dichloroethylene
Ethene, 1,2-dichloro-(e)-	156-60-5	trans-1,2-Dichloroethene
Ethene, chloro-	75-01-4	Vinyl chloride
Ethene, tetrachloro-	127-18-4	Tetrachloroethene
Ethene, trichloro-	79-01-6	Trichloroethene
Fluoranthene	206-44-0	Fluoranthene
Fluoride	12984-48-8	Fluoride
9H-Fluorene	86-73-7	Fluorene
2-Hexanone	591-78-6	2-Hexanone
Hydrazine, 1,2-diphenyl-	122-66-7	1,2-Diphenylhydrazine
Indeno(1,2,3-cd) pyrene	193-39-5	Indeno(1,2,3-cd) pyrene
Iron	7439-89-6	Iron (total)
Lead	7439-92-1	Lead (total)
Magnesium	7439-94-4	Magnesium (total)
Manganese	7439-96-5	Manganese (total)
Mercury	7439-97-6	Mercury (total)
Methanamine, N-methyl-N-nitroso	62-75-9	N-Nitrosodimethylamine
Methane, bromo-	74-83-9	Bromomethane
Methane, bromodichloro-	75-27-4	Bromodichloromethane
Methane, chloro	74-87-3	Chloromethane
Methane, dibromo-	74-95-3	Dibromomethane
Methane, dibromochloro-	124-48-1	Chlorodibromomethane
Methane, dichloro-	74-09-2	Dichloromethane
Methane, Dichlorodifluoro-	75-71-8	Dichlorodifluoromethane
Methane, iodo	74-88-4	Iodomethane
Methane, tetrachloro-	56-23-5	Carbon Tetrachloride
Methane, tribromo-	75-25-2	Tribromomethane
Methane, trichloro-	67-66-3	Chloroform
Methane, trichlorofluoro	75-69-4	Trichloromonofluoro methane
Methanesulfonic acid, methyl ester	66-27-3	Methyl methanesulfonate
Methanethiol, trichloro-	75-70-7	Trichloromethanethiol
4,7-Methano-1H-indene-1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro	57-74-9	Chlordane
4,7-Methano-1H-indene-1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8	Heptachlor
2,5-Methano-2H-indeno(1,2-b)oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-,(1aa,1bB,2a,5a,5aB,6B,6aa)	1024-57-3	Heptachlor epoxide
6,9-Methano-2,4,3-benzo-dioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-,3-oxide, (3a,5aB,6a,9a,9aB)	959-96-8	Endosulfan I
6,9-Methano-2,4,3-benzo-dioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-,3-oxide, (3a,5aa,6B,9B,9aa)	33213-65-9	Endosulfan II

1,3,4-Methano-2H-cyclobutal(cd) pentalen-2-one, 1,1a,3,3a,4,5,5,5a, 5b,6-decachloro-octahydro-	143-50-0	Kepone
1,2,4-Methanocyclo-penta(cd)pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexa-chlorodecahydro-, (1a,2B,2aB,4B,4aB, 5B,6aB,6aB,7R*)	7421-93-4	Endrin aldehyde
Morphonline, 4-nitroso-	59-89-2	N-Nitrosomor-pholine
1-Naphthalenamine	134-32-7	1-Naphthylamine
2-Naphthalenamine	91-59-8	2-Naphthylamine
Naphthalene	91-20-3	Naphthalene
Naphthalene, 2-chloro-	91-58-7	2-chloronaph-thalene
Naphthalene, 2-methyl-	91-57-6	2-Methylnaph-thalene
1,4-Naphthalenedione	130-15-4	1,4-Naphthoqui-none
Naphtho(1,2,3,4-def) chrysene	192-65-4	Dibenzo(a,e) pyrene
Nickel	7440-02-0	Nickel (total)
Osmium	7440-04-2	Osmium (total)
Oxirane	75-21-8	Ethylene oxide
2-Pentanone, 4-methyl-	108-10-1	4-Methyl-2-pentanone
Phenanthrene	85-01-8	Phenanthrene
Phenol	108-95-2	Phenol
Phenol, 2-(1-methyl-propyl)-4,6-dinitro	88-85-7	2-sec-Butyl-4,6-dinitro-phenol
Phenol, 2-chloro-	95-57-8	2-Chlorphenol
Phenol, 2-methyl-	95-48-7	ortho-Cresol
Phenol, 2-methyl-4,6-dinitro-	534-52-1	4,6-Dinitro-o-cresol
Phenol, 2-nitro	88-75-5	2-Nitrophenol
Phenol, 2,2'-methyl-enebis (3,4,6-trichloro)-	70-30-4	Hexachlorophene
Phenol, 2,3,4,6-tetrachloro-	58-90-2	2,3,4,6-Tetra-chlorophenol
Phenol, 2,4-dichloro	120-83-2	2,4-Dichloro-phenol
Phenol, 2,4-dimethyl-	105-67-9	2,4-Dimethyl-phenol
Phenol, 2,4-dinitro-	51-28-5	2,4-Dinitro-phenol
Phenol, 2,4,5-tri-chloro	95-95-4	2,4,5-Trichloro-phenol
Phenol, 2,4,6-tri-chloro-	88-06-2	2,4,6-Trichloro-phenol
Phenol, 2,6-dichloro-	87-65-0	2,6-Dichloro-phenol
Phenol, 4-chloro-3-methyl-	59-50-7	p-Chloro-m-cresol
Phenol, 4-methyl-	106-44-5	para-Cresol
Phenol, 4-nitro	100-02-7	4-Nitrophenol
Phenol, pentachloro-	87-86-5	Pentachloro-phenol
Phosphorodithioic acid, 0,0-diethyl S-((ethylthio) methyl) ester	298-02-2	Phorate
Phosphorodithioic acid, 0,0-diethyl S-(2-(ethylthio) ethyl) ester	298-04-4	Disulfoton
Phosphorothioic acid, 0-(4-((dimethyl-amino)sulfonyl) phenyl)0,0-di-methyl ester	52-85-7	Famphur
Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl ester	56-38-2	Parathion
Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester	297-97-2	0,0-Diethyl 0,2-pyrazinyl phos-phorothioate
Phosphorothioic acid, 0,0-dimethyl 0-(4-nitrophenyl) ester	298-00-0	Methyl parathion
Piperidine, 1-nitroso-	100-75-4	N-Nitrosopiper-idine
Potassium	7440-09-7	Potassium (total)
1-Propanamine, N-nitroso-N-propyl-	621-64-7	Di-n-propylni-trosamine
Propane, 1,2-dibromo-3-chloro	96-12-8	1,2-Dibromo-3-chloropropane
Propane, 1,2-di-chloro-	78-87-5	1,2-Dichloro-propane
Propane, 1,2,3-tri-chloro-	96-18-4	1,2,3-Trichloro-propane
Propane, 2,2'-oxybis (1-chloro-	108-60-1	Bis(2-chloroiso-propyl) ether
Propanedinitrile	109-77-3	Malononitrile
Propanenitrile	107-12-0	Ethyl cyanide
Propanenitrile, 3-chloro-	542-76-7	3-Chloropropio-nitrile
Propanoic acid, 2-(2,4,5-trichloro-phenoxy)-	93-72-1	Silvex
1-Propanol, 2,3-dibromophosphate (3:1)	126-72-7	Tris(2,3-dibro-mopropyl) phos-phate
1-Propanol, 2-methyl-	78-83-1	Isobutyl alcohol
2-Propanone	67-64-1	Acetone
2-Propenal	107-02-8	Acrolein
1-Propene, 1,1,2,3,3,3,-hexachloro-	1888-71-7	Hexachloro-propene
1-Propene, 1,3-di-chloro-, (E)-	10061-02-6	trans-1,3-Di-chloropropene
1-Propene, 1,3-di-chloro-, (Z)-	10061-01-5	cis-1,3-Dichlor-opropene
1-Propene, 1,3-chloro-	107-05-1	3-Chloropropene
2-Propenenitrile,2-methyl	126-98-7	Methacryloni-trile
2-Propenenitrile	107-13-1	Acrylonitrile
2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2	Ethyl methacry-late
2-Propenoic acid, 2-methl-, methyl ester	80-62-6	Methyl metha-crylate
2-Propen-1-ol	107-18-6	Allyl alcohol
2-Propyn-1-ol	107-19-7	2-Propyn-1-ol
Pyrene	129-00-0	Pyrene
Pyridine	110-86-1	Pyridine
Pyridine, 2-methyl-	109-06-8	2-Picoline
Pyridine, 1-nitroso-	930-55-2	N-nitrosopyr-rolidine
Selenium	7782-49-2	Selenium (total)
Silver	7440-22-4	Silver (total)
Sodium	7440-23-5	Sodium (total)
Sulfide	18496-25-8	Sulfide
Sulfurous acid, 2-chloroethyl 2-(4d-(1,1-dimethylethyl) phenoxy)-1-methyl-ethyl ester	140-57-8	Aramite
Thallim	7440-28-0	Thallim (total)
Thiodiphosphoric acid $((HO)_2 P(S))_2$, tetraethyl ester	3689-24-5	Tetraethylidi-thiopyrophos-phate
Tin	7440-31-5	Tin (total)
Toxaphene	8001-35-2	Toxaphene

Vanadium	7440-62-2	Vanadium (total)
Zinc	7440-66-6	Zinc (total)

(c) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the wellhead referenced to mean sea level based on a United States Geological Survey datum.

(4) For residual landfills this characterization shall include parameters approved by the cabinet based upon the chemical analysis of the waste.

(5) For other sites or facilities the characterization shall be for parameters determined by the cabinet.

Section 11. Groundwater Monitoring Parameters. (1)(a) Operators of Class II and Class III landfarming facilities requiring groundwater monitoring shall monitor for the following parameters on a semiannual basis: chemical oxygen demand, total organic carbon, total nitrogen, nitrate nitrogen, lead, chromium, cadmium, coliform bacteria;

(b) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the wellhead referenced to mean sea level based on a USGS datum; and

(c) Other parameters as approved by the cabinet based on the waste analysis.

(2) Operators of residual and construction/demolition debris landfills shall monitor semiannually for the following:

(a) Chloride, chemical oxygen demand, total dissolved solids, total organic carbon, specific conductance, pH, iron, sodium;

(b) Arsenic, barium, cadmium, chromium, lead, mercury, nitrate, selenium;

(c) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the wellhead referenced to mean sea level based on a USGS datum;

(d) Other parameters as approved by the cabinet based on the waste analysis; and

(e) If after four (4) **consecutive** [initial] quarterly monitoring periods, analysis for the parameters in paragraphs (a) through (d) of this subsection indicates no exceedences above levels specified in Section 8(1) of this regulation, the owner or operator may, upon request, be granted permission from the cabinet to reduce the monitoring parameters to those listed in paragraph (a) of this subsection.

(3) Operators of contained landfills shall be required to monitor quarterly for the following parameters:

(a) Chloride, chemical oxygen demand, total dissolved solids, total organic carbon, specific conductance, pH, iron, sodium, total organic halides, arsenic, barium, cadmium, chromium, lead, mercury, nitrate, selenium, silver;

(b) Acetone; acrolein; acrylonitrile; benzene; bromochloromethane; bromodichloromethane; 4-bromofluorobenzene; bromoform; bromomethane; 2-butanone (methyl ethyl ketone); carbon disulfide; carbon tetrachloride; chlorobenzene; chlorodibromomethane; chloroethane; 2-chloroethyl vinyl ether; chloroform; chloromethane; dibromomethane; 1,4-dichloro-2-butane; dichlorodifluoromethane; 1,1-dichloroethane; 1,2-dichloroethane; cis-1,3-dichloropropene; trans-1,3-dichloropropene; 1,4-difluorobenze; ethanol; ethylbenzene; ethyl methacrylate; 2-hexanone; iodomethane; methylene chloride; 4-methyl-2-pentanone; 1,1-dichloroethene; trans-1,2-dichloroethene; styrene; 1,1,2,2-tetrachloroethane; toluene; 1,1,1-trichloroethane; 1,1,2-trichloroethane; trichloroethane; trichlorofluoromethane, 1,2,3-trichloropropane; vinyl acetate; vinyl chloride; xylene;

(c) Groundwater elevations recorded as a distance from the elevation at the wellhead referenced to mean sea level based on a United States Geologic Survey datum;

(d) Other parameters as approved by the cabinet based on the waste analysis; and

(e) If after four (4) **consecutive** [initial] quarterly monitoring periods, analysis for the parameters in paragraphs (a) and (b) of this subsection indicates no exceedences above the levels specified in Section 8(1) of this regulation, the owner or operator may obtain permission from the cabinet to reduce the sampling program to annual sampling for parameters in paragraphs (a) and (b) of this subsection while sampling quarterly for the following: [monitoring parameters to the following:]

1. Chloride;
2. Chemical oxygen demand;
3. Total dissolved solids;
4. Total organic carbon;
5. Specific conductance;
6. pH;
7. Iron;
8. Sodium; and
9. Total organic halides.

(4) Operators of residual landfills shall monitor quarterly for parameters to be determined by the cabinet based upon chemical analysis of the waste to be disposed.

(5) Other solid waste sites or facilities shall monitor for parameters and at a frequency determined by the cabinet.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: March 8, 1990
FILED WITH LRC: March 9, 1990 at noon

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

401 KAR 48:310. Financial requirements and bonds.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.**888** [889], 224.994, **Chapter 355**

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842, 224.846

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the managing, processing, or disposal of wastes. KRS 224.842 requires that persons engaging in the management, processing and disposal of waste obtain a permit. KRS 224.846 requires nonpublic permit applicants to post bonds. This chapter establishes the minimum technical standards for solid waste sites or facilities. This regulation sets forth the financial requirements for closure, closure care and corrective action.

Section 1. Financial Assurance Criteria. The financial assurance criteria and bond requirements apply to the owner and operator of all solid waste disposal sites or facilities. Any owner or operator which is a city, county, urban-county government, 109 district, taxing district, political subdivision of the Commonwealth, the Commonwealth or any agencies thereof or any entity whose debts and liabilities are the debts and liabilities of the above entities shall only be required to comply with Section 12 of this regulation.

Section 2. Closure Cost Estimate. The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the solid waste disposal site or facility in accordance with the closure plan developed to satisfy the closure requirements in Section 4(1) of 401 KAR 48:060, Section (15) of 401 KAR 48:070, Section 4 of 401 KAR 48:170, Section 5 of 401 KAR 48:200 and KRS 224.846.

(1) The estimate shall equal the cost of closing the solid waste disposal site or facility at the point in the active life when the extent and manner of its operation would make closure the most expensive. [For contained landfills, the cost estimate mandated by KRS 224.846 shall be at least $25,000 per acre using 1990 as the baseline year: for construction/demolition debris landfills the cost estimate should be at least $10,000 per acre.] The cabinet shall adjust the figure for inflation and other factors each year. [For other solid waste sites or facilities] The owner or operator shall base the cost estimate on the following elements:

(a) Design;

(b) Site grading and drainage;

(c) Hauling and placing of each element of the approved cap;

(d) Final grading and drainage of the cap;

(e) Revegetation of the cap; and

(f) Quality control and construction certification. [; and]

[(g) Commonwealth oversight and administration:]

[1. If total cost of paragraphs (a) through (f) of this subsection is under $100,000, an additional cost of fifty (50) percent shall be added;]

[2. If total cost of paragraphs (a) through (f) of this subsection is between $100,000 and $1,000,000, an additional cost of thirty (30) percent shall be added;]

[3. If total cost of paragraphs (a) through (f) of this subsection is $1,000,000 - $5,000,000, an additional cost of twenty (20) percent shall be added; or]

[4. If total cost of paragraphs (a) through (f) of this subsection is over $5,000,000 an additional cost of fifteen (15) percent shall be added.]

(2) The owner or operator shall increase the closure cost estimate and the amount of financial assurance provided under Section 5 of this regulation if changes to the closure plan or solid waste disposal site or facility conditions increase the maximum cost of closure at any time during the active life.

(3) The owner or operator may request a reduction in the closure cost estimate and the amount of financial assurance provided under Section 5 of this regulation if he can demonstrate that the cost estimate exceeds the maximum cost of closure at any time over the life of the solid waste disposal site or facility.

(4) The owner or operator shall keep a copy of the latest closure cost estimate at the solid waste disposal site or facility until the owner or operator has been notified by the cabinet that he has been released from closure financial assurance requirements under Section 5 of this regulation.

Section 3. Closure Care Cost Estimate. (1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct each phase of closure care monitoring and maintenance of the solid waste landfill in accordance with the closure care plan developed to satisfy the closure care requirements of Section 3 of 401 KAR 48:060; Section 13 of 401 KAR 48:090; and Section 3 of 401 KAR 48:170. The closure care cost estimate for each phase of closure care used to demonstrate financial assurance in Section 6 of this regulation is calculated by multiplying the annual cost estimate for each phase of closure care by the number of years of closure care required. For contained landfills, the closure care estimate mandated by KRS 224.846 shall be a minimum of $10,000 per year using 1990 as the baseline year.

(2) The cost estimate for each phase of closure care shall be based on the most expensive costs of closure care during that phase.

(3) The owner or operator shall increase the amount of the closure care cost estimate and the amount of financial assurance provided under Section 6 of this regulation if changes in the closure care plan or facility conditions increase the maximum costs of closure care.

(4) The owner or operator may request a reduction in the closure cost estimate and the amount of financial assurance provided under Section 6 of this regulation if he can demonstrate to the satisfaction of the cabinet that the cost estimate exceeds the maximum costs of closure care remaining over the closure care period.

(5) The owner or operator shall keep a copy of the latest closure care cost estimate at the facility until he has been notified by the cabinet that he has been released from closure care financial assurance requirements for the entire facility under Section 6 of this regulation.

Section 4. Financial Mechanisms. The mechanisms used to demonstrate financial assurance under this regulation shall ensure that the funds necessary to meet the costs of closure and closure care shall be available in a timely manner whenever they are needed. The owner or operator shall use the bond specified in Sections 7, 8, 9 and 10 of this regulation, which satisfies the following criteria:

(1) The financial assurance mechanism shall ensure that the amount of funds is sufficient to cover the costs of closure and closure care;

(2) The financial assurance mechanisms shall ensure that funds shall be available in a timely fashion;

(3) The financial assurance mechanisms shall guarantee the availability of the required amount of coverage from the effective date of

these requirements or prior to the initial receipt of solid waste, whichever is later, until the owner or operator establishes an alternative financial assurance mechanism or is released from the financial assurance requirements under Sections 5, 6, 7 and 11 of this regulation. The amount of financial assurance obtained from a single financial institution shall not exceed the limit of federal insurance when such assurance is provided by a financial institution that uses federal insurance to guarantee the availability of funds.

Section 5. Closure Financial Assurance. The owner or operator of each solid waste landfill or landfarm shall establish, in accordance with Section 4 of this regulation, financial assurance for closure of the facility, in an amount equal to the most recent closure cost estimate prepared in accordance with Section 2 of this regulation. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements. The owner or operator may be released from financial assurance requirements for closure after a site visit by a cabinet representative and approval by the cabinet. For contained landfills, the owner or operator shall submit the certification that closure has been completed in accordance with the approved closure plan. Following receipt of the closure certification or completion of the closure inspection, the cabinet shall:

(1) Notify the owner or operator in writing that he is no longer required to maintain financial assurance for closure; or

(2) Provide the owner or operator with a detailed written statement of any reason to believe that closure has not been conducted in accordance with the approved closure plan.

Section 6. Closure Care [Financial Assurance]. The owner or operator of each solid waste landfill shall provide for [establish, in a manner consistent with Section 4 of this regulation, financial assurance for the costs of each phase of] closure care as required under Section 3 of 401 KAR 48:060, Section 13 of 401 KAR 48:090, and Section 3 of 401 KAR 48:170 for the required period following the cabinet's acceptance of closure. [in an amount equal to the sum of the most recent cost estimates for each phase of closure care, prepared in accordance with Section 3 of this regulation. The owner or operator shall provide continuous coverage for closure care until released from financial assurance requirements for closure care by the cabinet.] The owner or operator of a contained landfill may be released from [financial assurance requirements for] closure care requirements after the cabinet has received a certification that the [two (2) phases of the] closure care period has [have] been completed in accordance with the approved plan as required under Section 13 of 401 KAR 48:090. Following receipt of the closure care certification, the cabinet shall[:

(1) Notify the owner or operator in writing that he is no longer required to maintain financial assurance for closure care; or

(2)] notify the owner or operator with a detailed written statement of any reason to believe that closure care has not been conducted in accordance with the approved closure care plan.

Section 7. Performance Bond. Before the cabinet shall issue a permit, the owner or operator of a solid waste disposal site or facility that is required to post a bond or other security pursuant to KRS 224.846 shall complete the performance bond in a manner approved by the cabinet. To satisfy the financial requirement, the owner or operator shall submit a performance bond (see Section 8 and Appendix A of this regulation) and one (1) of the three (3) following:

(1) Surety bond as specified in Section 8 and Appendix A of this regulation;

(2) Letter of credit as specified in Section 9 and Appendix B of this regulation; or

(3) Escrow agreement as specified in Section 10 and Appendix C of this regulation.

Section 8. Wording of the Performance Bond. A performance bond guaranteeing performance of closure or closure care shall be executed on a form provided by the cabinet. The surety bond form is a part of the performance bond form. The surety bond portion of the performance bond shall be completed only if a surety bond is being used; otherwise the surety bond portion of the performance bond shall be left blank. The performance bond form shall be as contained in Appendix A of this regulation.

Section 9. Wording of the Instrument for a Letter of Credit. A letter of credit, as allowed by Section 4 of this regulation, shall be on a form provided by the cabinet. The letter of credit form shall be as contained in Appendix B of this regulation.

Section 10. Wording of the Escrow Agreement. A solid waste facility escrow agreement, as allowed in Section 4 of this regulation, shall be executed on a form provided by the cabinet. The escrow agreement form shall be as contained in Appendix C of this regulation. If a certificate of deposit is used in conjunction with the escrow agreement, it shall be made payable to the financial institution as the escrow agent.

Section 11. Release of Bonds. (1) Bonds posted to assure proper closure of a site shall be released two (2) years after the date that the cabinet determines the final cover has been constructed and revegetated with permanent vegetation. The cabinet may withhold that amount of bond necessary to correct deficiencies in the landfill or its closure system.

[(2) Bonds posted for financial assurance for closure care activities shall be released thirty (30) years following the date that the cabinet determines the final cover has been constructed and revegetated with permanent vegetation, unless the cabinet has information showing that the landfill is not in compliance with any provision of KRS Chapter 224 or regulations appropriate for the site or the required closure care period has been extended as a result of corrective action pursuant to 401 KAR 48:300.]

(2) [(3)] Bonds posted to assure performance and closure of landfarming facilities shall be released when the applicant demonstrates to the cabinet's satisfaction that the site has been

closed and is in compliance with 401 KAR 47:030, 401 KAR 48:300 and KRS Chapter 224.

Section 12. Financial Assurance for Publicly Owned Facilities. The owner or operator of a publicly owned facility shall provide a budget for the permitting, construction, operation, closure and closure care of the facility. The budget shall be revised and submitted annually. When elements of the facility's permitting, construction, operation, closure or closure care are to be accomplished by contract or agreement, a copy of the contract or agreement shall be submitted to the cabinet.

APPENDIX A TO 401 KAR 48:310
COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
DIVISION OF WASTE MANAGEMENT
18 REILLY ROAD
FRANKFORT, KY 40601
PERFORMANCE BOND

Application Number:_____
Existing Permit Number:_____
Type of Bond:
____ Cash Bond
____ Surety Bond (#_____)
____ Certificate of Deposit (#_____)
____ Letter of Credit (#_____)

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned, _____, as Principal, and _____, as Surety, is/are held and firmly bound unto the Natural Resources and Environmental Protection Cabinet in the penal sum of _____ dollars ($_____), _____ which sum is herewith deposited with the Natural Resources and Environmental Protection Cabinet; ____ for payment of which sum is to be well and truly made: _____ which sum is herewith deposited with the Natural Resources and Environmental Protection Cabinet, by and through its Escrow Agent, _____ as a grantee that the provisions of the permit issued pursuant to Application Number _____, all applicable laws, rules, and regulations will be observed and hereby bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. This bond is effective upon receipt by the Division of Waste Management (hereinafter Division).

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that, whereas, the above bound Principal, pursuant to the provisions of KRS Chapter 224 and 401 KAR Chapters 47 and 48 did file with the Division, an application for a permit to construct and/or operate a solid waste site or facility in the Commonwealth of Kentucky; that in said application the Principal identified the area to be permitted as _____ acres, located in _____ County, at or near the community of _____: and whereas the above described area will be affected by the facility during the life of the permit and until the Principal has completed proper closure and closure care; and corrective action, if required, and Cabinet, or, in the case of contained landfills, a professional engineer and Cabinet, has certified the same. Furthermore, it is understood that the obligation under this bond extends to environmental degradation occurring off the permitted area but proximately resulting from the construction, operation or closure of the solid waste site or facility.

Now, if said _____, as Principal, shall faithfully perform all the requirements of the above designated application, the permit issued pursuant thereto and the applicable laws, rules, and regulations, and the terms of this bond, then this obligation shall be released; otherwise, it is agreed that said penal sum shall be paid to the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, upon receipt of an Order of the Cabinet.

PRINCIPAL:_____ BY:_____
OFFICIAL POSITION:_____DATE:_____

Subscribed and sworn to before me by _____ this the _____ day of _____, 19____.

_____
Notary Public, State-at-Large

My commission expires the ____ day of _____, 19____.

COMPLETE FOR SURETY BOND:
SURETY:
ADDRESS:
LOCAL AGENCY ISSUING BOND:
ADDRESS:
BY:
OFFICIAL POSITION:
SIGNATURE:
DATE:

NOTE: The person who signs for a surety company shall file with the bond a copy of the Power of Attorney showing authority to sign. All bonds executed by an out-of-state bonding agent shall be countersigned by a resident Kentucky agent.

COUNTERSIGNED
BY:
AGENT FOR:
ADDRESS:

APPENDIX B TO 401 KAR 48:310
IRREVOCABLE LETTER OF CREDIT

_____
(financial institution)

COMMONWEALTH OF KENTUCKY
Natural Resources and
Environmental Protection Cabinet
Department for Environmental Protection
Division of Waste Management
18 Reilly Road
Frankfort, Kentucky 40601

Date:_____
IRREVOCABLE LETTER OF CREDIT NO:_____

Gentlemen:

We hereby open our irrevocable letter of credit in your favor for the account of _____ _____ for a sum or sums not exceeding a total of _____ dollars ($_____) available by your draft(s) on us at sight when accompanied by a Natural Resources and Environmental Protection Cabinet Order of Forfeiture.

It is a condition of this Letter of Credit that it will be automatically extended for additional periods of up to one (1) year from the then relevant expiry date unless thirty (30) days prior to that relevant expiry date, we notify you that we elect not to extend this Letter of Credit whereupon you may elect either

to obtain cash collateral by drawing your on-sight draft on us for an amount not to exceed the unused balance of this Letter of Credit, or to let the Letter of Credit expire. For the purposes of this credit, our notice not to extend shall mean:

1. That we send our notification to you at the above-listed address by registered mail (return receipt requested) dated not less than thirty (30) days prior to expiration; and

2. That, in the event, prior to fifteen (15) days before the then relevant expiry date, we have not received either your draft or your written notice that you do not intend to draw from your draft on us, we will hand deliver our notification to obtain a receipt from: Director, Division of Waste Management, Natural Resources and Environmental Protection Cabinet, or that official's designated representative, not less than five (5) days prior to the then relevant expiry date. In the event we shall have failed to notify you as described above, this Letter of Credit shall be automatically extended for a period of one (1) year; and

3. That, in the event you draw your draft upon us in response to our notice not to extend, such draft need not be accompanied by an Order of Forfeiture.

Drafts must be negotiated not later than _____. All drafts drawn under this credit shall state that they are "drawn under _____, dated _____, associated with permit number.

This Letter of Credit is subject to the Uniform Commercial Code of the Commonwealth of Kentucky. Jurisdiction for any litigation concerning this Letter of Credit shall be in Franklin Circuit Court, Commonwealth of Kentucky.

In the event we become unable to fulfill our obligations under the Letter of Credit for any reason, notice shall be given within five (5) days to the Permittee and Director, Division of Waste Management, at the address indicated in this Letter of Credit.

We hereby agree with the drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this credit that such drafts will be duly honored on due presentation to the drawee.

[Unless otherwise expressly stated, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits (1983 Revision) International Chamber of Commerce, Publication 400."]

BY:_____
Authorized Signer

_____
Title

APPENDIX C TO 401 KAR 48:310
COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
DIVISION OF WASTE MANAGEMENT
18 REILLY ROAD
FRANKFORT, KY 40601
ESCROW AGREEMENT

THIS AGREEMENT, made, executed, and delivered this the _____ day of _____, 19____, by and between _____, as Applicant, and _____, and the Kentucky Natural Resources and Environmental Protection Cabinet (hereinafter Cabinet).

WITNESSETH:

WHEREAS, Applicant desires to obtain a permit to construct and/or operate a solid waste site or facility in the Commonwealth of Kentucky; and

WHEREAS, the laws of the Commonwealth require that a bond be posted to insure proper closure, closure care of the facility and if required, corrective action to guarantee performance of the requirements in KRS Chapter 224 and the regulations promulgated pursuant thereto, and

WHEREAS, the Applicant desires to meet the bonding requirements for constructing and/or operating a solid waste site or facility in the Commonwealth of Kentucky by executing such bond and posting surety in the sum of _____ dollars ($_____) with the Cabinet to be held by Escrow Agent, which sum is hereby acknowledged by the Cabinet to be sufficient and acceptable for the permit application number ___ _____, relating to _____ acres located at _____ in _____ County, Kentucky; and

WHEREAS, such sum shall be placed in the safe custody of the Escrow Agent and the Agent is directed to purchase certificates of deposit of the _____, which certificates of deposit are hereinafter referred to as The Certificates, and are more fully described as follows, to wit:

CERTIFICATE NO.	DATE OF ISSUANCE	PRINCIPAL AMT.

AND WHEREAS, this Agreement is a supplement to the bond filed by the Applicant with permit application number _____ for a permit to construct and/or operate a solid waste site or facility.

NOW, THEREFORE, in consideration of the premises set forth herein, the parties hereto mutually agree as follows:

1. The Escrow Agent hereby acknowledges receipt of The Certificates above listed, to be safely and securely kept for the stated purposes of this Agreement and subject to the terms and conditions herein, and hereby binds itself to perform completely under the terms of this Agreement and to dispose of The Certificates or the proceeds therefrom only as provided herein. The Escrow Agent further agrees to exercise due care in the safekeeping and delivery of The Certificates;

2. The parties agree The Certificates or any subsequent Certificates are and shall be made payable in favor of the Escrow Agent only and the parties further agree that until such time as the Cabinet orders that the bond for the permit application be forfeited or until such time as the bond is released, all interest accruing on The Certificates shall be disposed of in accordance with paragraphs 4 and 5 of this Agreement;

3. The parties agree that the Escrow Agent is hereby authorized and directed to insure that The Certificates remain in full force during the term of this Agreement and the Escrow Agent may, upon notice to all parties, and upon the maturity of The Certificates, issue new Certificates of face value equal to the outstanding amount of the bond. In the event of such issuance, the new Certificates shall replace The Certificates herein for all purposes and shall be subject to the conditions of this Agreement;

4. Any interest accruing on The Certificates shall be held by the Escrow Agent until such time as the bond has been released or forfeited or The Certificates have matured and been replaced by new Certificates. No interest shall be paid to the Applicant on any Certificate until such time as the Certificate matures or a full release has been obtained from the Cabinet or until the bond has been forfeited and any penalty resulting from the cashing of the Certificate has been satisfied;

5. In the event of forfeiture of the performance bond herein and upon the Cabinet's written notice of such forfeiture to the Escrow Agent, the Escrow Agent shall promptly cash The Certificates and forward to the Cabinet a Cashier's Check in the outstanding amount of the bond, pay any penalties which result from the cashing of The Certificates from the interest accrued thereon, and remit any remaining interest and principal to the Applicant;

6. The parties agree that neither the Escrow Agent nor the Cabinet shall be liable for any loss of interest which may result to the Applicant as a result of an Order of Forfeiture;

7. The Escrow Agent shall not be liable for inquiring whether there has been performance by the Applicant or to see the application of any monies paid on the instruction of the Cabinet and in such matters the Escrow Agent may rely upon the instructions of the Cabinet executed by the Secretary of the Cabinet, his designee, or his successor or the successor agency as provided by law. The Escrow Agent need not verify the apparent authority of an agent of the Cabinet in carrying out the Cabinet's instructions. Nothing herein shall prevent the Commonwealth from designating a person authorized to act for it in any other lawful manner;

8. That for value received the Applicant does hereby assign, transfer, and set over to the Commonwealth of Kentucky all right, title, and interest which the Applicant may have in The Certificates. The parties agree that The Certificates are being held solely for the benefit of the Commonwealth of Kentucky and that the Applicant has relinquished all right, title, and interest to The Certificates as provided herein. The Applicant may not pledge or encumber in any manner The Certificates or any renewal certificates, or the interest due thereon, so long as the same are subject to the conditions of the bond herein;

9. The Cabinet agrees that upon completion of proper closure and <u>closure care</u> [postclosure], or corrective action of or for the solid waste site or facility and upon the Cabinet's inspection and certification of same and in the case of contained landfills, upon certification by a professional engineer, the Cabinet shall release the bond herein and promptly notify the Escrow Agent and the Applicant of such release.

10. It is agreed, as between the parties, that in the event the Escrow Agent closes or goes into receivership, any Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or National Credit Union Administration insurance proceeds paid on, to, or as a result of The Certificates, shall first be applied to cover The Certificates;

11. The parties agree that the Escrow Agent shall be the Cabinet's agent for holding The Certificates for the purpose of perfecting the Cabinet's security interest in those Certificates under KRS Chapter 355.

12. This agreement shall be binding upon the successors and assigns of the respective parties; and

13. Upon receipt by the Escrow Agent of written notification by the Cabinet of the forfeiture or the release of the bond herein, and disbursement pursuant to this agreement by the Escrow Agent of written notification by the Cabinet of the forfeiture or the release of the bond herein, and disbursement pursuant to this agreement by the Escrow Agent of The Certificates or the proceeds therefrom and any interest accrued thereon, the Escrow Agent shall be discharged of any and all duties and liabilities arising out of or as a result of this Agreement.

SIGNED, SEALED, AND DELIVERED, the day and date first above written by the appropriately authorized officers.

APPLICANT:
BY:
TITLE:
ESCROW AGENT:
BY:
TITLE:
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
BY:
TITLE:

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: March 8, 1990
FILED WITH LRC: March 9, 1990 at noon

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

401 KAR 49:010. General planning and management provisions for solid waste.

RELATES TO: KRS 61.874, 109.011, 109.041, <u>109.115</u> [109.071], 109.190, 224.005, 224.835, 224.842, 224.887, 224.888

STATUTORY AUTHORITY: KRS <u>Chapter 13A,</u> 224.033, 224.868, 224.886, 224.887

NECESSITY AND FUNCTION: KRS 224.033(24), 224.886, and 224.887 require the Natural Resources and Environmental Protection Cabinet to adopt regulations for counties, combinations of counties, cities, and waste management districts <u>to create</u> [in creating] solid waste management areas for the purpose of planning for solid waste management and recovery activities. This chapter establishes the requirements for solid waste planning. This regulation defines essential terms and sets forth general provisions which apply to all counties, <u>urban county governments,</u> combinations of counties, <u>cities</u> and waste management districts seeking designation as solid waste management areas. This regulation neither prohibits nor discourages the participation of the private sector in any solid waste activity. [Moreover, it is preferable for solid waste activities to be performed by the private sector when such is in the best interest[s] of the public and conforms with the policies and provisions set forth in KRS Chapter 109.]

Section 1. Definitions. (1) [Applicability.] [(1)] The solid waste management planning regulations shall apply to all counties, combinations of counties, cities, urban-county governments and waste management districts.

[(2)] [Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, no county, city or waste management district shall regulate special wastes as defined in KRS 224.868 or solid waste from agricultural or mining operations as provided in KRS 109.041(4).]

(2) [Section 2.] [Definitions.] [Unless otherwise defined in this section, the definitions in 401 KAR 30:010 shall apply.] Whenever the following terms appear in this chapter, unless context requires otherwise, they shall have the meanings given in this section.

(a) [(1)] "Action of the fiscal court" means any action or deed, including but not limited to a resolution or ordinance, which legally binds a county or, in the case of an urban-county government, the body in which legislative power is vested.

(b) [(2)] "Agreement" means a legally binding document or contract evidenced by a writing which establishes a waste management district or a proposed solid waste management area. The agreement may be between a single county, or two (2) or more counties and an agency or office which has been assigned responsibility for area plan development by a fiscal court.

[(3) "Area solid waste management plan" or "area plan" means the plan required by KRS 224.888 which sets forth a comprehensive program of solid waste management developed for implementation at the local government level.]

(c) [(4)] "Collection" means the gathering of solid waste at or near the source of generation. Sources of generation include, but are not limited to, residences, commercial establishments, institutions, and industrial plants.

(d) [(5)] "Designation as a solid waste management area" or "designation" means the approval from the cabinet of the application for designation as a solid waste management area as specified in 401 KAR 49:060 [030].

(e) [(6)] "Implementation" means the actual performance of planned activities according to time schedules in the approved area plan.

(f) [(7)] "Kentucky Waste Management Plan" means the comprehensive, statewide solid waste management plan [approved by the U.S. Environmental Protection Agency].

(g) "Medical waste" means any solid waste generated from health care facilities, including, but not limited to, hospitals, clinics, laboratories, and physicians', dentists' and veterinarians' offices.

(h) [(8)] "Planning period" means the interval of time designated for the accomplishment of [area] solid waste management area planning goals:

1. [(a)] "Short-term" means the planning period from the first through the fifth year after the most recent plan revision.

2. [(b)] "Midterm" means the planning period from the sixth through the tenth year after the most recent plan revision.

3. [(c)] "Long-term" means the planning period from the 11the through the 20the year after the most recent plan revision.

(i) [(9)] "Processing" means any solid waste material recovery, energy recovery, incineration, pulping, shredding, baling, compacting, any other method or technique to alter the physical or chemical composition of the solid waste, or any combination thereof.

(j) [(10)] "Regional" means of or pertaining to more than one (1) county.

(k) [(11)] "Resource conservation" means reduction of the amount of solid waste that is generated, reduction of overall resource consumption, or utilization of recovered resources.

(l) [(12)] "Solid waste activity" means any manner of solid waste management including collection, source separation, storage, transportation, transfer, processing, treatment and disposal.

(m) [(13)] "Source separation" means sorting solid waste for material recovery.

[(14) "Substantial revision" means a revision to an application for area designation which will significantly affect the plan, including but not limited to changes to local laws and regulations; delays in implementation; reordering or other changes to established, approved priorities; changes to the acquisition schedule for solid waste management activities or facilities; or changes in budgeting that will delay or prohibit implementation of the area plan.]

(n) [(15)] "Transfer" means the placement of solid waste from smaller collection vehicles into larger vehicles for transportation to other intermediate or final disposal facilities.

[(16) "Transportation" means the conveyance of solid waste by any mode.]

[Section 3. Notification of Intent to Apply for Area Designation. (1) Identification of lead agency. After a county decides to join with another county or counties or to assume joint responsibility with a city, or to independently submit an area plan, the fiscal court(s), board of directors or, in the case of an urban-county government, the body in which legislative power is vested, or such other office or agency responsible for area plan submittal shall notify the cabinet in writing by January 1, 1985, of the intent to apply for area designation. One (1) or more cities may be delegated the responsibility for developing an area solid waste management plan or providing solid waste management services where both the city and county agree to such delegation. Regardless of any such delegation, the county shall retain primary responsibility for solid waste management. Upon receipt of a Notification of Intent to Apply, the cabinet will transmit copies of the notification to all counties in Kentucky contiguous to the proposed solid waste management area. The notification shall state:]

[(a) Whether the applicant is acting independently, jointly or as a waste management district;]

[(b) The agency which will have primary responsibility for plan development; and]

[(c) The name and title of a designated contact person.]

[(2) Changes to information submitted. A county, city, or waste management district shall notify the cabinet within thirty (30) days of deciding to enter into a new agreement or amend, modify, or dissolve an existing agreement. The cabinet shall transmit copies of the notification to all counties in Kentucky

contiguous to the proposed solid waste management area.]

[Section 4. Establishment of Waste Management Districts. (1) Garbage and refuse districts. Garbage and refuse districts established pursuant to KRS Chapter 109 prior to June 17, 1978 shall be deemed waste management districts by the cabinet pursuant to KRS 109.190. Garbage and refuse districts which elect to be considered waste management districts shall petition the cabinet by submitting the information required in Section 3 of this regulation. Upon approval of the petition by the cabinet, the name of the garbage and refuse district will be changed to reflect the new status as a waste management district. An existing garbage and refuse district may dissolve the district to apply for designation as a solid waste management area independently or in conjunction with any county.]

Section 2. [(2)] Formation of waste management districts. A single county, urban county government or combination thereof [two (2) or more counties] which elect to become a waste management district under KRS 109.115 [109.071] shall notify the cabinet. [In addition to the notification required by Section 3 of this regulation,] The waste management district shall submit:

(1) [(a)] The agreement which establishes the district;

(2) [(b)] The rules, regulations, bylaws or other documents which govern the actions of the board of directors; and

(3) The name of the contact person and their mailing address;

(4) [(c)] A list of the members of the board of directors and their official titles. The cabinet will confirm receipt of the notification in writing to the individual identified as the contact person; and [.]

(5) Information necessary to update the solid waste management area plan.

[Section 5. Request for Information. The cabinet will provide at no cost one (1) copy of each document listed below to the fiscal court of each county, board of directors or other duly authorized office or agency. Additional copies will be provided upon request, at cost.]

[(1) Kentucky Solid Waste Management Regulations.]

[(2) Kentucky Solid Waste Management Planning Regulations.]

[(3) Guidelines for Land spreading].

[(4) Kentucky Waste Management Plan.]

[(5) Kentucky Solid Waste Management Plan-Executive Summary for the Area Development District which contains the county or two (2) or more counties joined by agreement or which contains a solid waste management district.]

[(6) Guidelines for the Development and Formulation of Area Solid Waste Management Plans.]

[Section 3. [6.] Severability. If any section, paragraph, phrase, sentence or clause of this chapter is declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: March 8, 1990
FILED WITH LRC: March 9, 1990 at noon

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

401 KAR 49:060. Application for designation as a solid waste management area.

RELATES TO: KRS 61.874, 109.011, 109.041, 109.115, 109.190, 224.005, 224.830 through 224.888

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.886, 224.887

NECESSITY AND FUNCTION: KRS 224.887 requires the cabinet to adopt regulations for counties, combinations of counties, cities, and waste management districts to create solid waste management areas for the purpose of planning for solid waste management and recovery activities. KRS 224.888 requires the area plans to be prepared in accordance with regulations promulgated by the cabinet. This chapter establishes the requirements for solid waste planning. This regulation sets forth application criteria that apply to all entities seeking designation as a solid waste management area.

Section 1. Applicability. Each county, urban county government, or [and] waste management district shall prepare, adopt, maintain, update and implement a comprehensive, coordinated [area] solid waste management area plan. The area plan shall contain the items outlined in 401 KAR 49:070 and is a prerequisite component for designation as a solid waste management area. A county may delegate responsibility for preparing an area-wide plan to a city if the city agrees to assume such responsibility. Cities that operate solid waste facilities or services, or contracted with a person to provide such facilities or services on or before July 15, 1984, and which pay a pro rata share of the cost of plan development, may assume joint responsibility with a county for plan development.

Section 2. Steps for Gaining Solid Waste Management Area Designation. This section summarizes those steps, in order of progression, that counties [a county], cities, urban county governments, or waste management districts shall follow to gain designation as a solid waste management area. All counties, cities, urban county governments or waste management districts shall submit the following to the cabinet:

(1) A notification of intent to apply for area designation, in accordance with Section 4 of this regulation, shall be submitted eighteen (18) months prior to the expiration of the existing area plan;

(2) A draft area plan, in accordance with Section 5 of this regulation, shall be submitted no less than nine (9) months prior to expiration of the existing area plan;

(3) A public notice of the draft area plan and the county's intent to apply for area designation, in accordance with Section 6 of this regulation, shall be issued upon approval of the draft area plan by the cabinet. The notice period shall be for a period of no less

than thirty (30) days. If requested during the public notice period, a public hearing(s) shall be held by the lead agency for plan development;

(4) A copy of the resolution and ordinance, in accordance with Section 7 of this regulation, formally approving and adopting the draft area plan shall be submitted by each entity that signed the notice of intent to apply for area designation. The draft area plan shall be approved and adopted only after the public comment period expires and any subsequent public hearing(s) are held and input received; and

(5) An application for area designation, in accordance with Section 8 of this regulation, shall be submitted after the draft area plan has been approved and adopted by resolution or ordinance. This application shall be submitted three (3) months prior to expiration of the existing area designation.

Section 3. City Government Roles in Solid Waste Management. No city shall be authorized to prepare an area plan or apply for designation as a solid waste management area unless the county, urban county government or waste management district delegates responsibility for area plan development to the city. Area plans prepared by a city shall address solid waste management problems and activities at both the city and county levels. If a county, urban county government or waste management district fails to apply or reapply as a solid waste management area at the time of expiration, a city may provide solid waste services and shall have all the powers and restrictions set forth for counties in KRS 109.041, 109.056, 109.059, and 109.062.

Section 4. Notification of Intent to Apply for Area Designation. The notification of intent to apply for area designation shall be submitted by an entity desiring designation as a solid waste management area.

(1) Identification of lead agency. Eighteen (18) months prior to the expiration of the plan, a notification of intent to apply for area designation shall be submitted to the cabinet. This shall be done by the lead agency which may be a single county or urban county government, multiple counties, a waste management district or a county in cooperation with a city or cities. The notification of intent to apply for area designation shall be adopted by resolution or ordinance by the fiscal court, boards of directors or, in the case of an urban-county government, the body in which legislative power is vested. One (1) or more cities may be delegated the responsibility for developing a solid waste management area plan or providing solid waste management services where both the city and county agree to such delegation. Regardless of any such delegation, the county shall retain primary responsibility for solid waste management. Upon receipt of a notification of intent to apply for area designation, the cabinet shall transmit copies of the notification to all counties in Kentucky contiguous to the proposed solid waste management area. The notification shall be on a form supplied by the cabinet and shall contain:

(a) Signed statements from each agency responsible for plan development, stating whether the applicant is acting independently, jointly or as a waste management district;

(b) The name of the agency and the designated contact person who shall have primary responsibility for plan development; and

(c) The name and title of a designated contact person from each agency that assumes responsibility for plan development.

(2) Each agency that assumes responsibility for plan development shall conclude a resolution or ordinance adopting the notice of intent to apply for area designation, a copy of which shall be submitted to the cabinet with the intent to apply form.

(3) Dissolving a 109 district. Counties who previously established waste management districts under the provisions of KRS 109.041 or 109.115 [071 or KRS Chapter 65] but do not wish to apply under this entity shall first dissolve the waste management district. In the case of a nontaxing district, this shall be accomplished by ordinance. In the case of a taxing district or a waste management district established by KRS Chapter 65 or KRS 109.071, the district shall be dissolved in accordance with the procedures outlined in KRS 65.170 and 65.176.

(4) Changes to information submitted. A county, city, or waste management district shall notify the cabinet within thirty (30) days of deciding to amend, modify, or dissolve an existing agreement. The cabinet shall transmit copies of the notification to all counties in Kentucky contiguous to the proposed solid waste management area.

Section 5. Preliminary Review and Approval of Area Plan. The fiscal court, urban county council or waste management district or designated agency shall submit a draft area plan to the cabinet no less than nine (9) months prior to the expiration of the area designation. The draft area plan shall be adopted by resolution by each entity that signed the notification of intent to apply for area designation before the area plan is submitted to the cabinet for preliminary review. Upon submittal to the cabinet, a preliminary review shall be conducted to determine the plan's compliance with the Kentucky waste management plan and all applicable laws and regulations, and a determination shall be made within ninety (90) days to approve or deny the draft area plan. Upon finding that the draft area plan is in compliance with all applicable requirements, the cabinet shall issue a written preliminary approval. This preliminary approval may condition final approval of the area plan and designation as a solid waste management area upon corrections or amendments to the draft area plan.

Section 6. Public Notice for Area Plan. (1) Public notice. Upon receipt of preliminary approval of the draft area plan, the fiscal court of each county in the proposed area or, in the case of an urban-county government, the body in which legislative power is vested, shall issue a public notice indicating their intent to apply for designation as a solid waste management area and that the solid waste management area plan is available for public review for a period of thirty (30) days. The fiscal court[(s)], urban county government or waste management district shall also give notice of this review opportunity to all agencies which signed the application to apply for designation and each city located within the county. This information shall specify the

amount of time allowed for their review and comment.

(2) Public hearing. If a public hearing is requested as a result of the public notice, the fiscal court of each county in the proposed area shall hold at least one (1) public hearing prior to adopting or approving the draft plan. The cabinet recommends that each comment received be evaluated and that a written response be prepared. A transcript or a summary of the comments received and the consideration of comments, if prepared, shall be made available to each designated contact person identified in the notification of intent to apply for area designation, if applicable, prior to adoption or approval of the application for designation as a solid waste management area. Copies of the comments and and consideration of comments, if prepared, shall be made available to the public through public libraries, public offices, individual copies, or any similar means, and shall be available to the cabinet upon request.

Section 7. Plan Approval and Adoption. Approval of the draft area plan by the fiscal court or waste management district shall not take place prior to public involvement as stipulated in Section 6 of this regulation. The fiscal court of each county in the proposed area or, in the case of an urban-county government, the body in which the legislative power is vested, as well as any other entities that signed the notice of intent to apply for area designation stipulated in Section 4 of this regulation, shall approve the draft area plan by ordinance or resolution. The ordinance or resolution shall state concurrence with the following:

(1) The objectives set forth in the area plan;

(2) The schedule for implementation of the program including month and year of task initiation and month and year of task completion;

(3) Procedures to obtain financing for the recommended public program through the short-term planning period; and

(4) The duties and responsibilities of all entities identified in the area plan.

Section 8. Application for Designation as a Solid Waste Management Area. (1) Application content. After preliminary approval of the draft plan by the cabinet and adoption of the application and plan by the fiscal court of the county(ies) or in the case of an urban-county government, the body in which legislative power is vested, application shall be made to the cabinet for designation as a solid waste management area. The application shall be on a form provided by the cabinet and shall include:

(a) Name of the proposed area;

(b) Name and address of the primary agency responsible for area plan implementation;

(c) Name, address and telephone number of the individual identified as the contact person for the primary agency;

(d) A list of the members of the fiscal court or board of directors, or, in the case of an urban-county government, the body in which legislative power is vested, and their titles, if appropriate;

(e) [Three (3)] Copies of the area plan prepared in accordance with 401 KAR 49:070;

(f) Copies of the ordinances or resolutions approving the area plan from each entity that signed the notification of intent to apply for area designation;

(g) The agreement or contract establishing the proposed area, if applicable;

(h) A copy of the final public notice required under Section 6 of this regulation; and

(i) A description of the general administrative process to implement the plan which shall include budgeting, enforcement, plan review, public information, management, and operation of the waste management activities or facilities proposed.

(2) Submittal date. The application for designation as a solid waste management area shall be submitted to the cabinet three (3) months prior to the expiration of the area designation.

(3) Copies required. The county shall submit one (1) copy of the application for designation as a solid waste management area and at least three (3) copies of the area plan. In the case of a multicounty waste management district at least one (1) plan shall be submitted for each county in the district plus two (2) additional copies of the area plan. Copies shall be eight and one-half (8 1/2) inches by eleven (11) inches and each page shall be securely bound in a notebook, folder or a similar means designed to keep the pages in order. Pages shall be numbered and the plan shall follow the formatting required in 401 KAR 49:070, Section 2. A title sheet identifying the plan and the lead agency which developed the plan shall be placed at the beginning of the area plan package.

Section 9. Designation as a Solid Waste Management Area. (1) Approval of the application. The cabinet shall review the information submitted pursuant to Section 8 of this regulation to determine whether the application and area plan are consistent with the Kentucky waste management plan and in compliance with all applicable state laws and regulations. If the information is in compliance, the cabinet shall approve the application and notify the lead agency in writing.

(2) Rejection of the application for designation. Rejection of the application shall be in writing and accompanied by a list of deficiencies which, if corrected may justify approval of the application for designation as a solid waste management area.

(3) If the entities of the designated solid waste management area amend, modify, or dissolve the agreement establishing the area, the cabinet shall be notified in writing no later than thirty (30) days after such action. The cabinet shall review the notification of amendment or modification of an agreement and make a written determination as to whether the county, counties, cities or waste management district shall submit a revised area plan. If the cabinet determines that a revised plan shall be submitted, each county or counties from a dissolved solid waste management area shall submit a revised proposed area plan, approved by the fiscal court of the county or counties within the proposed area or, in the case of an urban-county government, the body in which legislative power is vested, within six (6) months of the date of dissolution of the area. Failure to comply with the provisions of this section regarding revision of the area plan shall be grounds for revocation of area designation.

Section 10. Plan Amendments. (1) Amendments and updates shall be made:

(a) If the cabinet determines that the approved plan or any part thereof is inadequate based on new or revised information, conditions or circumstances or the plan is not being implemented according to the schedule in the approved plan; or

(b) If the solid waste management area determines that the approved plan or any part thereof is inadequate based on new or revised information, conditions or circumstances. The revised plan shall be approved by the fiscal court of each county within the area or, in the case of an urban-county government, the body in which legislative power is vested, as well as any entities which signed the notification of intent to apply for area designation stipulated in Section 4 of this regulation and submitted to the cabinet for review and approval.

(2) The solid waste management area shall submit to the cabinet a notice of intent to amend its solid waste plan. The notice shall include a description of the plan amendment and how it will change solid waste management. The cabinet shall advise the applicant of the acceptability of the proposed change. If the change is deemed to significantly impact solid waste management in the area in a manner that will significantly increase the expected cost to individuals for solid waste management or reduce service within the area, the entities that signed the notice of intent to apply for area designation shall:

(a) Approve and adopt the amendments in accordance with Section 7 of this regulation; and

(b) Submit to the cabinet a request for approval of the amendment including all information that is required in Section 8(1) of this regulation that has changed as a result of the plan amendment.

(3) The solid waste management area shall publish a notice that summarizes proposed changes to a solid waste management area plan, in accordance with Section 6 of this regulation, once preliminary approval is granted by the cabinet.

Section 11. Implementation. Each county, urban county government or waste management district shall apply for or reapply for designation as a solid waste management area and shall implement the approved solid waste management area plan.

[Section 12. Severability. If any section, paragraph, phrase, sentence or clause of this regulation is declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.]

Section 12. [13.] Repeal. 401 KAR 49:020, entitled Submission of area plan, 401 KAR 49:030, entitled Designation as a solid waste management area, and 401 KAR 49:050, entitled Establishment of fees, are hereby repealed.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: March 8, 1990
FILED WITH LRC: March 9, 1990 at noon

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

401 KAR 49:070. Contents of the area plan.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888, 224,994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.886, 224.887, 224.888

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the treatment, storage, recycling and disposal of solid wastes. KRS 224.886 grants the cabinet the primary authority to promulgate regulations for coordinating solid waste planning and management activities of waste management districts, counties or any combination thereof. KRS 224.887 requires the cabinet to promulgate regulations for creation of solid waste management areas and for planning for the management and recovery of solid waste. KRS 224.888 requires the area plans to be prepared in accordance with regulations promulgated by the cabinet. This chapter establishes the solid waste planning and management activities requirements. This regulation identifies the contents for area plans.

Section 1. Purpose and Scope of the Solid Waste Management Area Plan. (1) The area plan shall establish an orderly procedure for achieving the objectives of KRS Chapters 109 and 224, meeting the requirements of the solid waste management regulations and demonstrating conformance with the Kentucky waste management plan, as determined necessary by the cabinet. To accomplish the objectives of this subsection, the area plan shall address all solid waste management issues in the proposed area.

(2) In meeting the requirements for resource recovery and recycling, collection, transportation, storage, treatment and disposal activities and facilities, the area plan shall provide for an assessment of the adequacy of existing activities and facilities and the need for new, improved or expanded activities and facilities. It is not intended that detailed engineering design of specific activities or facilities be integrated into the plan.

(3) The area plan shall establish priorities and timetables for action based on a demographic study of the area, the existing level of solid waste management, the solid waste management system deficiencies, the goals and objectives to be accomplished, and the resources and management approaches available to the area. The priorities established shall cover a minimum of twenty (20) years from the date the area plan is submitted to the cabinet for approval in short-term (five (5) years), midterm (six (6) [five (5)] - ten (10) years) and long-term (eleven (11) [ten (10)] - twenty (20) years) planning periods, and shall contain the level of detail specified in Sections 5 and 8 of this regulation.

(a) The short-term period shall contain an actual schedule of activities to be implemented on an annual basis;

(b) The midterm period shall contain objectives and measures sufficiently detailed to show feasibility; and

(c) The long-term period shall contain objectives and measures which shall be general and goal-oriented.

(4) The area plan shall document those policy decisions adopted by the solid waste management area in addressing its solid waste management needs as follows:

(a) The area plan shall address existing legal authority for solid waste management within the proposed area, and shall identify modifications or additions to existing legal authority necessary to implement the proposed plan.

(b) The area plan shall include all incorporated and unincorporated areas in each county within the planning area and describe the relationship between the proposed area and those waste management activities currently being implemented by cities within the proposed area. For solid waste management facilities or activities which are currently operated by or under the control of a city within the proposed area, and shall continue to be operated by such, the plan shall describe the city's solid waste management system in a level of detail equal to that which is required by the county under this regulation. The plan may provide that the city shall continue to operate as an integral unit of the solid waste management area.

Section 2. Format of the Area Plan. The specific requirements for the contents of each chapter of the area plan shall be as specified in Sections 3 through 8 of this regulation. Each area plan shall have the organizational structure and chapter headings which are specified in this section.

(1) Title page and table of contents. Each area plan shall have as the firs page a title page which shall contain the name of the solid waste management area and the month and year the area plan was submitted to the cabinet. The second page of the area plan shall be titled: Table of Contents. Each table of contents shall list the chapter number, chapter name and page number on which the chapter begins.

(2) Chapter I. At the beginning of the first chapter, the following chapter heading shall be used: Chapter I - Background Information and Projections. This chapter of the area plan shall contain a general description of the physical, social and economic characteristics of the area. The specific requirements for the content of this chapter are specified in Section 3 of this regulation.

(3) Chapter II. At the beginning of the second chapter, the following chapter heading shall be used: Chapter II - Existing System. This chapter of the area plan shall contain an inventory and description of the existing solid waste management activities and facilities. The specific requirements for this chapter are specified in Section 4 of this regulation.

(4) Chapter III. At the beginning of the third chapter, the following chapter heading shall be used: Chapter III - Goals and Objectives of the Plan. This chapter of the area plan shall specify the area's goals and objectives for properly managing its solid waste. The specific requirements for this chapter are specified in Section 5 of this regulation.

(5) Chapter IV. At the beginning of the fourth chapter, the following chapter heading shall be used: Chapter IV - Deficiencies of the Existing System. This chapter of the area plan shall contain a description of the existing solid waste management system's deficiencies in meeting the objectives of the area. The specific requirements for this chapter are specified in Section 6 of this regulation.

(6) Chapter V. At the beginning of the fifth chapter, the following chapter heading shall be used: Chapter V - Analysis of Alternative Approaches. This chapter of the area plan shall identify all the alternatives which may be employed to achieve the area's goals and objectives and remedy system deficiencies. The specific requirements for this chapter are specified in Section 7 of this regulation.

(7) Chapter VI. At the beginning of the sixth chapter, the following chapter heading shall be used: Chapter VI - Selected Solid Waste Management System. This chapter of the area plan shall outline the selected solid waste management system to be implemented. The specific requirements for this chapter are specified in Section 8 of this regulation.

Section 3. Chapter I - Background Information and Projections. The area plan shall contain a general description of the physical, social, and economic characteristics of the area. The analysis shall include a description of:

(1) The topography of the area, including a map on a scale of at least 1:125,000 identifying all major topographical features;

(2) Current and projected population centers for five (5), ten (10) and twenty (20) years by census division, enumeration district or other subarea approved by the cabinet;

(3) Current and projected centers of waste generation including estimates of residential, commercial, and industrial wastes for five (5), ten (10) and twenty (20) years by census division, enumeration district or other subarea approved by the cabinet;

(4) Estimates of other solid waste streams such as institutional solid wastes, construction and demolition debris, sludges, septic tank pumpings and medical wastes; and

(5) Any portion of a comprehensive land use plan of the county, counties or city[(ies)], if such a plan exists, as it relates to solid waste management. This analysis shall include any information which outlines siting criteria for solid waste management facilities.

Section 4. Chapter II - Existing System. The area plan shall contain an inventory and description of all existing solid waste management activities and facilities in sufficient detail to assess their adequacy.

(1) Collection and transportation. This information shall include:

(a) A map of the area drawn to a scale of at least 1:125,000 depicting existing subareas to include, if appropriate, the following collection and transportation information in each subarea:

1. Boundaries of the subarea;

2. Collection routes delineated by hauler; and

3. Location and description of greenboxes, convenience centers, transfer stations and ultimate disposal site; and

(b) A narrative describing the existing collection and transportation system in each subarea including, if appropriate:

1. Method of collection, including rates and frequency;

2. Number of households;

3. Level of participation in the collection

services;

4. Amounts of residential, commercial, industrial, and medical waste collected;

5. Capacity of greenboxes, convenience centers, and transfer stations;

6. Mileage from the subarea to the disposal site[(s)] or transfer station; and

7. Name and address of each governmental agency or private company providing the service of waste transportation.

(2) Disposal. The area plan shall describe each site or facility at which the area's solid waste is being disposed. The description shall include the identity, location, live expectancy, ownership, cost of operating each facility, charges to the users, and a statement of the ability of the site to comply with all applicable laws and regulations. This description shall also identify the counties or states that currently use each disposal site or facility.

(3) Open dumps. The area plan shall identify on a map of a scale of at least 1:125,000 and provide a description of all existing open dumps in the proposed area.

(4) Recycling and resource recovery. The area plan shall provide an inventory of all recycling facilities and activities within the area. This description shall include, at a minimum, the company name and address of private recyclers, types of materials recycled, and the level of public participation. This information should also identify any civic activities which allow the citizens of the area to recycle. This information shall include the name of the organization, the items collected and the frequency of these activities.

(5) Legal authority. The area plan shall identify and include copies of all city and county ordinances, resolutions or regulations and waste management district regulations which relate to any aspect of solid waste management.

(6) Storage. The area plan shall identify those regulations and ordinances which provide for proper, safe and sanitary storage of solid waste prior to collection, processing or disposal.

(7) Public education. The area plan shall identify and describe in detail any local organizations, events, or programs which serve as public education forums on solid waste management issues.

(8) Management system. The area plan shall identify all persons, public agencies, committees, commissions, districts or other institutional organizations which are responsible for implementing any part of the present system and include a description of their general responsibilities, authority and enforcement powers.

(9) Financing mechanisms. The area plan shall include a description of financing for the existing solid waste system, including source and amount of funds received and costs of solid waste systems for collection, transportation, treatment and disposal.

Section 5. Chapter III - Objectives of the Plan. The area plan shall identify the short-term, midterm and long-term solid waste management goals and objectives which shall be given priority for implementation by the proposed area. These shall be consistent with state laws and regulations, based on an analysis of deficiencies in the existing solid waste management activities and facilities, the need for new activities and facilities to handle projected waste volumes, and the ability of existing facilities to comply with all applicable laws and regulations. Highest priority shall be given to activities which:

(1) Improve collection and achieve full participation by all residents of the planning area;

(2) Provide for proper disposal through the twenty (20) year planning period;

(3) Eliminate open dumps; and

(4) Promote and encourage resource recovery and recycling activities in order to reduce the amount of wastes disposed of at landfills and maximize the recovery of reusable resources.

Section 6. Chapter IV - Deficiencies of the Existing System. The area plan shall contain a description of the deficiencies of the existing system in meeting the solid waste management planning objectives of the area and Kentucky waste management plan and applicable laws and regulations.

Section 7. Chapter V - Analysis of Alternative Approaches. The area plan shall identify all alternatives which may be employed to achieve the area's goals and objectives as stated in Section 5 of this regulation. This analysis shall include methods of financing each alternative approach, as well as any institutional arrangements which may be needed to implement each alternative. This analysis shall serve as the basis for the area's selected solid waste management system.

Section 8. Chapter VI - Selected Solid Waste Management System. Based upon the objectives of the area plan and the analysis of alternative approaches, the area plan shall describe the selected solid waste management system to be implemented. The area plan shall contain a detailed description of activities which shall be performed to achieve the goals listed for the short-term planning period. This description shall include a schedule detailing the month and year each task shall be initiated and the month and year each task shall be completed. The selected system for the short-term planning period shall include the following elements:

(1) Collection and transportation.

(a) Documentation of the method by which all residents within the planning area will place their waste in or have their waste transported to a cabinet-approved solid waste management site or facility. For each type of collection service utilized, the area shall demonstrate a method for gauging public participation levels throughout the short-term period, with the goal being full participation by all residents by 1995. Collection practices which may be deemed acceptable by the cabinet are as follows:

1. Door-to-door household collection. Collection service may be provided by the public agency responsible for implementation of the solid waste management area plan or by contract, franchise or permit with the private sector.

2. Direct access to a manned convenience center or transfer facility within the planning area. Residents may transport their waste directly to manned convenience centers or transfer facilities within the boundaries of the planning area which meet the environmental performance standards of 401 KAR 47:030.

(b) A map of the area drawn to a scale of at least 1:125,000 depicting changes, if any, which shall be made to the existing collection and transportation systems described in Section 4(1)(a) of this regulation to improve participation in the collection and transportation systems; and

(c) A narrative describing the changes, if any, to the existing collection and transportation systems description contained in Section 4(1)(b) of this regulation, to improve participation in the collection and transportation systems;

(2) Disposal. A description of the sites and facilities at which solid wastes shall be disposed.

(a) For all disposal facilities, whether publicly owned or privately owned, the county shall secure a formal agreement with the facility to assure the facility's capacity and willingness to accept the county's waste for at least throughout the short-term planning period. A copy of the agreement shall be included in the plan.

(b) Where existing disposal facilities have the capacity sufficient to accommodate projected waste loads through the short-term planning period and are in compliance with all applicable laws and regulations, the plan shall reference the description of the existing disposal facilities in Chapter II of the area plan which are required by Section 4(2) of this regulation.

(c) The area plan shall identify any existing solid waste management facilities which shall be phased out in the short-term planning period.

(d) Where an existing disposal facility is assessed as having a life expectancy less than five (5) years, the area plan shall outline a siting procedure and development program which shall be undertaken during the first year of the short-term planning period to provide for the orderly location, development and financing of new or expanded solid waste disposal facilities. This procedure shall demonstrate how all residents within the planning area shall within the short-term planning period have the ability to dispose of their waste in an environmentally and legally sound manner. When the life expectancy of the existing disposal facility is reduced to less than two (2) years, a formal written agreement which guarantees a five (5) year disposal capacity shall be obtained from another permitted disposal facility.

(3) Open dumps and littering. The area plan shall specify planned programs to be implemented for the control and cleanup of open dumps on public and private property. Programs shall include public education, adoption and enforcement of ordinances, and a detailed description and schedule of cleanup activities. The program description shall identify all agencies responsible for implementing the above referenced activities.

(4) Recycling and resource recovery. The area plan shall document how all residents within the planning area shall have access to and be encouraged to participate in resource recovery and recycling activities. This information shall include:

(a) Any new or expanded activities or facilities to be undertaken by the area or the private sector, if available;

(b) Estimated per ton costs associated with collection and disposal activities as compared to per ton costs of alternative resource recovery activities;

(c) The public education and publicity strategies to be implemented to involve the maximum number of people; and

(d) Specific yearly goals for public participation in recycling and resource recovery activities.

(5) Ordinances. The area plan shall describe and identify any modifications or additions to local laws and regulations necessary to implement the area plan. This shall include evaluating legal authority for conformance with the Kentucky solid waste management regulations and identifying how local laws shall be enforced. The area plan shall also contain a description of the required permitting activities of the area by type of facility. The description shall include the procedures and criteria which shall be used by local government to review and act on the expansion of existing facilities or the siting of new solid waste sites or facilities.

(6) Storage. The area plan shall identify any modifications or additions to local ordinances and regulations which provide for proper, safe and sanitary storage of solid waste on the sources' property while awaiting collection, processing or disposal. The area plan **shall** [should] include criteria for safe and effective waste storage.

(7) Public education. The area plan shall describe specific activities to be implemented to promote proper solid waste management. These activities shall involve all sectors of the public including business, government, civic, media, schools and private citizens. These activities may include cleanup campaigns, school curricula, periodic news articles, and special events.

(8) Management system. The plan shall identify all persons, public agencies, committees, commissions, districts or other institutional organizations which shall be responsible for implementing any part of the area plan. One (1) person shall be identified as the lead person and contact for implementation of the area plan. A description of the general responsibilities, authority and enforcement procedures for the person identified shall be included. The plan shall also describe the specific services that shall be provided for area residents.

(9) Financing. The area plan shall include a detailed description of the short-term, midterm and long-term costs to be financed by the public sector, including capital construction and operating costs. The plan shall indicate the means by which implementation shall be financed. The information shall include an estimate of the costs per person for the selected system for the short-term, midterm and long-term periods.

[Section 9. Severability. If any section, paragraph, phrase, sentence or clause of this regulation is declared invalid or unconstitutional for any reason, the remainder of this regulation shall not be affected thereby.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: March 8, 1990
FILED WITH LRC: March 9, 1990 at noon

JUSTICE CABINET
Department of Criminal Justice Training
(As Amended)

500 KAR 2:030. Special law enforcement officers: evaluation examination.

RELATES TO: KRS 61.906
STATUTORY AUTHORITY: KRS Chapter 13A, 15A.160, 61.904
NECESSITY AND FUNCTION: KRS 61.906 authorizes the Secretary of Justice to issue a commission to a person who has successfully completed a written, oral and practical examination, approved by the council, dealing comprehensively with certain prescribed subject areas and demonstrates knowledge and proficiency in firearms safety, range firing and first aid. This regulation prescribes requirements for applying for an evaluation examination and the contents and requirements for such examinations.

Section 1. Application. A person who desires to receive a commission as a special law enforcement officer may file an application for an evaluation examination and waiver of training requirements with the Secretary of Justice. The application is made a part hereof by reference.

Section 2. Evaluation Examination. (1) After the Secretary of Justice has received an application for an evaluation examination and waiver and upon a determination that statutory requirements have been met, the secretary may recommend a candidate for training.

(2) When the Secretary of Justice recommends a candidate for an evaluation examination the Department of Criminal Justice Training shall administer the examination as soon as is reasonably convenient upon written notice to the applicant.

(3) The evaluation examination shall test the knowledge and ability of the applicant in **six (6)** [five (5)] areas. The areas are:

(a) Introduction to law enforcement;
(b) Law enforcement procedures;
(c) Physical security and safety;
(d) Firearms academics;
(e) Firearms practical;
(f) First aid and CPR.

The first four (4) areas are to be tested by written testing procedures. The fifth area is to be a practical firearms proficiency test to be given on a pistol range. That test will consist of eighteen (18) rounds, fired in three (3) sets, from the "weaver stance" at the seven (7) yard line; and eighteen (18) rounds, six (6) rounds point shoulder, six (6) rounds kneeling (strong hand), six (6) rounds kneeling (weak hand), all to be fired from the fifteen (15) yard line.

Candidates participating in the firearms practical evaluation examination shall furnish their firearms (not greater than forty-five (45) caliber) and ammunition for the exercises.

(4) If the candidate passes fifty (50) percent or more of the five (5) examination areas he **shall** [must] take and successfully complete those areas of the special law enforcement officers 120 hour basic course that are comparable to the failed areas. If the candidate fails more than fifty (50) percent of the examination areas he **shall** [must] successfully take and complete the entire 120 hour basic course. Seventy (70) percent or greater of correct answers shall constitute a passing grade. If a candidate holds a valid American Red Cross **Standard First Aid and CPR cards** [Multi-media card] or a recognized equivalent the first aid portion of the examination shall be waived.

W. MICHAEL TROOP, Secretary
APPROVED BY AGENCY: February 5, 1990
FILED WITH LRC: February 12, 1990 at 3 p.m.

JUSTICE CABINET
Kentucky Law Enforcement Council
(As Amended)

503 KAR 1:110. Basic training: graduation requirements; records.

RELATES TO: KRS 15.330(1)(e), 15.440(4)
STATUTORY AUTHORITY: KRS 15A.160
NECESSITY AND FUNCTION: KRS 15.330(1)(e) authorizes the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training. KRS 15.440(4) requires local units of government participating in the Law Enforcement Foundation Program Fund to require all police officers employed on or after July 1, 1972, to successfully complete at least 400 hours of basic training within one (1) year of the date of employment at a school certified or recognized by the council. This regulation prescribes requirements for graduation from a basic training course and for maintenance of basic training records.

Section 1. Basic Training Graduation Requirements. (1) A trainee in a basic training course shall participate in a minimum of 400 hours of training.

(2) A trainee may have excused absences from the course with approval of the director of the certified school or his designee. An excused absence from the course which causes a trainee to miss any of the 400 hours of basic training shall be made up through an additional training assignment.

(3) To successfully complete a basic training course, a trainee must:

(a) [(1)] Participate in a minimum of 400 hours of training.

(b) [(2)] Attain a passing overall grade. Fifty (50) percent of the overall grade shall be the grade on the final examination; the other fifty (50) percent shall be the grade on all graded training areas covered during the course. A trainee may not take the final examination until he has passed all such graded training areas. A trainee who, after taking the final examination, does not have a passing overall grade must repeat the entire course.

(c) [(3)] Successfully complete all graded training areas covered during the course.

1. Only upon failure of an examination and a reexamination shall a trainee be considered to have failed a training area.

2. Only one (1) reexamination in each graded area shall be permitted and it must be completed **in not less than twenty-four (24) hours nor more than** [within] thirty (30) days of the failure. **However, a trainee who fails a skills graded area examination may be permitted to be reexamined in that area sooner than twenty-four (24) hours upon execution of a written request**

and waiver. A trainee who has failed a graded training area must arrange with the school to repeat, and must successfully complete, that training area during a later basic training course.

3. A graded training area that is failed must be repeated and passed within 180 days of the initial failure. If the graded training area that is failed is [physical training, or] M.A.R.C. (the mechanics of arrest, restraint, and control), the repeating of the training in that area at facilities of the Department of Criminal Justice Training at Richmond, Kentucky, is optional with the trainee's agency head, but in any event the trainee must pass an examination on the failed area consisting of a test and if necessary a retest within 180 days of the initial failure.

4. In the event of extenuating circumstances beyond the control of the trainee such as injury, illness or personal tragedy which occurs during a basic training course which prevents a trainee from completing a basic training course, a trainee shall complete the unfinished [and/]or failed graded area within 180 days after return to duty provided the break in service does not exceed one (1) year. This right to repeat a failed graded training area or complete a basic training course which was caused by injury or illness shall not be applicable wherein the failure to pass or complete is caused by a preexisting physical injury, an existing or a preexisting physiological condition. This right to repeaat a failed graded area or complete a basic training course shall be limited to one (1) attempt per calendar year. [In the event of extenuating circumstances beyond the control such as injury, illness or personal tragedy which prevents completion of a repeated graded area within 180 days, the fund administrator or his designee may grant an extension of time but not to exceed 180 days from the termination of the extenuating circumstances.]

5. If a trainee fails to successfully pass a repeated graded training area he must repeat the entire basic training course.

(d) [(4)] Successfully complete all other assignments, exercises, and projects included in the course.

(e) [(5)] If a trainee's employment as a police officer is terminated (resignation or dismissal) while enrolled and prior to completion of a basic training course and later becomes reemployed as a police officer, or if a trainee because of extenuating circumstances beyond his control (illness, personal injury or personal tragedy) is unable to complete a basic training course, he shall complete the unfinished [and/]or failed graded areas within one (1) year after a return to duty or reemployment as an officer, provided, however, the break in employment or duty may not exceed one (1) year.

Section 2. Maintenance of Records. A certified school shall, at the conclusion of each basic training course, complete in triplicate the Department of Criminal Justice Training Form 68, "Application for Training Credit," a copy of which is made a part hereof by reference KLEC Form 29, "Application for Basic Training," for each trainee who has attended the course. The forms shall be sent to the council. After verification by the council, one (1) copy of the form shall be sent to the fund administrator, one (1) copy shall be sent to the head of the trainee's agency, and one (1) copy shall be retained by the council [for central training records purposes]. All training records required for fund purposes shall be retained by the certified school but [and] a copy of pertinent facts shall be sent to the fund administrator upon written request. All such records shall be available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes. All records shall be maintained in accordance with standards established by the State Archives and Records Commission (see KRS 171.410 to 171.740).

W. MICHAEL TROOP, Secretary
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JUSTICE CABINET
Kentucky Law Enforcement Council
(As Amended)

503 KAR 1:120. In-service training: graduation requirements; recognized courses; records.

RELATES TO: KRS 15.330(1)(e), 15.440(5)
STATUTORY AUTHORITY: KRS 15A.160
NECESSITY AND FUNCTION: KRS 15.330(1)(e) authorizes the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training. KRS 15.440(5) requires local units of government participating in the Law Enforcement Foundation Program Fund to require all police officers to successfully complete at least forty (40) hours of in-service training each calendar year at a school certified or recognized by the Council. This regulation prescribes requirements for graduation from an in-service training course and for maintenance of in-service training records and establishes procedures for recognizing training at noncertified schools.

Section 1. In-Service Training Graduation Requirements. A trainee in an in-service training course shall participate in the minimum hours prescribed for the course. A trainee may have excused absences from the course with approval of the director of the certified school or his designee. An excused absence which causes a trainee to miss any of the required hours of in-service training shall be made up through an additional training assignment. A trainee shall be allowed excused absences from no more than twenty (20) percent of the hours of an in-service course. To successfully complete an in-service training course, a trainee shall [must]:

(1) Participate in at least the minimum hours prescribed for the training course.

(2) Pass the final examination or a reexamination.

(3) Successfully complete all graded training areas and all other assignments, exercises, and projects included in the course. If a trainee fails to attain a minimum score of seventy (70) on a final examination in an in-service course, the trainee [he/she] may request a second examination. The request for the second examination shall [must] be made within seven (7) calendar days from the date a notice

of failure was mailed to the trainee. The second examination **shall** [must] contain a completely different set of questions from the first examination and it **shall** [must] be administered within twenty-one (21) days from the date of the request. The time and location of the second examination shall be at the discretion of the supervisor of the in-service program. A failure of a trainee to meet the minimum reexamination requirements shall constitute a course failure.

(4) Comply with all rules and regulations of the certified school, the fund, and the council.

Section 2. In-Service Training Courses at Recognized Schools. The council shall have the authority to recognize schools providing in-service training which are not certified by the council. A trainee who desires to attend an in-service training course at a school that is not certified shall make a written request to the council at least thirty (30) days prior to the first day of the course. The council shall have the authority to grant a request made after the course has been attended, but failure to submit the request at least thirty (30) days in advance of the course shall be justification for not recognizing the course. The council shall review the request and determine whether the school and the course shall be recognized based upon the following:

(1) The quality and reputation of the training school or institution;

(2) The relationship of the course to the officer's rank and responsibility; and

(3) The unavailability of the course at a certified school. If, upon review of the request, the council determines that the trainee may attend an in-service training course at a school or institution that is not certified, the council shall notify the trainee's agency, [the department,] and the fund administrator of its action. A trainee who fails to meet requirements established by the council for attendance at the recognized course (which shall not be less than those prescribed herein for certified schools) shall not have met the requirements of KRS 15.440(5).

Section 3. Maintenance of Records. Each trainee who has successfully completed an in-service course conducted by a school recognized or certified by the council (other than the Department of Criminal Justice Training) shall at the conclusion of such course have the school complete DOCJT Form 68, "Application for Training Credit," a copy of which is made a part hereof by reference. [A certified school shall, at the conclusion of each in-service training course, complete in triplicate the KLEC Form 28, "Application for In-Service Training," for each trainee who has attended the course.] The forms shall be sent to the council. After verification by the council, one (1) copy of the form shall be sent to the fund administrator, one (1) copy shall be sent to the head of the trainee's agency, and one (1) copy shall be retained by the council [for central training records purposes]. All training records required for fund purposes shall be retained by the certified school and a copy shall be sent to the fund administrator. All such records shall be available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes. All records shall be maintained in accordance with standards established by the State Archives and Records Commission (see KRS 171.410 to 171.740).

W. MICHAEL TROOP, Secretary
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JUSTICE CABINET
Department of Criminal Justice Training
(As Amended)

503 KAR 3:010. Basic law enforcement training course trainee conduct requirements; procedures and penalties.

RELATES TO: KRS 15A.070
STATUTORY AUTHORITY: KRS Chapter 13A, 15A.160
NECESSITY AND FUNCTION: KRS 15A.070 authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This regulation prescribes conduct requirements of trainees attending basic law enforcement training courses conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

Section 1. Conduct. A trainee attending a basic training course conducted by the Department of Criminal Justice Training shall be subject to the following rules of conduct:

(1) Absences.

(a) For the purpose of this section, absence is defined as not being physically present in a class.

(b) Any absences of less than twenty (20) percent of the subject area, excused or unexcused, **shall** [must] be made up by completion of an assignment in a manner approved by the section supervisor. Any absence, excused or unexcused, of twenty (20) percent or more, requires the trainee to repeat the area of instruction. Any test occurring during an unexcused absence cannot be made up by the trainee.

(c) To be excused, absences **shall** [must] be for legitimate reasons such as sickness, court appearances, or other emergencies. Written notice **shall** [must] be given when possible before the absence or on the first day upon returning in unexpected absence.

(2) Academy uniforms.

(a) Cadet uniform of the day. A uniform of the day is required by the Department of Criminal Justice Training. Cleaning and maintaining the uniform is the trainees' responsibility. Daily inspections will be made and the trainee **shall** [must] wear the uniform in the manner prescribed below.

(b) The uniform shall be clean and well pressed. Department collar pins will be worn centered on the collar parallel to the top edge and three-fourths (3/4) inch back from the vertical edge of the collar. The collar pins shall be cleaned and shined.

(c) The trainee name tag shall be centered on the left breast pocket flap.

(d) One (1) pen, the same color as the officer's collar pins, may be carried in the left breast pocket.

(e) The shirt sleeves shall not be worn rolled up nor any button on the shirt unfastened except

the collar button.

(f) Each trainee shall wear a clean white high neck polo shirt with an unstretched collar under his uniform shirt.

(g) A plan buckle black belt approximately one (1) inch or more in width **shall** [must] be worn with the trousers (with the exception of female trainee trousers).

(h) Black or navy blue socks shall be worn while in uniform.

(i) All trainees shall wear clean, shined black leather, plain-toed, police-type shoes, except as directed by class coordinator dependent on nature of course activity.

(j) Trainees shall wear the DOCJT visored utility cap as part of the designated basic training uniform.

(k) The visored utility cap shall be worn during roll call, inspection (excluding graduation), and all outdoor exercises.

(l) The visored utility cap, when worn, shall not be tipped backwards or worn to one side; it shall be worn either straight away or slightly forward.

(m) The brim or visor of the visored utility cap shall not be rolled or creased.

(n) The DOCJT tee-shirt shall only be worn during physical training.

(3) Alcoholic beverages or other intoxicating substances.

(a) A trainee shall not possess, consume nor be under the influence of alcoholic beverages or controlled substances not therapeutically prescribed by a physician while on property utilized by the Department of Criminal Justice Training.

(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the basic course supervisor of the use of controlled substances or medication whether or not it has been prescribed by a physician.

(4) Breaks.

(a) Each class may be allowed a ten (10) minute break per hour of instruction when possible. The course instructor shall designate the specific time and place for breaks.

(b) Basic trainees, attending class in the Stratton Building, are prohibited from taking breaks (including lunch time before or after eating) except in the following designated areas:

1. Lower level of breezeway (outside, between main building and gym);

2. Upper level of the Stratton Cafeteria; and

3. Second floor vending area - only when cafeteria is closed.

(5) Chain of command.

(a) All communications shall follow chain of command of the Department of Criminal Justice Training.

(b) Exceptions are permissible when necessary in conducting a training session.

(6) Conduct unbecoming an officer trainee.

(a) A trainee shall not conduct himself in a manner unbecoming an officer trainee.

(b) For the purposes of this section conduct unbecoming an officer trainee shall consist of, but not be limited to:

1. Inefficient or wasteful use of materials, supplies and equipment issued by the Department of Criminal Justice Training for the use by trainees;

2. Disorderly or boisterous behavior which is or may become disruptive to a training session;

3. Careless, negligent, or inattentive conduct which creates or may create a risk of injury to others during a training session;

4. Malingering or sleeping during a training class;

5. Wearing clothing that is so dirty or tattered as to present a slovern appearance;

6. Wearing clothing in a manner that is sexually revealing or suggestive; or

7. Aiding or abetting another in any of the foregoing.

(7) Dishonesty.

(a) A trainee shall not cheat or attempt to cheat on an examination, other evaluation or assigned project; alter or attempt to alter an examination score; deceive for profit or gain; or steal.

(b) A trainee shall not encourage, aid or abet any trainee in any of the foregoing proscribed conduct.

(8) Dormitory conduct.

(a) Basic training course trainees unless excepted shall reside in the dormitory designated by the Department of Criminal Justice Training during basic training and shall not travel to their homes except on weekends or holidays when school is not in session. Circumstances which would require emergency leave will be addressed by the training director on a case-by-case basis. A trainee who lives in Clark, Estill, Fayette, Garrard, Jackson, Jessamine, Madison or Rockcastle County may be permitted to commute to training if the trainee's chief or chief law enforcement officer so requests in writing and agrees to accept the condition that if such trainee is tardy for roll call three (3) times the trainee's privilege to commute shall be withdrawn and required to live in the dormitory for the remainder of the course.

(b) Basic training course trainees shall return to their dormitory rooms by 10:30 p.m., Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions **shall** [must] be approved by the class coordinator and reported through channels to the director, in writing.

(c) Backing into parking spaces is prohibited.

(d) Basic training course trainees shall observe "lights out" by 11 p.m. Sunday through Thursday except on nights prior to an academic test when the time will be extended to 12 midnight.

(e) Trainees living in the dormitory shall conduct themselves in an orderly manner. Any dangerous or disruptive behavior such as but not limited to rowdiness, loud noise, theft, immoral or obscene conduct shall not be committed.

(f) Each trainee will be responsible for cleaning his area. Each morning, prior to leaving for class, the trainee **shall** [must] ensure his room is clean, free of trash, beds made and the room ready for inspection.

(g) Doors **shall** [must] be locked whenever a room is unattended. While the room is unoccupied during training hours (8 a.m. - 5 p.m.), the window coverings **shall** [must] be left open to their widest extension.

(h) The use of cooking appliances such as hot plates, electric skillets and ovens is prohibited.

(i) All dorm rooms and lockers are subject to

inspection search for purposes of safety, sanitation and rule violations by the staff of the Department of Criminal Justice Training.

(j) The lobby of the dormitory is available to entertain visitors and guests and is not to be used as a group study area.

(k) A trainee residing at the dormitory shall:

1. Turn off all lights upon departure from the room;

2. Turn off air conditioner when leaving the room for a long period of time, including school hours and weekends while away; and

3. Turn off heating unit when leaving the room for a long period of time unless the temperature is near freezing - then leave the heater on low.

(l) A trainee shall not have any person of the opposite sex in his or her dormitory room without written permission of the class coordinator or higher staff member. No visitation shall be permitted after 10:30 p.m.

(m) Pets, animals or birds of any kind shall not be kept in rooms of the dormitory facilities.

(9) General classroom conduct.

(a) Trainees conducting themselves in a boisterous or disruptive manner which does or may interfere with the orderly presentation of training materials or instruction is prohibited and may be removed from the classroom at the option of the instructor.

(b) The use of tobacco, drink or food products and the wearing of hats or caps is prohibited in all classrooms in which Department of Criminal Justice Training classes are being conducted. The use of head cover may be permitted by an instructor in outdoor classroom training sessions.

(c) As used in this section, classroom includes all indoor facilities and outdoor areas utilized by the Department of Criminal Justice Training for training purposes whether the facilities are regularly utilized by the department or periodically utilized such as state parks, hotels/motels, law enforcement agencies or colleges and universities.

(10) Gifts. A trainee, individually or as a participant in group action, shall not give or contribute toward the giving of a gift of value to a staff member or guest instructor of the Department of Criminal Justice Training while participating as a trainee in any course conducted by the Department of Criminal Justice Training.

(11) Grooming (personal).

(a) The training shall be clean shaven with sideburns no longer than the bottom of the ear lobe. Mustaches are permitted if they are neatly kept, but only if the trainee has the mustache upon arrival. Beards shall not be permitted without the trainee's written departmental approval. The trainee shall not have hair that is unkept nor longer than medium length. The hair **shall** [must] not be over the collar, with the exception of female trainees.

(b) Personal appearance shall be such as to project an image which will reflect favorably upon the trainee as well as the Department of Criminal Justice Training and the trainee's employing agency.

(c) Clothing, jewelry or other accessories which depict obscenities (either pictorially or written) or any symbol representing objects not considered in good taste (based on professional police standards, or which depict words considered abusive) cannot be worn while attending Department of Criminal Justice Training classes or while on Department of Criminal Justice Training or campus property.

(12) Improper charges to the Department of Criminal Justice Training.

(a) A trainee shall not charge any item or service to the Department of Criminal Justice Training without written approval of an authorized Department of Criminal Justice Training representative.

(b) A trainee shall not willfully or negligently damage, destroy, or fail to return property of the Department of Criminal Justice Training or university. Failure to comply with this regulation shall result in a trainee having to replace or pay for the damaged, destroyed or lost property.

(c) A trainee cannot be considered to have successfully completed basic training, and will not be allowed to graduate, until he has returned all issued items or made satisfactory arrangements to pay for nonreturned items or damaged items.

(13) Insubordination.

(a) A trainee shall not be insubordinate.

(b) For the purpose of this section insubordination means:

1. A refusal to obey a lawful order from an instructor or other staff member of the Department of Criminal Justice Training authorized to convey the order;

2. Disrepectful conduct consisting of, but not limited to, use of vulgarity, rude remarks, obscene comments or gestures.

(14) Tardiness.

(a) Class shall begin and end promptly as scheduled unless otherwise specified. All trainees are expected to be punctual for class and school functions.

(b) Those who are late during the first ten (10) minutes of a class without justification shall be considered tardy.

(c) Arrival after ten (10) minutes will be considered an absence.

(15) Weapons, explosive substances, and other devices.

(a) Weapons.

1. Deadly weapons (as defined in KRS 500.080) or ammunition therefore shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training except those specifically authorized by the Department of Criminal Justice Training. Weapons specifically designated by the Department of Criminal Justice Training for training purposes and which are not provided by the Department of Criminal Justice Training shall only be brought directly to the facilities of the department at specific times and removed all as may be deemed appropriate by the department. Such weapons may not be stored in trainee vehicles parked on property utilized by the Department of Criminal Justice Training.

2. Weapons specifically designated by the Department of Criminal Justice Training to be used for training purposes shall be stored in a vault to be provided by the department at all times when they are not being used directly in a training session and may be removed only for scheduled training, servicing, cleaning, or repair purposes. Servicing, cleaning, and repairs of weapons shall be effected (other than repairs which may require expertise of a qualified gunsmith) only at times, places and subject to such conditions and supervision as may be approved by the supervisor of the basic

training section. Such activity shall only be conducted in the presence of a certified firearms instructor.

(b) Devices other than firearms.

1. Destructive devices (as defined in KRS 237.030), booby trap devices (as defined in KRS 237.030), "stun" guns, or fireworks (in all forms) shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training.

2. Exceptions may occur for training purposes and then only as they may be provided by the department.

(c) Hazardous substances.

1. Hazardous substances (as defined in KRS 224.877) shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training.

2. Exceptions may occur for training purposes and then only as they may be provided by the department.

(d) Confiscation.

1. Any instructor, supervisor, assistant director or director who observes any violation of this section, shall immediately confiscate the offending item or substance.

2. These items shall then be stored in a safe and secure facility of the Department of Criminal Justice Training pending appropriate disposition.

Section 2. Summary Action. (1) Recognizing that conduct of a trainee may constitute an immediate danger or a immediate threat of danger to self or others, an instructor, section supervisor, training assistant director, director or the commissioner, having knowledge of such conduct, may summarily discipline the trainee by reprimand, suspension from the particular training activity or by other appropriate action.

(2) Following such disciplinary action, the foregoing rules of procedure set forth in Section 4 of this regulation shall be applicable.

Section 3. Penalties. (1) For the following violation:

(a) Alcoholic beverages or other intoxicating substances, i.e., being on property utilized by the Department of Criminal Justice Training while under the influence of alcoholic beverages or controlled substances not prescribed by a doctor, or if prescribed by a doctor participating in a training exercise while under the influence thereof to the extent that it endangers the trainee or other persons or property;

(b) Conduct unbecoming an officer trainee, i.e., willful, careless, negligent or inattentive conduct which causes injury or creates a grave risk of injury to another person or property;

(c) Dishonesty;

(d) Dormitory conduct, consisting of disorderly conduct proscribed by Section 1(7)(e) of this regulation;

(e) Property loss or damage, i.e., willfully or negligently damaging, destroying or failing to return property of the Department of Criminal Justice Training or university;

(f) Weapons and explosives;

(g) A second violation of the rules described in Section 1(1)(b) of this regulation. The following penalty may be imposed:

1. Expulsion from training with or without prejudice. (Such expulsion shall be deemed a course failure);

2. Loss of privileges (meals, housing or both);

3. Suspension from training. (Such suspension shall be deemed a failure for that portion of training);

4. Written reprimand (with a copy filed with trainee's employing agency);

5. Probation.

(2) For the following violations:

(a) Alcoholic beverages or other intoxicating substances, i.e., the use or possession thereof not prescribed by a doctor on or about property utilized by the Department of Criminal Justice Training; possession of alcoholic beverages [and/]or intoxicating substances in a dormitory room shall result in loss of housing privilege;

(b) Conduct unbecoming an officer trainee except that which causes injury or damage to others or property per subsection (1) of this section;

(c) Curfew violation as proscribed by this subsection;

(d) Improper charges to the Department of Criminal Justice Training;

(e) Insubordination;

(f) Two (2) violations of other rules. The following penalty may be imposed:

1. Loss of privileges (meals, housing or both);

2. Suspension from training not to exceed five (5) days (such suspension shall be deemed a failure for that portion of training);

3. Written reprimand (with a copy filed with trainee's employing agency);

4. Probation.

(3) For all other violations not specifically noted in subsections (1) and (2) of this section the following penalty may be imposed:

(a) Written reprimand;

(b) Written warning;

(c) Probation.

Section 4. Who May Impose Penalties. (1) Instructor. An instructor may only impose a penalty consisting of a written warning.

(2) Supervisor. A supervisor may only impose a penalty consisting of a written warning, a written reprimand or a probation.

(3) Training director. The director of the training division may only impose a penalty consisting of a written warning, written reprimand, suspension from training, a loss of privileges or probation.

(4) Commissioner. The commissioner may impose a penalty consisting of any of the previously identified penalties, expulsion from training or probation.

Section 5. Complaint Process. (1) Complaint. any employee of the Department of Criminal Justice Training, guest instructor, guest or any basic course trainee having reasonable grounds for believing that a trainee has violated any of the rules of conduct identified herein or any violation of the law may file a complaint with the supervisor of the basic training section. This complaint should be but is not required to be in writing setting forth the facts upon which the complaint is based. If an instructor or the supervisor observes a violation of a rule for which only a penalty of a written warning or reprimand is provided a complaint need not be filed.

(2) Review of complaint.

(a) Upon receiving a complaint of a violation of these rules of conduct or of a violation of law the supervisor of the basic training section shall inquire into the matter and take such statements as may be advisable.

(b) After an inquiry into and review of the complaint the supervisor of the basic section may dispose of the complaint by the issuance of a written warning or reprimand or file charges.

(c) If the supervisor of the basic section deems it advisable to file charges the file together with the written request specifying the proscribed conduct shall be forwarded to the legal officer.

(3) Charges.

(a) Upon receipt of a request for charges, the legal officer shall review the request and the file to determine the sufficiency of the requested charge.

(b) The legal officer may make or cause further inquiry into the matter for additional information.

(c) The legal officer shall file such charges against a trainee as the legal officer believes is justified from the file and further inquiry or may deny the request for charges if the facts do not support any charges. If the legal officer declines to proceed with charges he shall notify the commissioner with a statement of reasons and the commissioner shall review the decision.

(4) Form.

(a) Charges shall be in writing.

(b) The proscribed conduct shall be particularly described so as to reasonably inform the trainee of the nature of the allegation.

(c) The charges form shall state the time, date and place the trainee shall be required to appear and plead to the charges.

(d) The legal officer shall sign the charges form and have a copy served upon the trainee either in person or by mail.

Section 6. Summary Disposition. (1) At the appearance of the trainee the charges shall be read to the trainee and explained if need be.

(2) The trainee shall be advised of a proposed penalty to be assessed in the event the charges are admitted or in the event the trainee denies the charge but waives a hearing.

(3) The trainee shall be requested to enter a plea.

(4) If the trainee admits the charge he shall be permitted to make a statement of explanation.

(5) If the trainee admits the charge or denies the charge but waives a hearing, penalty shall be assessed and an order entered.

(6) If the trainee denies the charge and requests a hearing a date and place shall be forthwith determined and the trainee notified either in person or by mail.

Section 7. Hearing. (1) The hearing shall be open.

(2) A trainee charged with a violation shall have the right to be present at a hearing, to testify, to present evidence in his own behalf, present witnesses, and to question those testifying against him.

(3) Formal rules of evidence and procedures shall not be applicable.

(4) The hearing shall be recorded by audio means but need not be transcribed.

(5) Affidavits may be received provided a copy is served on the other side not less than five (5) days prior to the hearing.

(6) The legal officer shall prepare a finding of fact, conclusion of law and order at the conclusion of the hearing pursuant to direction of the staff member conducting the hearing.

Section 8. Review. (1) A penalty imposed by an instructor, supervisor or director shall be automatically reviewed by the next highest level in the chain of command.

(2) The review shall be made on the record only, i.e., on the audio recording of evidence, documents and statements introduced at the initial hearing.

(3) The review shall be limited to a determination of whether there are reasonable grounds for believing that the charge or charges have been sustained by the evidence and whether the penalty imposed is commensurate with the seriousness of the evidence.

Section 9. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the point (reasons) on which the appeal is based and shall be on a form provided by the Department of Criminal Justice Training. The form is made a part hereof by reference.

(b) A copy of the order being appealed shall be attached to the notice of appeal.

(c) A copy of the notice of appeal shall be delivered to the Commissioner of the Department of Criminal Justice Training by certified mail.

(2) The appeal shall not be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the initial hearing.

(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

COMMONWEALTH OF KENTUCKY
JUSTICE CABINET

In the matter of:

_____
(Name)

NOTICE OF APPEAL

Comes _____ (name) who appeals from an Order of the Commissioner of the Department of Criminal Justice Training dated _____, 19____, a copy of which is annexed hereto and made a part hereof, and requests that said Order be reversed and held for naught.

The basis and reasons for this appeal are as follows: _____

This the _____ day of _____, 19___.

_____
NAME AND ADDRESS
_____
_____
_____

Served on the Department of Criminal Justice Training by mailing a true copy hereof to the Commissioner thereof by

certified mail this the _____
day of _____, 19___.

_____
NAME

W. MICHAEL TROOP, Secretary
APPROVED BY AGENCY: January 5, 1990
FILED WITH LRC: February 12, 1990 at 3 p.m.

JUSTICE CABINET
Department of Criminal Justice Training
(As Amended)

503 KAR 3:020. In-service law enforcement training course trainee conduct requirements; procedures and penalties.

RELATES TO: KRS 15A.070
STATUTORY AUTHORITY: KRS Chapter 13A, 15A.160
NECESSITY AND FUNCTION: KRS 15A.070 authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This regulation prescribes conduct requirements of trainees attending in-service law enforcement training courses conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

Section 1. Conduct. A trainee attending a training course conducted by the Department of Criminal Justice Training shall be subject to the following rules of conduct:

(1) Absences.

(a) For the purpose of this section, absence is defined as not being physically present in a class.

(b) Any absences of less than twenty (20) percent of the subject area, excused or unexcused, **shall** [must] be made up by completion of a special assignment determined by the instructor of the missed subject area and approved by the supervisor of the section conducting the course. Any absence, excused or unexcused, of twenty (20) percent or more, requires the trainee to repeat the area of instruction. Any test that occurs during an unexcused absence cannot be made up.

(c) To be excused, absences **shall** [must] be for legitimate reasons such as sickness, court appearances, and emergencies. Written notice **shall** [must] be given when possible before the absence or on the first day upon returning in unexpected absences.

(2) Alcoholic beverages or other intoxicating substances.

(a) A trainee shall not possess, consume nor be under the influence of alcoholic beverages or controlled substances not therapeutically prescribed by a physician while on property utilized by the Department of Criminal Justice Training.

(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication whether prescribed or not he or she shall not participate in any training activity if the trainee is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the in-service course supervisor of the use of controlled substances or medication whether or not it has been prescribed by a physician.

(3) Appearance.

(a) Personal appearance shall be such as to project an image which will reflect favorably upon the student officer as well as the Department of Criminal Justice Training and the student officer's employing agency.

(b) Clothing, jewelry or other accessories which depict obscenities (either pictorially or written) or any symbol representing objects not considered in good taste (based on professional police standards, or which depict words considered abusive) cannot be worn while attending Department of Criminal Justice Training classes or while on Department of Criminal Justice Training or campus property.

(4) Breaks.

(a) Each class may be allowed a ten (10) minute break per hour of instruction when possible. The course instructor shall designate the specific time and/or place for breaks.

(b) Trainees, attending class in the Stratton Building, are prohibited from taking breaks except in the following designated areas:

1. Lower level of breezeway (outside, between main building and gym);
2. Stratton Cafeteria; and
3. Second floor vending area.

(5) Conduct unbecoming an officer trainee.

(a) A trainee shall not conduct himself in a manner unbecoming an officer trainee.

(b) For the purposes of this section conduct unbecoming an officer trainee shall consist of, but not be limited to:

1. Inefficient or wasteful use of materials, supplies and equipment issued by the Department of Criminal Justice Training for the use by trainees;
2. Disorderly or boisterous behavior which is or may become disruptive to a training session;
3. Careless, negligent, or inattentive conduct which creates or may create a risk of injury to others during a training session;
4. Malingering or sleeping during a training class;
5. Wearing clothing that is so dirty or tattered as to present a slovern appearance;
6. Wearing clothing in a manner that is sexually revealing or suggestive; or
7. Aiding or abetting another in any of the foregoing.

(c) Disruptive trainees may be removed from the class room at the option of the instructor.

(d) The use of tobacco, drink and food products is prohibited in all classrooms in which Department of Criminal Justice Training classes are being conducted. This policy will apply to meeting rooms in state parks, hotels and rooms of other agencies, if used in a classroom setting and for teaching a Department of Criminal Justice Training course of class, or when being used for Department of Criminal Justice Training sponsored seminar.

(e) As used in this section, classroom includes all indoor facilities and outdoor areas utilized by the Department of Criminal Justice Training for training purposes whether the facilities are regularly utilized by the department or periodically utilized such as state parks, hotels/motels, law enforcement agencies or colleges and universities.

(6) Dishonesty.

(a) A trainee shall not cheat or attempt to cheat on an examination, other evaluation or assigned project; alter or attempt to alter an

examination score; deceive for profit or gain; or steal.

(b) A trainee shall not encourage, aid or abet any trainee in any of the foregoing proscribed conduct.

(7) Dormitory conduct.

(a) Backing into parking spaces is prohibited.

(b) Trainees shall observe "lights out" by 11 p.m. Sunday through Thursday except on nights prior to an academic test when the time will be extended to 12 midnight.

(c) Trainees living in the dormitory shall conduct themselves in an orderly manner. Any dangerous or disruptive behavior such as but not limited to rowdiness, loud noise, theft, immoral or obscene conduct shall not be committed.

(d) Each trainee will be responsible for cleaning his area. Each morning, prior to leaving for class, the trainee **shall** [must] ensure his room is clean, free of trash, beds made and the room ready for inspection.

(e) Doors **shall** [must] be locked whenever a room is unattended. While the room is unoccupied during training hours (8 a.m. - 5 p.m.), the window coverings **shall** [must] be left open to their widest extension.

(f) The use of cooking appliances such as hot plates, electric skillets and ovens is prohibited.

(g) All dorm rooms and lockers are subject to inspection search for purposes of safety, sanitation and rule violations by the staff of the Department of Criminal Justice Training.

(h) The lobby of the dormitory is available to entertain visitors and guests and is not to be used as a group study area.

(i) A trainee residing at the dormitory shall:

1. Turn off all lights upon departure from the room;

2. Turn off air conditioner when leaving the room for a long period of time, including school hours and weekends while away; and

3. Turn off heating unit when leaving the room for a long period of time unless the temperature is near freezing - then leave the heater on low.

(j) A trainee shall not have any person of the opposite sex in his or her dormitory room without written permission of the class coordinator or higher staff member. No visitation shall be permitted after 10:30 p.m.

(k) Pets, animals or birds of any kind shall not be kept in rooms of the dormitory facilities.

(8) Gifts. A trainee, individually or as a participant in group action, shall not give or contribute toward the giving of a gift of value to a staff member of Department of Criminal Justice Training while participating as a trainee in any course conducted by the Department of Criminal Justice Training.

(9) Insubordination.

(a) A trainee shall not be insubordinate.

(b) For the purpose of this section insubordination means:

1. A refusal to obey a lawful order from an instructor or other staff member of the Department of Criminal Justice Training authorized to convey the order;

2. Disrepectful conduct consisting of, but not limited to, use of vulgarity, rude remarks, obscene comments or gestures.

(10) Property loss or damage.

(a) A trainee shall not willfully or negligently damage, destroy, or fail to return property of the Department of Criminal Justice Training or university.

(b) Failure to comply with this regulation shall result in a trainee having to replace or pay for the damage, destroyed or lost property upon notification.

(11) Tardiness.

(a) Class shall begin and end promptly as scheduled unless otherwise specified. All trainees are expected to be punctual for class and school functions.

(b) Those who are late during the first ten (10) minutes of a class without justification shall be considered tardy.

(c) Arrival after ten (10) minutes will be considered an absence.

(12) Weapons, explosives, etc.

(a) Weapons.

1. Deadly weapons as defined in KRS 500.080 other than an officer's regular service weapon or authorized off-duty weapon including ammunition therefore shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training except those specifically authorized by the Department of Criminal Justice Training. Weapons specifically designated by the Department of Criminal Justice Training for training purposes and which are not provided by the Department of Criminal Justice Training shall only be brought directly to the facilities of the department at specific times and removed all as may be deemed appropriate by the department. Such weapons may not be stored in trainee vehicles parked on property utilized by the Department of Criminal Justice Training.

2. Weapons specifically designated by the Department of Criminal Justice Training to be used for training purposes shall be stored in a vault to be provided by the department at all times when they are not being used directly in a training session and may be removed only for scheduled training, servicing, cleaning, or repair purposes. Servicing, cleaning, and repairs of weapons shall be effected (other than repairs which may require expertise of a qualified gunsmith) only at times, places and subject to such conditions and supervision as may be approved by the supervisor of the in-service training section. Such activity shall only be conducted in the presence of a certified firearms instructor.

(b) Devices other than firearms. Destructive devices (as defined in KRS 237.030), booby trap devices (as defined in KRS 237.030), "stun" guns, or fireworks (in all forms) shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training. Exceptions may occur for training purposes and then only as they may be provided by the department.

(c) Hazardous substances. Hazardous substances (as defined in KRS 224.877) shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training. Exceptions may occur for training purposes and then only as they may be provided by the department.

(d) Confiscation.

1. Any instructor, supervisor, assistant director or director who observes any violation of this section, shall immediately confiscate the offending item or substance.

2. These items shall then be stored in a safe and secure facility of the Department of Criminal Justice Training pending appropriate disposition.

Section 2. Summary Action. (1) Recognizing that conduct of a trainee may constitute an immediate danger or a immediate threat of danger to self or others, an instructor, section supervisor, training assistant director, director or the commissioner, having knowledge of such conduct, may summarily discipline the trainee by reprimand, suspension from the particular training activity or by other appropriate action.

(2) Following such disciplinary action, the rules of procedure set forth in Section 4 of this regulation shall be applicable.

Section 3. Penalties. (1) For the following violation:

(a) Alcoholic beverages or other intoxicating substances, i.e., being on property utilized by the Department of Criminal Justice Training while under the influence of alcoholic beverages or controlled substances not prescribed by a doctor, or if prescribed by a doctor participating in a training exercise while under the influence thereof to the extent that it endangers the trainee or other persons or property;

(b) Conduct unbecoming an officer trainee, i.e., willful, careless, negligent or inattentive conduct which causes injury or creates a grave risk of injury to another person or property;

(c) Dishonesty;

(d) Property loss or damage, i.e., willfully or negligently damaging, destroying or failing to return property of the Department of Criminal Justice Training or university;

(e) A second violation of the rules described in Section 1(1)(a) of this regulation. The following penalty may be imposed:

1. Expulsion from training with or without prejudice. (Such expulsion shall be deemed a course failure);

2. Loss of privileges (meals, housing or both);

3. Suspension from training. (Such suspension shall be deemed a failure for that portion of training);

4. Written reprimand (with a copy filed with trainee's employing agency);

5. Probation.

(2) For the following violations:

(a) Alcoholic beverages or other intoxicating substances, i.e., the use or possession thereof not prescribed by a doctor on or about property utilized by the Department of Criminal Justice Training; possession of alcoholic beverages and/or intoxicating substances in a dormitory room shall result in loss of housing privilege;

(b) Conduct unbecoming an officer trainee except that which causes injury or damage to others or property;

(c) Insubordination;

(d) Weapons and explosives;

(e) Two (2) violations of other rules.

The following penalty may be imposed:

1. Loss of privileges (meals, housing or both);

2. Suspension from training not to exceed five (5) days (such suspension shall be deemed a failure for that portion of training);

3. Written reprimand (with a copy filed with trainee's employing agency);

4. Probation.

(3) For all other violations not specifically noted in subsections (1) and (2) of this section the following penalty may be imposed:

(a) Written reprimand;

(b) Written warning;

(c) Probation.

Section 4. Who May Impose Penalties. (1) Instructor. An instructor may only impose a penalty consisting of a written warning.

(2) Supervisor. A supervisor may only impose a penalty consisting of a written warning, a written reprimand or a probation.

(3) Training director. The director of the training division may only impose a penalty consisting of written warning, written reprimand, suspension from training, a loss of privileges or probation.

(4) Commissioner. The commissioner may impose a penalty consisting of any of the previously identified penalties, expulsion from training or probation.

Section 5. Complaint Process. (1) Complaint. Any employee of the Department of Criminal Justice Training, guest instructor, guest or any course trainee having reasonable grounds for believing that a trainee has violated any of the rules of conduct identified herein or any violation of the law may file a complaint with the supervisor who is conducting the particular course at the time or the supervisor of the training section handling that training program. This complaint should be, but is not required to be, in writing setting forth the facts upon which the complaint is based. If an instructor or the supervisor observes a violation of a rule for which only a penalty of a written warning or reprimand is provided a complaint need not be filed.

(2) Review of complaint.

(a) Upon receiving a complaint of a violation of these rules of conduct or of a violation of law the supervisor of the training section of the particular training program shall inquire into the matter and take such statements as may be advisable.

(b) After an inquiry into and review of the complaint the supervisor may dispose of the complaint by the issuance of a written warning or reprimand or file charges.

(c) If the supervisor of the particular training program deems it advisable to file charges, the file together with the written request specifying the proscribed conduct shall be forwarded to the legal officer.

(3) Charges.

(a) Upon receipt of a request for charges, the legal officer shall review the request and the file to determine the sufficiency of the requested charge.

(b) The legal officer may make or cause further inquiry into the matter for additional information.

(c) The legal officer shall file such charges against a trainee as the legal officer believes is justified from the file and further inquiry or may deny the request for charges if the facts do not support any charges. If the legal officer declines to proceed with charges he shall notify the commissioner with a statement of reasons and the commissioner shall review the decision.

(4) Form.

(a) Charges shall be in writing.

(b) The proscribed conduct shall be particularly described so as to reasonably inform the trainee of the nature of the allegation.

(c) The charges form shall state the time,

date and place the hearing on the charges shall be heard.

(d) The legal officer shall sign the charges form and have a copy served upon the trainee either in person or by mail.

Section 6. Summary Disposition. (1) At the appearance of the trainee the charges shall be read to the trainee and explained if need be.

(2) The trainee shall be advised of a proposed penalty to be assessed in the event the charges are admitted or in the event the trainee denies the charge but waives a hearing.

(3) The trainee shall be requested to enter a plea.

(4) If the trainee admits the charge he shall be permitted to make a statement of explanation.

(5) If the trainee admits the charge or denies the charge but waives a hearing, penalty shall be assessed and an order entered.

(6) If the trainee denies the charge and requests a hearing a date and place shall be forthwith determined and the trainee notified either in person or by mail.

Section 7. Hearing. (1) The hearing shall be open.

(2) A trainee charged with a violation shall have the right to be present at a hearing, to testify, to present evidence in his own behalf, present witnesses, and to question those testifying against him.

(3) Formal rules of evidence and procedures shall not be applicable.

(4) The hearing shall be recorded by audio means but need not be transcribed.

(5) Affidavits may be received provided a copy is served on the other side not less than five (5) days prior to the hearing.

(6) The legal officer shall prepare a finding of fact, conclusion of law and order at the conclusion of the hearing pursuant to direction of the staff member conducting the hearing.

Section 8. Review. (1) A penalty imposed by an instructor, supervisor or director shall be automatically reviewed by the next highest level in the chain of command.

(2) The review shall be made on the record only, i.e., on the audio recording of evidence, documents and statements introduced at the initial hearing.

(3) The review shall be limited to a determination of whether there are reasonable grounds for believing that the charge or charges have been sustained by the evidence and whether the penalty imposed is commensurate with the seriousness of the evidence.

Section 9. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the point (reasons) on which the appeal is based and shall be on a form provided by the Department of Criminal Justice Training. The form is made a part hereof by reference.

(b) A copy of the order being appealed shall be attached to the notice of appeal.

(c) A copy of the notice of appeal shall be delivered to the Commissioner of the Department of Criminal Justice Training by certified mail.

(2) The appeal shall not be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the initial hearing.

(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

COMMONWEALTH OF KENTUCKY
JUSTICE CABINET

In the matter of:

_____
(Name)

NOTICE OF APPEAL

Comes _____ (name) who appeals from an Order of the Commissioner of the Department of Criminal Justice Training dated _____, 19____, a copy of which is annexed hereto and made a part hereof, and requests that said Order be reversed and held for naught.

The basis and reasons for this appeal are as follows: _____

This the _____ day of _____, 19___.

_____
NAME AND ADDRESS
_____
_____
_____

Served on the Department of Criminal Justice Training by mailing a true copy hereof to the Commissioner thereof by certified mail this the _____ day of _____, 19___

_____
NAME

W. MICHAEL TROOP, Secretary
APPROVED BY AGENCY: January 5, 1990
FILED WITH LRC: February 12, 1990 at 3 p.m.

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

815 KAR 7:010. Administration and enforcement.

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, and parts thereof, which shall establish standards for construction of all buildings in the state. This regulation establishes the administration and enforcement sections of the Kentucky Building Code. This amendment is necessary to clarify the conditions for continuing a lawful use of the building and to identify the criteria for approval of the building official when a change of use occurs [bring the regulation into technical compliance with KRS Chapter 13A by making amendments and deletions in Sections 1, 22, 23 and 24].

Section 1. Definitions Used in Title 815, Chapter 7. (1) "Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "BOCA" means Building Officials and Code Administrators International, Inc.

(3) "Code official" means the building official or other enforcement officer designated by the appointing authority of a local governmental jurisdiction for the enforcement of this regulation or the codes and standards adopted herein.

(4) [(3)] "Building" as defined by KRS 198B.010(4).

(5) [(4)] "Commissioner" as defined by KRS 198B.010(11).

(6) [(5)] "Department" as defined by KRS 198B.010(13).

(7) [(6)] "Fire official" means the chief of the fire department or of the fire prevention bureau, or if there is not a jurisdiction fire department or fire prevention bureau, such officer as shall be designated by the appointing authority of the jurisdiction, or his duly appointed representative, to enforce the provisions of KRS 227.300 and **Title** 815 **Chapter 10 of the Kentucky Administrative Regulations** [KAR 10:020].

(8) [(7)] "Industrialized building system" or "building system" as defined in KRS 198B.010(18) and applies to a building of any size or for any use all or any component part of which is of closed construction made from precast concrete panels, or precut wood sections fabricated to individual specifications in an off-site manufacturing facility and assembled in accordance with the manufacturer's instructions.

(9) [(8)] "KAR" means Kentucky Administrative Regulations.

(10) [(9)] "KBC" means the Kentucky Building Code as established in this chapter.

(11) [(10)] "KRS" means Kentucky Revised Statutes.

(12) [(11)] "Major structural change" means structural alterations and structural repairs made within any twelve (12) month period costing in excess of fifty (50) percent of the physical value of the structure, as determined by comparison of the extent/value of the alterations involved and the replacement value of the structure at the time the plans for the alterations are approved, using the BOCA Chart for Construction Cost.

(13) [(12)] "Person" means a person, partnership, corporation or other legal entity.

(14) [(13)] "Single family dwelling" means one (1) unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which is not connected to any other unit or building.

(15) [(14)] "Trade or brand name house" means any single structure made of precut or prefabricated panels, sections or individual pieces that are sold or prefabricated under a name that identifies both the manufacturer and a particular type of structure he makes, and that are assembled on a permanent foundation by conventional home-building and electrical and plumbing installation techniques.

Section 2. Scope. This regulation shall supersede any and all other conflicting administration and enforcement provisions which may be incorporated by reference within the KBC.

(1) The KBC shall control all matters concerning the construction, alteration, addition, remodeling, use and occupancy classifications of all buildings in the state.

(2) Trade or brand name houses shall be constructed in accordance with the applicable provisions of the KBC.

(3) The provisions of the KBC relating to single family dwellings, that are not trade or brand name houses or industrialized building systems, shall be mandatory only after a local government, by ordinance, extends the application of the KBC to those units. However, the state plumbing code and the national electrical code shall be applicable to these units, whether or not the local government passes an ordinance. A local government may not enforce any building code other than the KBC on such units.

(4) Unless otherwise specifically provided within the KBC, all references to article or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of the KBC.

(5) The provisions of this code relating to the construction, repair, alteration, enlargement, restoration and moving of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local government authority as historic buildings, subject to the approval of the board of appeals when such buildings are judged by the building official to be safe and in the interest of public health, safety and welfare regarding any proposed construction, alteration, repair, enlargement, restoration and relocation. The building official may require submission of architectural and engineering plans and specifications bearing the professional seal of the designer prior to a determination.

(6) The KBC shall be construed to secure its expressed intent which is to secure public safety, health and welfare insofar as they are affected by building construction quality, electrical systems, plumbing, energy, boiler safety, handicapped accessibility, life safety from hazards of fire and explosion and other disasters. It is the further expressed intent of this code to avoid duplicative plan review and inspection of new construction and to gather together in one (1) set of regulations all the requirements relating to the construction of buildings in the state to enable builders, owners and building officials to be adequately informed.

Section 3. Applicability. (1) The provisions of the KBC shall cover all matters affecting or relating to buildings, and structures, as set forth in Section 2 of this regulation.

(2) No person shall construct a building or structure, extend, repair, remove or alter in violation of these provisions, except for ordinary repairs as defined in Section 4 of this regulation, and except further that the raising, lowering or moving of a building or structure as a unit necessitated by a change in legal grade or widening of a street shall be permitted provided the building or structure is not otherwise altered or its use or occupancy changed.

(3) Any requirement essential for structural,

fire or sanitary safety of a building essential for the safety of the occupants thereof, and which is not specifically covered by this code, shall be determined by other regulations of the department or other applicable law.

(4) Any person who violates any provision of the article or any other provision of the Kentucky Building Code shall be subject to the penalties provided in Section 19 of this regulation.

Section 4. Ordinary Repairs. Ordinary repairs to structures may be made without application or notice to the building official. Ordinary repair means any nonstructural reconstruction or renewal of any part of an existing building for the purpose of its maintenance or decoration, and shall include, but not be limited to, the replacement or installation of nonstructural components of the building such as roofing, siding, windows, storm windows, insulation, drywall or lath and plaster, or any other replacement, in kind, that does not alter the structural integrity, alter the occupancy or use of the building, or affect, by rearrangement, exitways and means of egress; but shall not include additions to or alteration of, or relocation of any standpipe, water supply, sewer, drainage, gas, soil, waste, vent or similar piping, electric wiring or mechanical equipment including furnaces and hot water heaters or other work affecting public health or safety.

Section 5. Installation of Service Equipment. When the installation, extension, alteration or repair of an elevator, moving stairway, mechanical equipment, refrigeration, air conditioning or ventilating apparatus, plumbing, gas piping, electrical wiring, heating system or other equipment is specifically controlled by the provisions of this code, it shall be unlawful to use such equipment until a certificate of approval has been issued therefor by the building official or other agency having jurisdiction.

Section 6. Existing Structures. (1) Continuation of existing use. The legal use and occupancy of any structure existing on the date of adoption of this code or for which it has been heretofore approved may be continued without change, except as may be specifically covered in this code, the Kentucky Standards of Safety (Fire Prevention Code), or the existing structures code adopted by local ordinance, [existing structures or fire prevention codes set forth in 815 KAR 10:020 or] as may be deemed necessary by the code [building] official for the general safety and welfare of the occupants and the public.

(2) Change in use. It shall be unlawful to make any change in the use [or occupancy] of any structure or portion thereof with the potential to [which would] cause a greater hazard to the public because of increased structural or fire loading or inadequate exits for the number of occupants [subject it to any special provisions of this code] without approval of the building official. [; such approval shall be granted] If the building official determines the [finds that such] structure meets the intent of the provisions of the code [law] governing building construction for the proposed new use and occupancy and the proposed [that such] change does not result in any greater hazard to public safety or welfare, he shall approve the change. In making his decision, the building official may require a written opinion from a design professional.

(3) Additions, alterations or repairs. Additions, alterations or repairs may be made to any structure without requiring the existing structure to comply with all the requirements of this code, provided such work conforms to that required of a new structure. Additions, alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building. Any building plus new additions shall not exceed the height, number of stories and area specified for new buildings.

(4) Alterations or repairs to an existing structure which are nonstructural and do not adversely affect any structural member of any part of the structure having a required fire resistance rating may be made with the same materials of which the structure is constructed.

Section 7. Departments of Building Inspection. (1) Each local government singularly or by association with other local governments shall employ a building official or inspector and other code enforcement personnel as necessary to enforce this code within its jurisdiction. The department shall be responsible for the enforcement of this code as it pertains to the buildings assigned by law to it.

(2) All building officials shall be appointed by the chief appointing authority for the respective jurisdictions and shall meet the qualifications for the position which may be established by the appointing authority, in addition to the requirements for certification of Kentucky building code inspectors as detailed in 815 KAR 7:070.

(3) Official records shall be kept of all business and activities of the various local building departments or state building departments specified in provisions of the KBC, and all such records shall be open to the public inspection at all appropriate times under the terms and conditions of KRS Chapter 61.

Section 8. Duties and Powers of the Building Official. The local governments shall designate the persons to be charged with the responsibility of enforcing the KBC within its community and it shall neither adopt nor enforce any ordinance regulating buildings which conflicts with the KBC. The local building official shall be responsible for the examination and approval of plans and specifications and the inspections necessary to determine compliance for the following buildings:

(1) All buildings classified as storage, residential, miscellaneous or utility occupancies so long as they do not exceed three (3) stories in height or 20,000 square feet of floor area.

(2) All buildings classified as assembly business or mercantile occupancies having a capacity which does not exceed 100 persons.

(3) All churches having a capacity of 400 or less persons and 6,000 or less square feet of total floor area.

(4) All buildings classified as factory or industrial occupancies having a capacity which does not exceed 100 persons.

(5) Buildings owned by the Commonwealth are

not subject to local plan review, inspection or approval, regardless of size, occupant load or occupancy classification.

Section 9. Duties and Powers of the Department. (1) It shall be the responsibility of the department to review plans and specifications, issue permits, make inspections and to determine compliance with the KBC for the following buildings:

(a) All buildings classified as assembly occupancies having a capacity in excess of 100 persons, except churches having a capacity of 400 or less persons and 6,000 or less square feet of total floor area;

(b) All buildings classified as educational occupancies;

(c) All buildings classified as institutional occupancies;

(d) All buildings classified as business and mercantile occupancies having a capacity in excess of 100 persons;

(e) All buildings classified as industrial and factory occupancies having a capacity in excess of 100 persons;

(f) All frozen food locker plants;

(g) All buildings classified as high hazard occupancies;

(h) All other buildings containing in excess of three (3) stories or 20,000 square feet of floor area;

(i) All industrialized building systems regardless of occupancy classification;

(j) All buildings owned by the Commonwealth, regardless of occupancy classification or size.

(2) Any local government may petition to the department for additional plan review responsibility. Such petition shall include the evidence of the local governments capability to perform those functions, as required by regulations of the board. Denials of such petitions are appealable to the board.

(3) The appropriate official shall make all the required inspections, or he may accept reports of inspection by authoritative and recognized services or individuals; and all reports of such inspections shall be in writing and certified by a responsible officer of such authoritative service or by the responsible individual.

(4) The building official or his authorized representative should carry proper credentials of his respective office for the purpose of inspecting buildings and premises and the performance of his duty under this code.

(5) The board shall have the powers as may be necessary in the interest of public safety, health and general welfare, to adopt and promulgate amendments to the code and other rules and regulations which are necessary to implement this code and by means of the appeals board procedures to issue interpretations which shall be binding upon the appellee and the building officials. The building official shall implement the provisions of this code to secure the intent thereof.

(6) In the absence of provisions not specifically contained in this code or approved rules and orders, the regulation, specifications and standards listed in Appendix A "Referenced Standards" of the 1987 Edition of BOCA National Building Code filed herein by reference, shall be deemed to represent accepted engineering practice with respect to materials, equipment, system or method of construction therein specified, and shall therefore be acceptable.

Section 10. New Materials and Modifications. (1) It is the purpose of the KBC to set forth performance objections so as to facilitate new technologies, techniques and materials; therefore, alternate materials and equipment may be used provided such an alternative has been tested and listed by nationally recognized testing and research laboratories approved by the board.

(2) The building official may accept supporting data to assist him in his determinations: duly authenticated research reports from BOCA or from other approved authenticated sources for all materials or assemblies proposed for use which are not specifically provided for in the KBC.

(3) Used materials, equipment and devices may be used provided they have been retested and placed in good and proper working condition and approved by the building official.

(4) When there are practical difficulties involved in carrying out structural or mechanical provisions of this code or of an approved rule, the building official having plan review responsibility may vary or modify such provision upon application of the owner or his representative only if the spirit and intent of the law shall be observed and equivalent safeguards provided. The application for modification and the final decision of the building official shall be in writing. When a modification is granted by a local building official, a copy of the application and the decision shall be forwarded to the department and the local fire official.

(5) The board may withdraw authority for plan review from a local building department where it finds, upon petition of the department, that the local inspection agency is not adequately performing any portion of its program and, thereafter, allow the department to preempt that portion of a local program.

Section 11. Inspections. (1) Before issuing a permit the appropriate building officials may examine or cause to be examined all buildings, structures and sites for which an application has been filed for a permit required by this code. No construction shall begin on buildings covered by this regulation until a local building official has issued a permit for such construction and an official representing the department has issued a letter releasing the plans for construction (if it has plan review responsibility).

(2) After issuing a building permit for a building over which he has plan review responsibility the building official shall conduct inspections from time to time during and upon completion of work and he shall maintain a record of all such examinations and inspections and of all violations of the KBC.

(3) The building official may accept reports of approved inspection services which satisfy the requirements of the appropriate governmental entity.

(4) Inspections for KBC compliance of trade or brand name homes shall be the responsibility of the local building official.

(5) In-plant inspections in production and manufacturing facilities for industrialized building systems as well as on-site inspection shall be conducted by the department or its

authorized agent pursuant to 815 KAR 7:020. The local building official shall be responsible to inspect such system only for location under applicable local ordinances.

(6) Upon completion of the building, the owner or agent of the facility shall request a final inspection; the building official shall set a time for said inspection and notify the owner or agent. If compliance with the approved plans and permit has been achieved, a certificate of occupancy shall be issued, as described in Section 17 of this regulation. If compliance has not been achieved, any violations shall be noted and immediately communicated to the owner or agent and the fire official.

(7) The building official shall cooperate with the fire official by allowing the fire official to inspect all buildings during construction. Any recommendations made by the fire official relating to fire safety in construction of a building shall be considered by the building official and if a certificate of occupancy is issued contrary to said written recommendations the building official shall give written notification of his decision to the fire official and the department at once.

Section 12. Right of Entry. Applicants for building permits shall be deemed to consent to inspection during construction and upon completion of construction for the purpose of determining that such building is constructed in compliance with the Kentucky Building Code, and the inspector may enter upon the premises during any reasonable hour.

Section 13. Application for Permit Required. (1) It shall be unlawful to construct, enlarge, or alter a structure; or change the type of occupancy of a building requiring greater strength, exiting or sanitary provisions; or to change to another use; or to install or alter any equipment for which provision is made or the installation of which is required by KBC, without first filing an application with the appropriate building officials in writing and obtaining the required permit therefor; except that ordinary repairs, as defined in Section 4 of this regulation, which do not involve any violation of KBC shall be exempt from this provision.

(2) The application for a permit shall be submitted in writing and in such form as the department may prescribe and shall be accompanied by the required fee.

(3) The application shall contain a general description of the proposed work, its location, the use and occupancy of all parts of the building or structure and of all portions of the site or lot not covered by the building or structure, and such additional information as may be required by the building official.

(4) Application for permit shall be made by the owner or lessee of the building or structure, or agent of either, or by the licensed engineer or architect employed in connection with the proposed work. If the application is made by a person other than the owner in fee, it shall be accompanied by a duly verified affidavit of the owner or the qualified person making the application that the proposed work is authorized by the owner in fee and that the applicant is authorized to make such application. The full names and addresses of the owner, lessee, applicant and of the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application.

(5) The application for the permit shall be accompanied by specifications and plans drawn to scale, with sufficient clarity and detail dimensions to show the nature and character of the work to be performed. The building official shall cooperate with the fire official by allowing the fire official to review all plans. Any recommendations made by the fire official relating to fire safety in construction of a building shall be considered by the building official and he shall report his decision to the fire official at once. When quality of materials is essential for conformity to the KBC, specific information shall be given to establish such quality; and the KBC shall not be cited, or the term "legal" or its equivalent be used, as a substitute for specific information. The building official may waive the requirement for filing plans when the work involved is of a minor nature.

(6) Site plan. There shall also be a site plan showing to scale the size and location of all the new construction and all existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades; and it shall be drawn in accordance with an accurate boundary line survey.

(7) Engineering details. The building official may require adequate details of structural, mechanical and electrical work including computations, stress diagrams and other essential technical data to be filed. All engineering plans and computations shall bear the signature of the responsible design professional. Plans for buildings more than two (2) stories in height shall indicate how required structural and fire resistance rating integrity will be maintained, and where a penetration will be made for electrical, mechanical, plumbing and communication conduits, pipes and systems.

(8) An application for permit for any proposed work should be deemed to have been abandoned six (6) months after date of filing, unless such application has been diligently prosecuted or a permit shall have been issued; except that for reasonable cause, the building official may grant one (1) or more extensions of time for additional periods not exceeding ninety (90) days each.

(9) Subject to the limitations of Section 13 of this regulation, amendments to a plan, application or other records accompanying the same may be filed at any time before completion of the work for which the permit is sought or issued; and such amendments shall be deemed a part of the original application and shall be filed therewith.

(10) The building official may revoke a permit or approval issued under the KBC in case of any false statements or misrepresentation in the application or on the plans.

Section 14. Permits Required. (1) The building official shall examine or cause to be examined all applications for permits and amendments thereto within a reasonable time after filing. If the application or the plans do not conform to the requirements of all pertinent laws, he shall reject such application in writing, stating the reasons therefor. If he finds that the proposed work conforms to the requirements of this code and all laws and ordinances

applicable thereto, he shall issue a permit therefor as soon as practicable.

(2) Any permit issued shall become invalid if the authorized work is not commenced within one (1) year after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six (6) months after the time of commencing the work.

(3) The KBC shall not require changes in the plans, construction or designated use of a building for which a lawful permit has been theretofore issued or otherwise lawfully authorized by approved plans, so long as the substantial construction on the project has commenced within one (1) year from the date the permit was issued.

(4) The building official shall attach his signature to every permit, or he may authorize a subordinate to affix such signature thereto.

(5) The building official shall record and communicate to the owner or agent, the terms and conditions related to his approval to commence construction.

(6) The building official may issue a permit for the construction of foundations or any other part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted, provided adequate information and detailed statements have been filed complying with all the pertinent requirements of this code. The holder of such permit for the foundations or other part of a building or structure shall proceed at his own risk with the building operation and without assurance that a permit for the entire structure will be granted.

(7) Approved plans. The building official shall stamp or endorse in writing the corrected plans approved, and that set shall be available at the building site, open to inspection of the building official or his authorized representative at all reasonable times.

(8) A true copy of the building permit shall be available on the site of operation open to public inspection during the entire time of prosecution of the work and until the completion of the same.

Section 15. Conditions of Permit. (1) A permit shall not be issued until the fees prescribed by the department or the local government have been paid. The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of the KBC, except as specifically stipulated by modification or legally granted variation as described in the permit.

(2) All work shall conform to the appropriate application and plans for which the permit has been issued and any approved amendments thereto and shall be located strictly in accordance with the approved plot plan and any local ordinances governing the location of the building.

(3) A lot shall not be changed, increased or diminished in area from that shown on the official plot site plan, unless a revised plan showing such changes accompanied by the necessary affidavit of owner or applicant shall have been filed and approved, except that such revised plan will not be required if the change is caused by reason of an official street opening, street widening or other public improvement.

Section 16. Fees. (1) A permit to begin work for new construction, alteration, removal, or other building operations shall not be issued until the fees prescribed by law shall have been paid to the department or local building department, nor shall an amendment to a permit necessitating an additional fee because of an increase in the estimated cost of the work involved be approved until the additional fee shall have been paid.

(2) The payment of the fee for construction, alteration, and for all work done in connection with or concurrently with the work contemplated by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that may be prescribed by law or ordinance for water taps, sewer connections, electrical permits, erection of signs and display structures, marquees or other appurtenant structures, or fees of inspections, certificates of use and occupancy or other privileges or requirements, both within and without the jurisdiction of building inspection.

(3) The fee for building permits and other functions performed pursuant to KRS Chapter 198B may be designed to fully cover the cost of the service performed; and the department and each local government is authorized to establish by approved rules or ordinances a schedule of unit rates for buildings and structures of all use groups and type of construction as classified and defined in the KBC.

Section 17. Certificate of Use and Occupancy. (1) No building on which site preparation and assembly were begun, after the Kentucky Building Code becomes effective as to that building, shall be occupied until the appropriate building official issues a certificate of occupancy certifying that the building was constructed in conformance with the standards of the Kentucky Building Code, or assembled or installed in conformance with applicable instructions; except that: a building for which a permit was legally granted prior to the effective date of the KBC may be constructed and occupied under the provisions of relevant regulations in force at the time the permit was issued provided that substantial construction has commenced within one (1) year from the date the permit was issued.

(2) A building or structure hereafter enlarged, extended or altered to change from one (1) use group to another or to a different use within the same use group, in whole or part, and a building or structure hereafter altered for which a certificate of use and occupancy has not been heretofore issued, shall not be occupied or used until the certificate shall have been issued by the building official, certifying that the work has been completed in accordance with the provisions of the approved permit; except that any use or occupancy, which was not discontinued during the work alteration, shall be discontinued within thirty (30) days after the completion of the alteration unless the required certificate is secured from the building official.

(3) After a change of use has been made in a building or structure, the reestablishment of a prior use that would not have been legal in a new building of the same type of construction is prohibited unless the building complies with all applicable provisions of this code. A change from one (1) prohibited use, for which a permit has been granted to another prohibited use shall

be deemed a violation of this code.

(4) Upon the request of the holder of a permit, the building official may issue a temporary certificate of occupancy for a building or structure, or part thereof, before the entire work covered by the permit shall have been completed, provided such portion or portions may be occupied safely prior to full completion of the building or structure without endangering life or public welfare.

(5) When a building or structure is entitled thereto, the building official shall issue a certificate of use and occupancy within ten (10) days after written application. The certificate shall certify compliance with the provisions of this code and the purpose for which the building may be used in its several parts. The certificate of use and occupancy may specify the following information from the 1987 edition of the BOCA National Building Code: the use group, in accordance with the provisions of Article 3; the fire grading as defined in Article 3 and Table 902; the maximum live load on all floors as prescribed in Article 11; the occupancy load in the building and all parts thereof as defined in Article 3 and Article 8; and any special stipulations and conditions of the building permit.

Section 18. Posting Structures. (1) Every building and structure and part thereof designed for business, factory and industrial, high hazard, mercantile, or storage use (use groups B, F, H, M, and S) as defined by the KBC shall be posted on all floors by the owner with a suitably designed placard in a form designated by the department, which shall be securely fastened to the structure in a readily visible place, stating: the use group, and the occupancy load.

(2) Every room constituting a place of assembly shall have the occupancy load of the room posted in a conspicuous place, near the main exit from the room. Approved signs shall be maintained in a legible manner by the owner or his authorized agent. Signs shall be durable and shall indicate the number of occupants permitted for each room use.

(3) All posting signs shall be furnished by the owner and shall be of permanent design; they shall not be removed, or defaced and, if lost, removed or defaced, shall be immediately replaced.

Section 19. Violations and Remedies. (1) It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, remove, use or occupy any building or structure or equipment regulated by the KBC, or cause same to be done, contrary to or in conflict with or in violation of any of the provisions of this code.

(2) The building official shall serve a notice of violation or order on the person responsible for erection, construction, alteration, extension, repair, removal, demolition, use or occupancy of a building or structure in violation of this code or in violation of a detail statement or a plan approval thereunder, or in violation of a permit or certificate issued under the provisions of this code; and such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

(3) If the notice of violation is not complied with promptly, the building official shall request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation or to require the removal or termination of the unlawful use of the building or of the order or direction made pursuant thereto.

(4) Penalties. Any person who shall violate a provision of the KBC or shall fail to comply with any of the requirements thereof or who shall erect, construct, alter or repair a building or structure in violation of an approved plan or proper direction of the building official, or of a permit or certificate issued under the provisions of the KBC, shall be subject to such penalties as may be provided by KRS 198B.990 and other applicable law.

(5) Injunctive relief. The department or any local agency enforcing the uniform state building code may obtain injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, delivery, use, occupancy or construction of any building on which construction was begun after the effective date of said code, upon an affidavit of the department or the local government agency specifying the manner in which the construction, or if a building existing prior to the effective date of said code, the reconstruction, alteration, repair or conversion does not conform to the requirements of the KBC.

(6) No person shall hinder an inspector enforcing any of the provisions of this code in the performance of his lawful duties under this chapter.

Section 20. Notice to Owner. (1) Upon notice from the building official that work on any building or structure is being prosecuted contrary to the provisions of this code or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop-work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work may be resumed.

(2) Unlawful continuance. Any person who shall continue any work in or about the structure after having been served with a stop-work order, except such work as he is directed to perform to remove a violation or unsafe conditions, shall be liable to the restraints provided in Section 19 of this regulation.

Section 21. Authority for Existing Buildings. (1) Upon the issuance of a final approval of a facility and the issuance of a lawful certificate of occupancy with respect to a particular facility, the building official's authority and responsibility as to that facility is ended so far as the KBC is concerned, unless the facility later becomes subjected to the KBC by virtue of Section 6 of this regulation.

(2) Other local or state law must be consulted to determine the existence of other powers given to the building official, such as those related to demolition or authority over unsafe structures, which are not specifically awarded him or her in the KBC.

(3) The State Fire Marshal's Office and the local fire official designated by the local government shall continue to be the persons responsible for enforcement of the fire safety standards for existing buildings and shall also

inspect for fire safety maintenance after a building has been given a final certificate by the building official, under KRS Chapter 227, and 815 KAR 10:020.

Section 22. Local Board of Appeals. Local appeals boards may be appointed to hear the decisions of the local building official in accordance with the provisions of KRS 198B.070.

Section 23. Appeals Procedures. (1) All appeals to the decisions of building officials shall be conducted in accordance with the appeals provisions of KRS 198B.070. The local fire official shall be considered a party entitled to the appeals procedures described in KRS 198B.070.

(3) Appeals to the board shall be in writing and shall be addressed to the Commissioner of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601; Attention: Appeals Board. Such appeals shall include citations of those provisions of the Kentucky Building Code which are at issue, an explanation as stated in subsection (3) of this section of why the decision of the state building official or local building official relative to those provisions is being contested and a copy of the decision rendered by the local appeals board, if any.

Section 24. Construction Control and Responsibilities. (1) The provisions of this section shall define the responsibility of the building official in relation to design professionals and the circumstances under which the department or the local building official shall be authorized to accept design professionals affirmation in their plans and specifications as to compliance with various provisions of this code.

(2) All new, alteration, repair, expansion, addition or modification work involving the practice of professional architecture and engineering as defined by KRS Chapters 322 and 323 shall be prepared by registered professional architects or engineers as certified by the state; and all plans, computations and specifications required for a building permit application for such work must be prepared by or under the direct supervision of the registered architect or engineer and bear his seal and signature in accordance with those statutes.

Section 25. Validity. (1) In the event any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions thereof, which may or shall be determined to be legal; and it shall be presumed that this code would have been passed without such illegal or invalid parts or provisions.

(2) Any invalid part of this code shall be segregated from the remainder of this code by the court holding such part invalid, and the remainder shall remain effective.

(3) The invalidity of any provision in any section of the KBC as applied to existing buildings and structures shall not be held to affect the validity of such section in its application to buildings and structures hereafter erected.

Section 26. Effective Dates for KBC Application. (1) Any building required by Section 9(1) of this regulation to be submitted to the Department of Housing, Buildings and Construction and which was not submitted and accepted for construction prior to February 15, 1980, must be constructed in compliance with the applicable provisions of the KBC.

(2) Any building required by Section 8 of this regulation to be submitted to a local government for plan review and which was not lawfully approved for construction prior to the following timetables shall be constructed in compliance with the applicable provisions of the KBC:

(a) In all local governments in a county containing a first or second class city or urban county government, no later than February 15, 1980.

(b) In all local governments in a county where the largest city is of the third or fourth class, no later than August 15, 1981.

(c) In all local governments in a county containing no city larger than fifth or sixth class, no later than August 15, 1982.

(3) Any local government may adopt the KBC voluntarily before the mandatory date stated in subsection (2) of this section.

Section 27. Whenever the department has entered into a contractual obligation requiring enforcement of applicable federally approved codes, the department shall approve plans and make inspections; using those federal codes as an alternative to other applicable provisions of the KBC, so long as equivalent safety is maintained. Any facility of an occupancy type subject to review by the federal codes may use this section.

Section 28. Day Care Centers. Family child day care homes, group day care homes, day nurseries and child day care centers which comply with the provisions of the Life Safety Code, N.F.P.A. Pamphlet #101, shall be deemed to have satisfied all the life safety requirements of the Kentucky Building Code.

Section 29. Until December 31, 1987, the department shall accept plans in conformity with the requirements of either the 1984 Edition BOCA Code or the 1987 Edition, together with any Kentucky amendments thereto. After December 31, 1987, all plans shall be designed to conform with the 1987 Edition of the BOCA Code as set forth in this regulation.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: Janaury 18, 1990
FILED WITH LRC: January 30, 1990 at 10 a.m.

REGULATION AMENDED AFTER PUBLIC HEARING

PUBLIC PROTECTION & REGULATION CABINET
Public Service Commission
(Amended After Hearing)

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.]

(1) "Applicant" means for purposes of Section 21 of this regulation the developer, builder or other person, partnership, association, corporation or governmental agency applying for the installation of an underground electric supply system.

(2) "Building" means 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.

(3) [(2)] "Customer" means for purposes of Section 21 of this regulation the developer, builder or other person, partnership, association, corporation or governmental agency applying for installation of an underground electric supply system.

(4) [(3)] "Customer premises" means the building for which service is intended or in use.

(5) [(4)] "Distribution system" means electric service facilities consisting of primary and secondary conductors, transformers, and necessary accessories and appurtenances for furnishing electric power at utilization voltage.

(6) [(5)] "Multiple-occupancy building" means 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.

(7) [(6)] "Subdivision" means a tract of land which is divided into ten (10) or more lots for the construction of new residential buildings, or for construction of two (2) or more new multiple occupancy buildings.

Section 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 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) The adoption and applicability of the National Electrical Code as a standard of utility construction is limited to electric utility auxiliary buildings which are not an integral part of a generating plant, substation, or control center. Integral part is defined as essential to the operation or necessary to make complete.

(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 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 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 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 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 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 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 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 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 installed transformer capacity does not exceed 25 KVA. Any utility which extends service to a customer who may require polyphase service or whose installed transformer capacity will exceed 25 KVA may require the customer to pay in advance additional cost of construction which exceeds that for a single phase line where the installed transformer capacity does not exceed 25 KVA.

(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 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 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 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 watthour [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 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 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 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 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 the utility shall use the following table to determine the percentage of the total meters in each group to be tested. [, 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 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 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 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 Electrical Safety Code [and the National Electrical Code heretofore adopted].

Section 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 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) 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.]

[(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.]

[(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.]

(3) [(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].

(4) [(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.

(5) [(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 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 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.

(6) [(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.

(7) [(8)] Construction. All electrical facilities shall be installed and constructed to comply with applicable codes, [and the] rules and regulations of the commission.

Section 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
JAMES T. THORNBERRY, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: April 4, 1990
FILED WITH LRC: April 5, 1990 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH APRIL 15, 1990

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.075, 18A.0751, 18A.111
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.111 relates specifically to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or 12th month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Law Enforcement Officer Trainee	12 months
2112	DES Duty Officer	12 months
2113	DES Duty Officer Senior	12 months
2408	MVE Trainee	12 months
2410	MVE Officer Trainee	12 months
2435	MVE Inspector Trainee	12 months
2480	Water Patrol Officer Second Class	12 months
2481	Water Patrol Officer First Class	12 months
3254	Boiler Inspector Trainee	12 months
3416	Financial Institution Examiner Trainee	12 months
5105	Vocational Education Instructor	12 months
5108	Industrial and Trade Instructor	12 months
5110	MSHA Instructor	12 months
5126	Teacher of Blind and/or Visually Impaired Rank III	12 months
5127	Teacher of Blind and/or Visually Impaired Rank II	12 months
5128	Teacher of Blind and/or Visually Impaired Rank I	12 months
5131	Teacher of Deaf and/or Hearing Impaired Rank III	12 months
5132	Teacher of Deaf and/or Hearing Impaired Rank II	12 months
5133	Teacher of Deaf and/or Hearing Impaired Rank I	12 months
5141	Education Teacher Rank III	12 months
5142	Education Teacher Rank II	12 months
5143	Education Teacher Rank I	12 months
7203	Forest Guard	12 months
7205	Forest Ranger	12 months
7207	Forest Ranger Unit	12 months
7209	Forest Ranger District	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. If an employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion. When the employee is notified, copies of the notice of reversion shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion, except as provided in KRS 18A.111.

Section 3. Probationary Period Upon Reinstatement. An employee who is reinstated, except an employee ordered reinstated pursuant to KRS 18A.111(3), to a position in the classified service shall serve a promotional probationary period.

JAMES M. SHAKE, Chairman
APPROVED BY AGENCY: March 21, 1990
FILED WITH LRC: April 9, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 23, 1990, at 9:30 a.m., in Room 360, Capitol Annex Building. Individuals interested in attending this hearing shall notify this agency

in writing by May 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: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.
(1) Type and number of entities affected: All state agencies with classified employees.
(a) Direct and indirect costs or savings to those affected: No appreciable change.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: 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. This regulation must apply equally to all classified employees and all state agencies with classified employees.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:052. Refusal, revocation, suspension or probation of license or certificate; administrative warning to licensee or certificant.

RELATES TO: KRS 327.070, 327.090
STATUTORY AUTHORITY: KRS 327.040
NECESSITY AND FUNCTION: The board has the responsibility of enforcing the definitive procedures of refusal, revocation, suspension, or placing on probation, the license of any physical therapist and the certificate of any physical therapist's assistant or issuing an administrative warning to any licensee or certificant. Often questions concerning the law or possible violations can be resolved by mutual discussions; however, these guidelines are to be followed when the board receives, or initiates, a written and signed explicit complaint. All aspects of an investigation of a complaint shall be held strictly confidential until after enforcement action is completed or a decision is made to take no action.

Section 1. (1) Complaint. A complaint that a person (hereinafter called respondent) has failed to or refused to obey the requirements of KRS Chapter 327, or the rules and regulations of the board [or its "Standards of Practice Guidelines"] shall be made in writing to or by the Kentucky State Board of Physical Therapy. The complaint must be a clear and concise statement of violation and it must be signed by the complainant. The complainant need not be a physical therapist or assistant. Within ten (10) days the chairman of the board shall acknowledge to the complainant receipt of the complaint by registered or certified mail.
(2) Notice to respondent. Within ten (10) days after receipt of the written complaint, the chairman of the board shall notify the respondent of the complaint by registered or certified mail, return receipt requested. This notice shall require the respondent to reply to the complaint by registered or certified mail to the board within twenty (20) [ten (10)] days after receipt of notice.
(3) Investigation of complaint. The investigation shall be a thorough, objective review of the circumstances under which the alleged violation took place. Two (2) members of the board or its official representative may wish to discuss the complaint with the respondent or complainant to collect and organize more information, but not make a decision. An investigative file shall be formed to include all information and documents acquired during the investigation.

Section 2. [(4)] Arrangement for a hearing. After receiving respondent's written reply and after possible discussion between the board and respondent, the board shall determine if a hearing will be necessary to further investigate the complaint. If no hearing is necessary or all parties come to an agreement, the board shall advise all parties that the matter is determined to be settled or closed. If a hearing is necessary, the board shall give all involved parties thirty (30) days notice of the date, time and place the hearing will be held. [The board shall call a hearing if it may revoke, refuse, or suspend a license or certificate or place a licensee or certificant on probation or issue an administrative warning to a licensee or certificant so that the licensee or certificant can show evidence why his/her license or certificate should not be revoked, refused, or suspended or that the licensee or certificant should not be placed on probation or receive an administrative warning.]
(1) [(5)] Hearing. At the hearing the respondent has the right to be present and to be represented by counsel. The board may or may not wish to follow formal rules of evidence, but the board may exclude irrelevant or repetitious evidence. The hearing may be conducted to bring

out pertinent facts, including the calling of witnesses and the production of pertinent documents. Testimony shall be under oath or affirmation. The hearing shall be recorded. All documents accepted by the board, including the investigative file, shall be made part of the record of the hearing.

(2) [(6)] Findings and decisions. After the hearing the board shall make findings as to all questions of fact and all questions of interpretation of KRS Chapter 327 and [,] board rules and regulations [and the "Standards of Practice Guideline"]. The board may close the matter or settle, and notify all persons involved, or it may take appropriate disciplinary action after conferring with the Attorney General to assure that all guidelines have been followed correctly.

[Section 2. Any person aggrieved by an order of the board denying, suspending or revoking his/her license or certificate may appeal to the Franklin Circuit Court within thirty (30) days after entry of said order for appropriate relief. Examination of the record of the board's action will be done for the purpose of determining whether the board abused its discretion.]

[Section 3. The Kentucky State Board of Physical Therapy hereby adopts a "Standards of Practice Guidelines" for evaluating the performance of a physical therapist or physical therapist's assistant. These guidelines being one and the same as adopted by the Kentucky State Board of Physical Therapy at its meeting on September 29, 1986 and filed with the board minutes.]

WALTER KIM CLEARY, Chairman

APPROVED BY AGENCY: April 6, 1990

FILED WITH LRC: April 12, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1990 at 10 a.m. at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by May 16, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mrs. Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, The Mall Office Center, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207-4215.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly

(1) Type and number of entities affected: N/A

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: N/A

(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:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: These amendments delete the Standards of Practice Guidelines as a document adopted by reference. A new code of ethical standards and standards of practice have been written as a proposed regulation, 201 KAR 22:053. Other revisions delete unnecessary information and increase, from ten to twenty, the numbers of days in which a respondent is to reply to the chairman's letter advising of the complaint which has been filed.

TIERING: Was tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:101. Eligibility and method of applying for physical therapist's assistant['s] certification.

RELATES TO: KRS 327.040

STATUTORY AUTHORITY: KRS 327.040

NECESSITY AND FUNCTION: In order to offer a high level of assistance to the physical therapist in delivery of his service, the role of physical therapist's assistant was developed. [The assistant's work is carried out only under the supervision and direction of the physical therapist to whom the employee is responsible.] This regulation identifies the requirements and mechanisms by which one may become certified as a physical therapist's assistant and defines supervision of practice [and delegation of duties].

Section 1. (1) The physical therapist's assistant is a skilled health care [technical] worker who performs physical therapy and related duties as assigned by the physical therapist. This work is carried out only under the supervision and direction of the therapist to whom the employee is responsible. Supervision requires [means that] the responsible therapist to be available and accessible by telecommunications to the assistant at all times during the working hours of the assistant and to be responsible for the direction of the actions

of the person supervised when services are performed by the assistant. [The therapist shall not designate to a less qualified person any service which requires the skill, knowledge and judgment of the therapist and shall perform personally the following activities, regardless of the setting in which service is given:]

[(a) Interpretation of physician referrals.]

[(b) Initial evaluation of the referred patient.]

[(c) Development of the treatment plan and program, including long- and short-term goals.]

[(d) Selection of the appropriate portions of the program to be delegated.]

[(e) Instruction of the assistant in the delegated functions to be carried out: precautions, special problems, contraindications, goals and anticipated progress, and plans for reevaluation.]

[(f) Supervision of the assistant.]

[(g) Reevaluation of the patient and adjustment of the treatment plan with the assistant present.]

[(h) Arrangement for reports (written and oral) from the assistant through the therapist to the physician or another physical therapy service.]

(2) Only individuals certified as a physical therapist's assistant under this chapter may hold himself out as a physical therapist's assistant, and may use the initials PTA or CPTA, or in any other manner imply that he is a physical therapist's assistant in designating his[/her] title. From the effective date of this regulation, no person shall act, or [nor] hold himself out to be able to act as an assistant in this state unless he/she is certified in accordance with the provisions of the board's regulations.

Section 2. (1) To be eligible for board certification the assistant applicant shall [must] have:

(a) Successfully completed the academic and clinical requirements of an approved physical therapist's assistant program, or been approved by the board as a special candidate for certification as defined in 201 KAR 22:106;

(b) Been granted certification upon completion by the administrator of the approved [that] program;

(c) [Have] Successfully completed an examination required by the Kentucky State Board of Physical Therapy; and

(d) [Have] Paid a fee to the board relative to that person's vehicle of certification as required in 201 KAR 22:135.

(2) All physical therapist's assistant programs accredited by the American Physical Therapy Association are periodically reviewed and updated for approval by the Kentucky State Board of Physical Therapy.

Section 3. A person desiring to practice as a physical therapist's assistant in Kentucky must apply to the Kentucky State Board of Physical Therapy. When requested, an application form and instructions shall [will] be sent to the applicant by the executive secretary of the board. When the completed application, certification of completion of all academic and clinical portions of an approved program, and correct fee have been received, the applicant becomes an official candidate for certification.

Section 4. Four (4) types of candidates will be accepted for certification:

(1) Examination;
(2) Endorsement;
(3) Reinstatement; and
(4) Special.

WALTER KIM CLEARY, Chairman
APPROVED BY AGENCY: April 6, 1990
FILED WITH LRC: April 12, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1990 at 10 a.m. at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by May 16, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mrs. Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, The Mall Office Center, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207-4215.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly

(1) Type and number of entities affected: All licensees and certificands, presently 1,337 persons, but only by eliminating redundancy in requirements being listed in more than one place.

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

1. First year: No change, N/A.
2. Continuing costs or savings: No change, N/A.
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: N/A

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: No change.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: Activities which are not to be delegated by the physical therapist will now be found only in 201

KAR 22:053. This reduces the number of places a person must look to understand licensee responsibility. Other amendments are for clarification or are "housekeeping".

TIERING: Was tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:110. Renewal of assistant's certification.

RELATES TO: KRS 327.040
STATUTORY AUTHORITY: KRS 327.040
NECESSITY AND FUNCTION: This regulation provides specific direction for the biennial renewal of the physical therapist's assistant certificate or temporary permit.

Section 1. The assistant may [will automatically] receive a renewal certificate or temporary permit upon payment on or before March 31 of each uneven numbered year of a renewal fee to be set by regulation and submission of the following written information to the board:

(1) Current complete home address and telephone number, including county of residence;

(2) Current, complete name(s), address(es), telephone number(s), and county(ies) of each location in which physical therapy service is provided; [and]

(3) The name and license number of the assistant's primary physical therapist supervisor at each Kentucky work location; and

(4) [(3)] Written confirmation that the person has not since his certificate or permit was issued or renewed:

(a) Been convicted of a felony or any crime in the courts of this state or any other state, territory or country;

(b) Had his license disciplined or under current disciplinary review in another state;

(c) Had a civil judgment concerning his practice; or

(d) Had any other circumstance which may be in violation of KRS 327.070. Persons convicted or disciplined in the interim before renewal may submit such information during that period for consideration by the board prior to license renewal. Notice of a violation by a certificant, except minor traffic violations which do not involve substance abuse, shall [will] be reviewed by the board.

Section 2. If payment and complete information are not received by the executive secretary by March 31 of each uneven numbered year, the certificate or permit shall lapse and the person shall not work as a physical therapist's assistant in Kentucky.

Section 3. Upon initial certification and each subsequent renewal, each physical therapist's assistant shall [will] be furnished a validation that shall be posted to the original certificate and displayed at the primary physical therapy service location and a billfold certificate which is a means of identifying a person holding himself out as a physical therapist's assistant.

WALTER KIM CLEARY, Chairman
APPROVED BY AGENCY: April 6, 1990
FILED WITH LRC: April 12, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1990 at 10 a.m. at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by May 16, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mrs. Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, The Mall Office Center, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207-4215.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly

(1) Type and number of entities affected: Currently 323 physical therapist's assistants.

(a) Direct and indirect costs or savings to those affected: Neither costs nor savings involved.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: Will be required to report the name and license number of physical therapist who is the primary supervisor.

(2) Effects on the promulgating administrative body: Will ease the problem of identifying the supervisor of an assistant.

(a) Direct and indirect costs or savings: No costs are involved.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Nothing significant.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: Because a physical therapist will no longer be able to supervise more than the equivalent of four full-time persons providing patient care, this reporting of the name of the supervisor will assist the board in "matching" supervisors to those who require supervision.

TIERING: Was tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:047. Specified areas; seasons, limits for upland game birds, furbearers and small game.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.180, 150.300, 150.340, 150.360, 150.370, 150.399, 150.400, 150.410, 150.415, 150.416, 150.417, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation pertains to the hunting seasons, bag and possession limits for upland game birds, furbearers and animals on specified wildlife management areas and refuges. This regulation is necessary for the continued protection of these species and to insure a permanent and continued supply of wildlife resources for present and future residents of the state. The function of this regulation is to provide for the prudent taking of upland game birds, furbearers and animals within reasonable limits based upon an adequate supply. This amendment is necessary because of changes in season dates and the opening or closure of certain wildlife management areas to hunting.

Section 1. All statewide and specified area regulations, seasons, bag and possession limits apply to the following wildlife management areas and refuges unless exceptions are listed.

Section 2. Exceptions to Statewide Small Game Hunting Regulations for Wildlife Management Areas and Refuges. (1) West Kentucky Wildlife Management Area located in McCracken County.

(a) Quail and rabbit: November 1 through January 31 on Tracts 2, 3, 6 and 7; January 1 through 10 on Tracts 1, 4 and 5 [December 22 through 31 on Tracts 1 and 5; and January 1 through 10 on Tract 4].

(b) Squirrel (gray and fox): from opening of Western zone squirrel season through October 31 on Tracts 1, 2, 3, 4, 5 and 6. November 1 through December 31 on Tract 6 only.

(c) Raccoon and opossum: tracts 1 through 6 only. There is no shakeout season on this area.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(e) All tracts designated by numbers followed by the letter "A" are closed to hunting.

(f) No rifles, or ball or slug ammunition of any type shall be allowed for taking small game.

(g) Unleashed dogs are prohibited April 1 through the opening of Western Zone squirrel season, except during permitted field trials.

(h) Tract 6 is closed to vehicular traffic February 1 through April 16.

(i) There shall be no upland game bird, small game or furbearer hunting, trapping or unleashed dogs allowed during the deer quota hunts.

(2) Land Between the Lakes Wildlife Management Area (LBL) season through September 23; December 1 through January 31; and during deer archery season only by legally licensed and equipped deer archery hunters.

(a) Squirrel (gray and fox): from opening of Western Zone squirrel season through September 28 [22], December 1 through January 31; and during deer archery season only by legally licensed and equipped deer archery hunters.

(b) Quail: December 1 through the last day of February.

(c) Rabbit: December 1 through the last day of February.

(d) Raccoon and opossum: Tuesday, Thursday, Friday and Saturday nights only during the period December 1 through January 31. Daily bag limit one (1) person per night. Raccoon and opossum hunters shall check in and out nightly at designated check station. Harvest report cards shall be displayed in vehicle windshield while hunting and submitted at the check station upon completion of each night's hunt. Season shall [will] be closed in some hunt areas on dates listed in the LBL Hunting Guide.

(e) Field trials: September 1 through March 31. Scheduled basis only. Written requests shall be received by LBL at least ten (10) days prior to the proposed hunt date. Approval shall be obtained from LBL and the Department of Fish and Wildlife Resources District Supervisor. Field trials shall be recognized club hunts and each participant shall be on a club roster for that hunt.

(f) Fox chasing: from sunset to sunrise; third Saturday in August through the third Saturday in September [October 1] south of Highway 68 to state line.

(g) Fox (gray and red) and bobcat taking: gun and archery on December 1 through January 31.

(h) Groundhog [Woodchuck]: daylight hours only. March 15 through March 31 and during the LBL deer archery season only by legally licensed and equipped deer archery hunters. All harvested animals shall be removed from the area. Gun hunting is prohibited in Hunt Area 8 and in that portion of Hunt Area 9 designated as the ORV area.

(i) Coyote: daylight hours only by legally licensed hunters during any LBL open season with weapons specified for that season.

(j) Bird dog, beagle and raccoon hound training season: during the entire month of October only in areas designated in the LBL Hunting and Angling Guide.

(k) All dogs shall wear a collar bearing the owner's name, address, and telephone number. Dogs shall not be used for hunting October 1 through November 11, except in authorized field trials and designated dog training Hunt Areas.

(l) Trapping for furbearers (including bobcats).

1. Only those persons who are selected by a drawing are permitted to trap furbearers on LBL.

2. Authorized trappers shall [may] trap in assigned areas only and shall report their harvest in accordance with LBL instructions.

3. Trapping season: January 7 [December 26] through January 20 [8] for all furbearers.

4. Trapping devices. No. 3 or smaller foothold traps, padded foot-hold traps and snares without self-locking devices are permitted. The jaws of No. 1 1/2 and larger foothold traps used on land shall be offset three-sixteenths (3/16) inch or be padded foot-hold traps [of the soft catch-type trap]. Water sets are restricted to No. 3 or smaller foothold traps, padded foot-hold traps, No. 330 or smaller Conibear-type traps, and nonlocking snares.

(m) Bobcat: bobcats shall be taken by gun, archery or trapping.

1. The limit is two (2) bobcats per person per season by any method.

2. The bobcat harvest quota is twenty-four (24). Should it be determined that the quota of twenty-four (24) bobcats shall be filled prior to January 31, the season shall close. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

3. All bobcats shall be tagged before leaving LBL and within forty-eight (48) hours of harvest. Bobcats shall be tagged by LBL personnel upon presentation of the entire animal, skinned or unskinned, at LBL check stations, Golden Pond Administrative Office, or Patrol Office.

4. Bobcats shall be taken by hunting or by calling during daylight hours only. Callers shall use only hand or mouth operated calls.

(n) [(m)] Weapons restrictions. The use of crossbows, center-fire rifles, center-fire handguns, and shotguns with slugs or shot larger than BBs is prohibited for the taking of all species listed in this subsection except that groundhogs [woodchucks] may be taken with center-fire rifles during the specified spring season.

(3) Reelfoot National Wildlife Refuge located in Fulton County.

(a) Squirrel (gray and fox): fourth Saturday in August through October 15 only in areas designated by signs as open to public hunting.

(b) Raccoon: four (4) consecutive nights beginning on the last Wednesday in September and four (4) consecutive nights beginning on the first Wednesday in October on the Long Point Refuge unit, with hunting allowed only during the hours of 7:30 p.m. to 12 midnight. No bag or possession limits.

(c) Hunters shall check in and out at designated check stations.

(d) No other hunting is permitted except as authorized by other applicable regulations.

(4) Ballard Wildlife Management Area located in Ballard County.

(a) Areas designated by signs are closed to hunting.

(b) The wooded area south of Terrell Landing Road and designated by signs reading "Wildlife Management Area for Public Hunting" is open in conjunction with other applicable seasons.

(5) Central Kentucky Wildlife Management Area located in Madison County.

(a) This area is closed to all hunting except dove and squirrel.

(b) Unleashed dogs are prohibited April 1 through the opening of the Western Zone squirrel season, except during permitted field trials.

(c) Furbearer shall be taken by trapping only. All trappers shall obtain written permission from the area manager.

(6) Curtis Gates Lloyd/Mullins Wildlife and Recreation Area located in Grant County.

(a) Areas closed to hunting are designated by refuge signs.

(b) Quail and rabbit: November 1 through January 31 except during the deer gun season.

(c) Unleashed dogs are prohibited April 1 through the opening of the Western Zone squirrel season, except during permitted field trials.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(7) Pioneer Weapons Wildlife Management Area located in Bath and Menifee Counties. Hunters on this area are restricted to pioneer weapons only. These include muzzle-loading rifles, muzzle-loading pistols, muzzle-loading shotguns, longbows, recurve bows or compound bows and crossbows. Muzzle-loading shotguns for taking squirrels, quail, grouse and rabbits shall not be used with shot larger than No. 2.

(a) [Except for the purpose of hunting during an open hunting season,] Unleashed dogs are prohibited March [February] 1 through August 31 except during permitted field trials.

(b) Breech-loading firearms shall be unloaded in both the chamber and magazine unless possessed by authorized personnel.

(8) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties. There shall be no hunting on [Mondays or] Tuesdays or Wednesdays except when [Monday or] Tuesday or Wednesday is a federal holiday or as follows: December 18-19 [22-23] and 26 [29-30]. There shall be no hunting on December 25 and January 1.

(a) Seasons, bag and possession limits.

1. Squirrel (gray and fox): August 18 [17] through September 21 [22], November 22 [23] through December 7 [8], December 8 [9] through 31 on selected areas; January 4 through January 31 [February 26, March 1 through 31].

2. Quail: November 22 [23] through December 7 [8], December 8 [9] through 31 on selected areas; January 3 [4] through February 28 [26].

3. Rabbit: November 22 [23] through December 7 [8], December 8 [9] through 31 on selected areas; January 3 [4] through February 28 [26]; bag limit five (5); possession limit ten (10).

4. Raccoon, gray fox and opossum: taking with gun or dogs, November 22 [23] through December 7 [8], December 8 [9] through 31 on selected areas. January 3 [4] through February 28 [26]; limit one (1) per person.

5. Coyote and groundhog [woodchuck]: May 13 [11] through August 17 [14] and during any other authorized hunt.

6. Red fox: November 22 [23] through December 7 [8], December 8 [9] through 31 on selected areas. January 3 [4] through 28 [29].

(b) Permission shall be obtained for each hunt at building #6645 and hunters shall stay within their assigned area. A hunting permit costing fifteen (15) dollars is required.

(c) All hunters between the ages of twelve (12) and eighteen (18) shall possess a valid hunter safety certificate.

(9) Clay Wildlife Management Area located in Nicholas County.

(a) Quail and rabbit: November 1 through December 31.

(b) Grouse: October 1 through December 31.

(c) Squirrel (gray and fox): First Saturday in September [15] through December 31.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(e) Unleashed dogs are prohibited March [April] 1 through August 31 except during permitted field trials.

(f) There shall be no upland game bird, small game or furbearer hunting, trapping or unleashed dogs allowed during deer quota hunts.

(10) Pine Mountain Wildlife Management Area located in Letcher County. Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(11) Dewey Lake Wildlife Management Area in Floyd County, Paintsville Lake Wildlife Management Area in Johnson and Morgan Counties, Fishtrap Lake Wildlife Management Area in Pike County and Redbird Wildlife Management Area in Clay and Leslie Counties.

(a) Squirrel (gray and fox): First Saturday in September [15] through December 31.
(b) Grouse: October 1 through December 31.
(c) Quail and rabbit: November 1 through December 31.
(d) Furbearer: Closes December 31.
(e) Closed to all other hunting except as authorized by other applicable regulations.
(f) There shall be no upland game bird, small game or furbearer hunting or trapping when these areas are open to deer gun hunting.
(g) Unleashed dogs are prohibited March [January] 1, through August 31 except during permitted field trials.
(h) Shotguns only.
(i) Shakeout season is closed on these areas.
(12) Beaver Creek Wildlife Management Area located in McCreary and Pulaski Counties, Mill Creek Wildlife Management Area in Jackson County and Cane Creek Wildlife Management Area in Laurel County and all private in-holdings within these areas.
(a) Squirrel (gray and fox): First Saturday in September [15] through December 31.
(b) Grouse: October 1 through December 31.
(c) Quail and rabbit: November 1 through December 31.
(d) Furbearer: December 5 through December 31. All trappers shall obtain and complete a harvest survey form obtained from the area manager.
(e) Closed to all other hunting except as authorized by other applicable regulations.
(f) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed when these areas are open to deer gun hunting.
(g) Unleashed dogs are prohibited March [February] 1 through August 31 except during permitted field trials.
(h) Shakeout season is closed on these areas.
(13) Higginson-Henry Wildlife Management Area located in Union County.
(a) Quail and rabbit: November 1 through January 31.
(b) Unleashed dogs are prohibited April 1 through the opening of the Western Zone squirrel season except during permitted field trials.
(c) All hunters and dog trainers shall check in and out daily at the designated check station.
(d) There shall be no upland game bird, small game or furbearer hunting, trapping or unleashed dogs allowed during deer quota hunts.
(14) Yellowbank Wildlife Management Area located in Breckinridge County.
(a) Quail and rabbit: November 1 through January 31.
(b) All hunters and dog trainers shall check in and out daily at the designated check station.
(c) Unleashed dogs are prohibited April 1 through the opening of the Western Zone squirrel season except during permitted field trials.
(d) There shall be no small game or furbearer hunting, trapping or unleashed dogs allowed during deer quota hunts.
(e) Areas within Tract 1 designated by signs are closed to all hunting, fishing, boating and trespassing from October 15 through March 15.
(15) Kleber Wildlife Management Area located in Owen and Franklin Counties.
(a) Quail and rabbit: November 1 through January 31.
(b) All hunters and dog trainers shall check in and out daily at the designated check station.
(c) Unleashed dogs are prohibited April 1 through the opening of the Western Zone squirrel season except during permitted field trials.
(d) There shall be no upland game bird, small game or furbearer hunting, trapping or unleashed dogs allowed during deer quota hunts.
(16) Westvaco Public Hunting Areas. Persons hunting on Westvaco Public Hunting Areas shall possess a valid Westvaco Hunting Permit.
(17) Sloughs Wildlife Management Area located in Henderson and Union Counties. Frank Sauerheber Unit: areas designated by signs are closed to all hunting, fishing, boating and trespassing from October 15 through March 15.
(18) Peal Wildlife Management Area located in Ballard County.
(a) Squirrel (gray and fox): third Saturday in August through the Friday before the deer gun season and the day following the deer gun season through December 31.
(b) Furbearer hunting: twenty (20) day taking season commencing the day following the deer gun season. There is no shakeout season on this area.
(c) Furbearer trapping: December 1 through 10; water sets only; trappers selected by drawing conducted by the area manager.
(d) Quail and rabbit: November 1 through January 31.
(e) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during the deer gun season.
(19) Big South Fork National River and Recreation Area located in McCreary County.
(a) Squirrel (gray and fox): first Saturday in September [15] through December 31.
(b) Grouse: October 1 through December 31.
(c) Quail and rabbit: November 1 through December 31.
(d) Unleashed dogs are prohibited March [February] 1 through August 31 except during permitted field trials.
(e) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during the deer gun season.
(20) Taylorsville Lake Wildlife Management Area in Spencer, Anderson and Nelson Counties.
(a) Areas closed to all hunting, fishing, boating and trespassing are designated by refuge signs.
(b) Quail and rabbit: November 1 through January 31 [except during the deer gun season].
(c) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during the deer quota hunts.
(21) Fleming Wildlife Management Area located in Fleming County.
(a) Quail and rabbit: November 1 through December 31.
(b) Grouse: October 1 through December 31.
(c) Squirrel (gray and fox): first Saturday in September [15] through December 31.
(d) Unleashed dogs are prohibited March [February] 1 through August 31 except during permitted field trials.
(e) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during the deer gun season.
(22) Grayson Lake Wildlife Management Area in Carter and Elliott Counties.
(a) Areas designated by signs are closed to hunting. [The entire management area, excluding the areas west of KY 1496 and east of the area formed by the line created by Bruin Creek and

that section of the Little Sandy River (Grayson Lake) extending north from the confluence of Bruin Creek, is open to hunting. The open area includes the "Coon Eye" and Gimlet and Little Gimlet Creek portions of the area.]

(b) Quail and rabbit: November 1 through December 31.

(c) Grouse: October 1 through December 31.

(d) Squirrel (gray and fox): first Saturday in September [15] through December 31.

(e) Unleashed dogs are prohibited March [February] 1 through August 31 except during permitted field trials.

(f) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during deer quota hunts.

(g) All hunters and dog trainers shall check in and out daily at a designated check station.

(23) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties is closed to all hunting.

(24) Lake Cumberland Wildlife Management Area - All Kentucky Department of Fish and Wildlife Resources managed lands on the north side of Lake Cumberland.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: November 1 through December 31.

(c) Unleashed dogs are prohibited March [February] 1 through August 31 except during permitted field trials.

(d) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during deer gun season.

(25) Green River Lake Wildlife Management Area in Taylor and Adair Counties.

(a) Quail and rabbit: November 1 through January 31.

(b) Unleashed dogs are prohibited February 1 through August 31 except during permitted field trials.

(c) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during deer gun season.

(26) Barren River Wildlife Management Area in Allen and Barren Counties and Nolin Reservoir Wildlife Management Area in Edmonson, Grayson and Hart Counties.

(a) Quail and rabbit: November 1 through January 31.

(b) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during deer gun season.

(27) Yatesville Wildlife Management Area located in Lawrence County: all hunters and dog trainers shall check in and out daily at a designated check station. [Nolin Reservoir Wildlife Management Area in Edmonson, Grayson and Hart Counties.]

[(a) Quail and rabbit: November 1 through January 31.]

[(b) There shall be no small game or furbearer hunting or trapping or unleashed dogs allowed during deer gun season.]

(28) Daviess County Wildlife Management Area located in Daviess County.

(a) Area closed to hunting and trapping for upland game birds, small game and furbearers.

(b) Unleashed dogs are prohibited April 1 through the opening of the Western Zone squirrel season except during permitted field trials.

(29) Fort Knox Wildlife Management Area located in Bullitt, Meade and Hardin Counties.

(a) Furbearer: trapping is prohibited.

(b) Unleashed dogs are prohibited April 1 through the opening of the Western Zone squirrel season except during permitted field trials.

(c) Area requirements.

1. Permission to hunt shall be obtained for each hunt at the hunt control office.

2. There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during deer gun hunts.

3. Hunters shall stay in their assigned areas.

4. All hunters thirty-seven (37) years of age and younger shall possess a valid hunter safety certificate.

5. Pistols, center fire rifles and crossbows are prohibited.

6. Vehicles are prohibited off maintained roads, except as otherwise authorized.

7. All firearms shall be unloaded while in a vehicle, being carried in a nonhunting area, during nonhunting hours or after a hunter has taken the legal game bag limit.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman

APPROVED BY AGENCY: March 5, 1990

FILED WITH LRC: April 12, 1990 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on May 23, 1990 at 1 p.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lauren E. Schaaf, Director of Wildlife, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: Approximately 340,000 small game hunters and 7,000 trappers are expected to participate in the 1987-88 statewide hunting and trapping seasons. About 14,000 of these can be expected to avail themselves of the opportunity to participate in seasons on the special areas designated in this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and/or a state trapping license. Indirect costs are determined by the individual, depending upon his level of participation.

1. First year: Persons participating in the hunting or trapping seasons proposed by this regulation would be required to possess a valid hunting license ($8.50 for residents) or a valid trapping license ($11.50 resident, $6 resident landowner/tenant), respectively. A $15 hunting permit is required by Fort Campbell authorities.

2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Hunters are required to check in and/or out at some of the management areas specified in this regulation. Trappers on Mill Creek, Cane Creek and Beaver Creek wildlife management areas are required to complete a harvest survey.
(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.
(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation.
1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $2,500.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: 14,000 small game hunters and 140 trappers may be expected to expend money for equipment, transportation, food and lodging. The average annual expenditure for these items by Kentucky small game hunters is $96.98 according to the 1980 National Hunting and Fishing Survey. The average season expenditure for Kentucky trappers during the 1981-82 trapping season was $209.32. State and local revenues can be expected to be positively affected due to necessary expenditures by small game hunters and trappers for the required licenses and due to taxes levied upon items purchased.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that small game and furbearer populations are at levels which can sustain a regulated harvest by sportsmen.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Only parts of local government will be affected.
3. State the aspect or service of local government to which this administrative regulation relates. The County clerks office serves as a distribution system for the hunting licenses required by this regulation. The County Circuit Courts are where violators of these regulations are prosecuted.
4. How does this administrative regulation affect the local government or any service it provides? The County Clerk's office personnel are involved in sale of hunting licenses. This office receives a $.75/license fee for selling the licenses. The County Circuit Courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:170. Seasons for deer hunting.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.180, 150.305, 150.330, 150.340, 150.360, 150.370, 150.390, 150.400, 150.4111, 150.415, 150.416, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150,025
NECESSITY AND FUNCTION: This regulation pertains to deer seasons in specified counties and on wildlife management areas (WMA). This regulation is necessary to set deer hunting season dates, to specify the counties and management areas open to deer hunting, to prescribe the methods by which deer may be legally taken, and to prescribe procedures by which handicapped persons may apply for exemptions from conventional hunting methods requirements. The function of this regulation is to provide for the prudent taking of deer within reasonable limits, and to insure a permanent and continuing supply of deer for present and future residents of the state. This amendment is necessary to adjust for date, weapon and tag limit changes in the deer seasons.

Section 1. Gun (and any other legal method) Seasons, Zones, Dates, Tags, and Legal Deer. Deer hunting is permitted in the following zones on the dates listed, using any legal method, except as specified in subsection (7) of this section and Section 4 of this regulation.
(1) Zone No. 1: open for ten (10) consecutive days beginning the second Saturday in November. The white tag is valid for any deer [on the first five (5) days, and for antlered deer only on the last five (5) days, of the season]. The yellow tag is valid only for antlerless deer [on the first five (5) days and is not valid on the last five (5) days of the season]. Counties in this zone are Crittenden, Livingston, Logan, and Webster [Breckinridge, Caldwell, Christian, Crittenden, Hancock, Hopkins, Livingston, Logan, Muhlenberg, Todd, and Webster].
(2) Zone No. 2: open for ten (10) consecutive days beginning the second Saturday in November. The white tag is valid for any deer on the first five (5) [three (3)] days and for antlered deer only on the last five (5) [seven (7)] days of the season. The yellow tag is valid only for antlerless deer on the first five (5) [three (3)] days and is not valid on the last five (5) [seven (7)] days of the season. Counties in this zone are Boone, Breckinridge, Bullitt, Caldwell, Carroll, Christian, Gallatin, Hancock, Hopkins, Jefferson, Kenton, Lyon, Meade, Muhlenberg,

Nelson, Oldham, Shelby, Spencer, Todd, Trimble, and Union [Allen, Anderson, Ballard, Boone, Bracken, Butler, Carlisle, Carroll, Franklin, Fulton, Gallatin, Grant, Graves, Henderson, Henry, Hickman, Jefferson, Kenton, McCracken, Marion, Meade, Ohio, Oldham, Owen, Pendleton, Shelby, Trigg, Trimble, Union, and Washington].

(3) Zone No. 3: open for ten (10) consecutive days beginning the second Saturday in November. The white tag is valid for antlered deer only on the last eight (8) [first seven (7)] days and for any deer on the first two (2) [last three (3)] days of the season. The yellow tag is valid only for antlerless deer on the first two (2) [last three (3)] days and is not valid on the last eight (8) [first seven (7)] days of the season. Counties in this zone are Allen, Anderson, Ballard, Boyle, Bracken, Butler, Calloway, Carlisle, Casey, Franklin, Fulton, Grant, Graves, Grayson, Green, Hardin, Harrison, Henderson, Henry, Hickman, Larue, McCracken, Marion, Mercer, Ohio, Owen, Pendleton, Robertson, Scott, Taylor, Trigg, Washington, and Woodford [Bullitt, Calloway, Daviess, Grayson, Green, Hardin, Harrison, Larue, Lyon, McLean, Mercer, Metcalfe, Nelson, Robertson, Scott, Taylor, Warren, and Woodford].

(4) Zone No. 4: open for ten (10) consecutive days beginning the second Saturday in November. The white tag is valid for antlered deer on the first nine (9) days and for any deer on the last day. The yellow tag is not valid for the first nine (9) days and is valid only for antlerless deer on the last day of the season. Counties in this zone are Adair, Barren, Campbell, Cumberland, Daviess, Edmonson, McLean, Marshall, Mason, Metcalfe, Monroe, Nicholas, Simpson, and Warren [Boyle, Campbell, Casey, Cumberland, Edmonson, Marshall, Mason, Monroe, Nicholas, and Spencer].

(5) Zone No. 5: open for ten (10) consecutive days beginning the second Saturday in November. The white tag is valid only for antlered deer. The yellow tag is not valid. Counties in this zone are Bath, Boyd, Carter, Clark, Clinton, Elliott, Fleming, Greenup, Hart, Lawrence, Lincoln, McCreary, Madison, Menifee, Morgan, Pulaski, Rowan, Russell, Wayne, and Whitley [Elliott, Fleming, Greenup, Hart, Lawrence, Lincoln, McCreary, Menifee, Morgan, Pulaski, Rowan, Russell, Simpson, and Wayne].

(6) Zone No. 6: open for five (5) consecutive days beginning on [the Thursday following] the second Saturday in November. The white tag is valid for antlered deer only. The yellow tag is not valid. Counties in this zone are Bell, Bourbon, Breathitt, Clay, Fayette, Floyd, Garrard, Harlan, Jackson, Jessamine, Johnson, Knott, Laurel, Lee, Leslie, Letcher, Lewis, Martin, Montgomery, Owsley, Perry, Pike, Powell, Rockcastle, and Wolfe [Clinton, Fayette, Floyd, Garrard, Harlan, Jackson, Jessamine, Johnson, Knott, Laurel, Lee, Leslie, Lewis, Madison, Martin, Montgomery, Owsley, Pike, Powell, Rockcastle, Whitley, and Wolfe].

(7) [Zone No. 7:] Counties, wildlife management areas, and parks closed to all deer hunting.

(a) Counties: [in this zone are] Estill, Knox, and Magoffin [Letcher, Magoffin, and Perry].

(b) Wildlife management areas: Ballard WMA in Ballard County (except that portion south of Terrell Landing Road), Robinson Forest WMA in Breathitt, Perry, and Knott Counties, and Swan Lake WMA in Ballard County.

(c) Deer hunting is prohibited within the boundaries of all national parks.

(8) Exceptions to tag usage. Hunters using special purpose tags as antlerless deer permits issued to landowners, as specified in 301 KAR 2:210 shall take only one (1) antlerless deer in addition to the statewide limit. Hunters required to possess a deer permit as specified in Section 6(1) of this regulation shall [must] have this permit in possession when hunting with a special purpose tag.

Section 2. Archery and Crossbow Season, Zones, Dates, Tags, and Legal Deer. Except as specified in Sections 1 and 3 of this regulation, both the yellow and white tags are valid for any deer in Zones 1, 2, 3, 4, and 5; and both the yellow and white tags are valid for antlered deer only in Zone 6.

(1) Archery season (longbows, recurve and compound bows): October 1 through January 15 [December 31].

(2) Crossbow season: beginning the second Saturday in November and continuing for twenty (20) consecutive days and during the muzzle-loading seasons only.

(3) Archery and crossbow hunting during firearms seasons. Archery and crossbow equipment may be used during any gun and muzzle-loading seasons. Archery and crossbow hunters shall abide by the gun or muzzle-loading seasons regulations and tag restrictions in effect for the county or WMA in which they are hunting as specified in Sections 1, 3, 4, and 7 of this regulation. Hunters shall not possess both archery or crossbow equipment and firearms while deer hunting except during gun, WMA quota hunt and muzzle-loading seasons.

Section 3. Muzzle-loading Season, Zones, Dates, Tags, and Legal Deer. Both the white and the yellow tags are valid for any deer in Zones 1, 2, and 3 as specified in Section 1 of this regulation. Both the white and the yellow tags are valid for antlered deer only in Zones 4 and 5. The white tag is valid for antlered deer only in Zone 6. The yellow tag is not valid in Zone 6.

(1) Dates: two (2) consecutive days beginning the first Saturday in October and seven (7) consecutive days beginning the second Saturday in December.

(2) Permitted firearms: only those muzzle-loading firearms specified in Section 8(1) of this regulation are permitted. Hunters shall not possess breech-loading firearms while deer hunting during this period.

Section 4. Exceptions to Deer Hunting Regulations on Wildlife Management Areas. All deer gun, archery and crossbow regulations apply unless otherwise specified below. When specific hunting dates are given, deer hunting shall be permitted only on those dates; otherwise, applicable dates and harvest restrictions for the zone in which the WMA occurs shall apply. Unless otherwise noted below, the muzzle-loading season shall not be in effect on these areas.

(1) Limits. An individual shall take no more than one (1) deer from each of the areas listed below except that two (2) may be taken on West Kentucky and Higginson-Henry WMA's.

(2) Advance application for quota hunts. Advance application is required for all quota hunts. Applications for quota hunts shall be made only on forms provided by the department

and shall include the hunting license number of the applicant, if that applicant is required to possess a license [for hunting on these areas]. No more than four (4) hunters shall apply as a party [by stapling their applications together]. Hunters sixteen (16) years old and older shall apply to only one (1) quota hunt, and qualified juveniles (those who on the day of the hunt are at least ten (10) years old and have not reached their 16th birthday) shall apply to a maximum of one (1) quota hunt and one (1) youth hunt. Multiple applications to one (1) area or applications in excess of the limits stated in this subsection shall result in disqualification. Completed applications shall [must] be stamped, self-addressed and postmarked no later than August 31.

(3) Checking in and out.

(a) Hunters drawn for quota hunts shall hunt only on assigned dates and in assigned areas, and shall [must] check in before, and out at the completion of, the hunt. All hunters shall present their application and show proof of identity when checking in. No other person shall substitute for the person whose name appears on the application. Hunters shall also produce the signature portion of a current deer permit and will be issued a special purpose tag to place on the deer. Hunters shall take only the kind of deer specified (antlered or antlerless) if so specified on the tag. Participants in youth hunts shall also show valid hunter safety certification and shall [must] be accompanied by an adult as specified in Section 7(1) of this regulation.

(b) All deer hunters shall [must] both check in and check out for all hunts on Clay, Dewey Lake, Grayson Lake, Higginson-Henry, Kleber, Paintsville Lake, Redbird, West Kentucky, Yatesville and Yellowbank WMAs.

(4) Hunting on private inholdings within WMAs. Owners of private inholdings or their guests may hunt on these inholdings during quota hunts without going through the application procedure, but shall [must] obey all other quota hunt rules. Private inholdings are open only during the hunts and under the regulations for the WMA in which they lie.

(5) Equipment permitted. On quota hunts and gun hunts any legal method (firearms, archery, or crossbow) may be used, and all hunters shall [must] wear hunter orange as specified in Section 7(4) of this regulation. Archery hunts are limited to legal longbows, recurve bows and compound bows.

(6) Beaver Creek WMA in McCreary and Pulaski Counties, and Mill Creek WMA in Jackson County.

(a) Archery hunt: antlered deer only, October 15 through the Friday preceding the second Saturday in November [10].

(b) Quota hunt: antlered deer only, first Saturday and Sunday in December.

(7) Birdsville Island WMA in Livingston County.

(a) Quota hunt: any deer, October 20 and 27.

(b) Drawing: a drawing shall be announced in the news media and held in Livingston County on October 6 to select participating hunters.

(8) [(7)] Cane Creek WMA in Laurel County.

(a) Archery hunt: antlered deer only, October 1 through the Friday preceding the second Saturday in November [10] and the Monday following the first Sunday in December [4] through December 31.

(b) Gun hunt: antlered deer only, second [third] Saturday in November.

(9) [(8)] Central Kentucky WMA in Madison County.

(a) Archery hunt: antlered deer only, December 18 through 31.

(b) No firearm[s] deer hunting allowed.

(10) [(9)] Clay WMA in Nicholas County.

(a) Archery hunt: any deer, October 15 through the Friday preceding the second Saturday in November [30].

(b) Quota hunt: any deer, first Saturday and Sunday in December.

(11) [(10)] Dewey Lake WMA in Floyd County.

(a) Archery hunt: antlered deer only, October 1 through the Friday preceding the second Saturday in November [10] and the Monday following the quota hunt [December 4] through December 31 except during youth quota hunt.

(b) Quota hunt: antlered deer only, first Saturday and Sunday in December.

(c) Youth quota hunt: any deer, first Saturday and Sunday in November.

(12) [(11)] Grayson Lake WMA in Carter and Elliott Counties.

(a) Youth quota hunt: any deer, first Saturday and Sunday in November [December], only on that portion north [west] of Route 1496, east of the Little Sandy River and on the Bruin Creek portions of the area. This is the only firearm deer hunting permitted on the area.

(b) Archery and crossbow hunt: any deer, except on the portion north [west] of Route 1496, east of the Little Sandy River and on the Bruin Creek section, October 1 through December 31.

(13) [(12)] Higginson-Henry WMA in Union County.

(a) Quota hunt for deer as specified on permit, first Saturday and Sunday in November.

(b) Archery hunt: during the period October 1 through 15 hunters may only hunt with a special purpose tag. Only one (1) antlerless deer may be taken during this period. One (1) deer of either sex may be taken with the white or yellow deer tag during the period October 16 through December 31 [any deer, October 1 through December 31], except during the quota hunt.

(14) [(13)] Kleber WMA in Owen and Franklin Counties.

(a) Quota hunt: [for] any deer, first Saturday and Sunday in December.

(b) Archery hunt: third Saturday in October through December 31, except during the quota hunt.

(15) [(14)] Paintsville Lake WMA in Morgan and Johnson Counties.

(a) Quota hunt: antlered deer only, first Saturday and Sunday in December.

(b) Archery hunt: antlered deer only October 1 through the Friday preceding the second Saturday in November and the Monday following the quota hunt through December 31.

(16) [(15)] Peabody and White City WMA's in Hopkins, Muhlenberg and Ohio Counties.

(a) Archery hunt: October 1 through December 31. Advance application required for all tracts except White City WMA.

(b) Quota hunt 1: the second Saturday in November through the following Wednesday.

(c) Quota hunt 2: the Thursday following the second Saturday in November through the following Monday.

(d) Limits: one (1) deer. The white tag is valid for any deer and the yellow tag is valid only for antlerless deer.

(e) All hunters shall [must] apply in advance

on the standard application form and have the validated portion of this form in their possession while hunting. Archery hunters shall not be selected by a drawing and may apply to hunt through December 1.

(17) [(16)] Pennyrile WMA in Caldwell, Christian, and Hopkins Counties. All deer hunting shall conform to Zone 4 [3] regulations.

(18) [(17)] Pioneer Weapons WMA in Bath and Menifee Counties.

(a) Legal muzzle-loading firearms only; [muzzle-loading handguns of .44 caliber or larger are permitted;] crossbows may be used during the entire archery season.

(b) Checking in or out is not required. All deer taken shall [must] be checked in accordance with Section 6(3) of this regulation.

(c) Hunting is permitted during the muzzle-loading season as specified in Section 3 of this regulation.

(19) [(18)] Redbird WMA in Clay and Leslie Counties.

(a) Archery hunt: antlered deer only, October 1 through the Friday preceding the second Saturday in November and the Monday following the first Sunday in December [November 10 and December 4] through December 31.

(b) Gun hunt: antlered deer only, second [third] Saturday in November.

(20) Taylorsville Lake WMA in Anderson and Spencer Counties.

(a) Archery hunt: any deer, October 1 through December 31, except during the quota hunt.

(b) Quota gun hunt: any deer, first Saturday and Sunday in November.

(21) [(19)] Tradewater WMA in Hopkins County: all deer hunting shall conform to Zone 4 [3] regulations.

(22) [(20)] West Kentucky WMA in McCracken County.

(a) Archery hunts [and quota archery hunts]: any deer, October 1 through November 1, November 5 through 15, November 19 through 20, December 10 through 13 [2 through the Thursday preceding the first Saturday in November, November 6 through November 16, November 20 through November 24, and December 6 through December 14] on all tracts except [those tracts] posted [as safety] zones and December 17 [18] through December 31 on tracts 5 and 6 only. [Quota archery hunts shall take place during specified periods to be announced. A special purpose tag, available at check in, shall be used and shall not count against the state limit.]

(b) Archery hunts on posted zones: designated posted zones shall be opened to archery hunts on November 19 and 20 and December 10 through 13.

(c) [(b)] Quota hunt 1: any deer, third Saturday and Sunday in November.

(d) [(c)] Quota hunt 2: any deer, third Saturday and Sunday in December.

(e) [(d)] Youth quota hunt: any deer, first Saturday and Sunday in November.

(f) [(e)] All gun hunters are limited to muzzle- or breech-loading shotguns only.

(g) [(f)] No firearms permitted on any [tract] posted [as a safety] zone at any time.

(g) All hunters shall check in and out daily.

(h) Crossbow hunt: beginning October 26 [27] and continuing for eight (8) consecutive days.

(i) Limits: two (2) deer, one (1) of which shall be antlerless and tagged with the yellow tag, the other deer may be antlered or antlerless and tagged with a special purpose tag issued on the area. Only one (1) special purpose tag shall be issued to an individual. A bow hunter who has taken a deer on this WMA with a special purpose tag shall not hunt in the quota hunt.

(23) [(21)] Yellowbank WMA in Breckinridge County.

(a) Quota hunt: [for] any deer, first Saturday and Sunday in November.

(b) Archery hunt: antlered deer only October 1 through 14 and any deer, October 15 through December 31, except during quota hunt.

Section 5. Legal Deer, Taking of Other Species, Hunting Hours and Bag Limits. (1) An antlered deer is defined as having one (1) antler at least four (4) inches in length, measured from the skin to the tip of the antler.

(2) Hunting is permitted during daylight hours only.

(3) The limit is two (2) deer per hunter per year, except that deer may be taken in addition to the limit with the special purpose tag as provided by this and other regulations.

(4) The taking of coyotes and wild hogs from November 1 through the gun, archery and special muzzle-loader season is permitted by deer hunters possessing a valid deer tag as specified in Sections 1, 2 and 3 of this regulation, and using legal weapons as specified in Sections 7 and 8 of this regulation. Any wild hog taken shall be reported to an official deer check station and the carcass presented for examination.

Section 6. Hunting License, Deer Permits, Deer Tags and Check Station Requirements. (1) Hunting license and deer permits. All deer hunters, except those exempted by KRS 150.170[(3), (5), (6), or (7),] shall possess a valid annual Kentucky hunting license and a valid deer permit. Hunters not eligible to purchase a junior hunting license shall purchase the two (2) tag permit. Hunters eligible to purchase a junior hunting license may purchase either the junior deer permit or the two (2) tag permit. The junior permit may be used in place of either the white or yellow tag.

(2) Leaving head attached. Any person possessing a deer shall leave the head attached to the body until the carcass is removed from the field and checked in.

(3) Mandatory deer check stations. Any person taking a deer during any deer hunting season shall present the entire or field dressed carcass to have it checked at the deer check station nearest to where the deer was taken, or by the nearest available conservation officer, no later than 9 a.m. on the day following the day taken. The person taking the deer shall check it in personally. The hunter shall fill out an official game check card and submit it to the check station operator or conservation officer. The hunter's portion of this card shall be retained in the hunter's possession until the deer is taken to the processor. Parts separated for taxidermy shall be accompanied by the taxidermy portion of the game check card as specified in subsection (4)(c) of this section.

(4) Tagging deer carcass and head.

(a) Immediately after taking a deer and before moving the carcass, the hunter shall attach a valid, adhesive backed, paper tag portion of the deer permit or special purpose tag to the deer. This tag shall be attached so that it cannot be removed without destroying the tag or mutilating

the carcass and shall remain attached until the carcass is processed and packaged. Before moving any harvested deer from their property or allowing it out of their possession, hunters who are not required to possess a deer permit under the provisions of subsection (1) of this section shall attach to the deer a card or tag containing the following information: name of owner, address, date killed and location killed.

(b) Deer taken in Kentucky shall not be transported outside state boundaries unless they have been checked in at an official check station. Proof of legal harvest shall [must] accompany any deer or parts of deer transported into Kentucky. Any deer entered in the trophy deer list shall be taken legally and within the boundaries of the state.

(c) Heads or other parts from deer taken in Kentucky separated from the carcass for mounting by a taxidermist shall have the taxidermy portion of the official game check card properly filled out and attached to the separated part.

(d) Deer hides may be sold to licensed fur buyers and licensed fur processors.

(e) All locker and processing plants shall keep accurate records of name of hunter, address, and date received for deer in their facility. Each deer shall have a tag stating the above information.

Section 7. Requirements for Deer Hunting. (1) Persons under sixteen (16) years of age shall not hunt deer with a gun unless accompanied by an adult who shall be able to seize immediate control of the juvenile's hunting weapon.

(2) Deer shall not be taken with the aid of dogs or any domestic animal, or by the use of a boat or any type of vehicle.

(3) A deer shall not be taken while the deer is swimming.

(4) All persons hunting deer during any season or hunt where firearms are permitted shall wear a hat or cap and vest of a solid, unbroken hunter orange color. Required garments shall not be camouflage orange or fishnet type material. A hunter orange coat or coveralls may be substituted for the vest. The hat, cap, vest, coat, or coveralls shall be worn as outer garments on both the head and upper torso (chest and back). A small patch, logo, pocket, shell holder, hat rim, and/or pads (shoulder and/or elbow) shall be permitted on any of these garments so long as they do not significantly obscure the hunter orange color. [minimum total of 500 square inches of visible solid hunter orange color on the head, back and chest. A vest and headgear shall satisfy the requirements of this regulation. Headgear may display an emblem on the front as long as this emblem does not completely obscure the hunter orange color when viewed from head on.]

(5) On department owned or operated wildlife management areas, Westvaco Public Hunting Area, the Daniel Boone National Forest, Reelfoot National Waterfowl Refuge and the Big South Fork National River and Recreation Area, the use of any nails, spikes, screw-in devices, wire or tree climbers is prohibited for attaching tree stands or for climbing trees. Only portable tree stands and climbing devices that do not injure trees may be used. Portable stands shall not be placed in trees more than two (2) weeks before opening day of each hunting period and shall be removed within one (1) week following the last day of each hunting period. All portable tree stands shall be marked with the owner's name and address. Existing permanent tree stands shall not be used.

(6) Rattling of antlers or sticks and the use of hand or mouth operated calls are permitted.

(7) No person shall possess a deer taken contrary to this or any other regulation or statute.

Section 8. Firearms and Ammunition Restrictions for Gun Deer Hunting. (1) Permitted: center-fire rifles; muzzle-loading rifles of .40 caliber or larger; and muzzle-loading or breech-loading shotguns of ten (10) gauge maximum and twenty (20) gauge minimum firing a single projectile; handguns with barrel lengths of 3.9 inches and a minimum caliber of .30 with a cartridge case length of not less than one and one-fourth (1 1/4) inch. Legal handgun cartridges may be used in rifles and legal rifle cartridges may be used in handguns. Muzzle-loading pistols shall be the .44 Colt Dragoon, the .44 Colt Walker or 45 caliber or larger.

(2) Prohibited: any caliber or cartridge that does not meet the requirements given in subsection (1) of this section; any fully automatic weapon or weapon capable of firing more than one (1) round with one (1) trigger pull; [muzzle-loading handguns;] semiautomatic and pump rifles or shotguns a magazine capacity exceeding ten (10) rounds fully jacketed ammunition tracer bullet ammunition; buckshot or any type of shot shells.

Section 9. Equipment Restrictions for Archery Deer Hunting. (1) Longbows, recurve and compound bows shall not be fitted with any device capable of holding an arrow at full draw without aid from the hunter.

(2) Arrows shall be barbless without chemical treatment or chemical attachments, with broadhead points at least seven-eighths (7/8) inch wide.

(3) Crossbows shall have a minimum pull weight of 100 pounds and a working safety device. Minimum bolt weight is 380 grains with a barbless broadhead point at least seven-eighths (7/8) inch wide with no chemical treatments or chemical attachments.

Section 10. Hunting Methods Exemptions for Handicapped Hunters. Persons with physical handicaps that would make it impossible for them to hunt by conventional methods may apply by letter to the commissioner of the department for a hunting methods exemption. The commissioner may authorize any reasonable exception that would permit a handicapped person to hunt when he or she could not otherwise do so because of his or her handicap. Specific exemptions to be allowed shall be described in the letter of authorization, which shall be signed by the commissioner and a conservation officer who shall certify that the applicant for the exemption is, in his opinion, handicapped to such a degree that the requested exemption is necessary to permit the applicant to hunt. Hunting method exemptions will expire at the end of the license year.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman

APPROVED BY AGENCY: March 5, 1990
FILED WITH LRC: April 12, 1990 at 1 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on May 25, 1990 at 10 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 20, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lauren E. Schaaf, Director of Wildlife, 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: An estimated 211,000 persons will participate in the white-tailed deer hunting proposed by this regulation.
(a) Direct and indirect costs or savings to those affected: These costs involve the purchase of a state hunting license and a deer permit. Indirect costs are determined by the individual hunter, depending on his level of participation.
1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license ($8.50 for residents) and a deer permit ($17.50) unless exempt by regulations.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Deer hunters will be asked to check their deer at a county deer check station and fill out a game check card denoting specific information about the deer.
(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.
(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the regulation.
1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $1,000,000.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Approximately 211,000 deer hunters may be expected to expend money for equipment, transportation, food and lodging. The annual expenditure for these items averages $25 per day of hunting according to the 1980 National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that white-tailed deer populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes_X_ No___
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Only parts of local government will be affected.
3. State the aspect or service of local government to which this administrative regulation relates. The County clerks office serves as a distribution system for the hunting licenses required by this regulation. The County Circuit Courts are where violators of these regulations are prosecuted.
4. How does this administrative regulation affect the local government or any service it provides? The County Clerk's office personnel are involved in sale of hunting licenses and deer tags. This office receives a $.50/license fee for selling the licenses. The County Circuit Courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:210. Antlerless deer permits.

RELATES TO: KRS 150.010, 150.025, 150.105, 150.170, 150.175, 150.305, 150.330, 150.340, 150.360, 150.370, 150.390, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation pertains to the taking of antlerless deer during deer gun seasons where established county deer hunting seasons are inadequate to control localized agricultural damage caused by deer. Its purpose is to provide a means of alleviating localized agricultural damage until such time as it is appropriate to apply deer herd stabilization or reduction measures on a county wide basis. The function of this regulation is

to prescribe the conditions and procedures under which antlerless deer may be taken for this purpose. This amendment is necessary to allow for the use of special purpose deer tags as antlerless deer permits.

Section 1. Antlerless Deer Permit Application, Issuance and Validity. (1) Landowners or their agents may apply for antlerless permits by contacting their local conservation officer and completing an antlerless deer permit application form.

(2) Applications for permits to be issued in the current year shall be submitted no later than September 30. Applications submitted after September 30 shall be considered but permits may not be issued until the following year.

(3) The conservation officer shall forward completed applications and his recommendations to the Division of Wildlife for consideration.

(4) The Division of Wildlife shall determine the number of permits to be issued for any one (1) landholding through consideration of the extent of damage, the size of the landholding, the number of deer necessary to be removed to alleviate further damage, and the adequacy of the county deer season to address the problem. Permits shall [may] not be issued in instances where the county deer season is adequate to achieve the desired reduction in deer numbers.

(5) Permits shall be issued only to a landowner or his agent.

(6) Landowners or their agents may transfer the permits they have been issued to persons of their choice.

(7) Permits are valid for use only on the landholding for which they were issued.

(8) Permits are valid only during [the deer gun season of] the season [year] in which they were issued.

[(9) Permits are not valid during the archery or special muzzle-loading firearms seasons.]

Section 2. Requirements for Landowners or Their Agents to Whom Antlerless Deer Permits have been Issued. (1) Landowners or their agents shall have the hunter sign the permit prior to transferring the permit to a hunter.

(2) Landowners or their agents shall return all unused permits to the Division of Wildlife within ten (10) days of the close of the deer gun season.

(3) Failure to comply with the requirements of this section, conviction for a deer regulation violation, or other abuse of the antlerless permit program shall be grounds for permit revocation and future ineligibility.

(4) Appeals of a revocation or a denial of eligibility shall be submitted in writing to the commissioner within sixty (60) days of any such action. Any adverse decision of the commissioner may be appealed to the commission in writing within sixty (60) days of the adverse decision of the commissioner and it shall be heard at the next regularly scheduled meeting.

Section 3. Requirements for Hunters Taking Antlerless Deer Under a Special Purpose Tag Used as an Antlerless Deer Permit. (1) Hunters shall [must] comply with all current deer season regulations, including the deer bag and possession limit, except that only one (1) antlerless deer per hunter may be taken with a special purpose tag in addition to the statewide limit.

(2) Before moving the carcass, hunters shall attach the adhesive backed special purpose tag to the deer in such a manner that it cannot be removed without destroying the tag or mutilating the deer.

(3) Hunters shall [must] check their deer in accordance with deer season regulations.

(4) Hunters who take an antlered deer while in possession of a special purpose tag are not required to affix the special purpose tag to the deer, but shall affix the yellow or the white state tag to the deer according to the provisions of 301 KAR 2:170.

(5) Unsigned special purpose tags are not valid.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman
APPROVED BY AGENCY: March 5, 1990
FILED WITH LRC: April 12, 1990 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 25, 1990 at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 20, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lauren E. Schaaf, Director of Wildlife, 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: An estimated 211,000 persons will participate in the white-tailed deer hunting proposed by this regulation. An estimated 94,000 landowners actively engaged in farming may also be affected.

(a) Direct and indirect costs or savings to those affected: These costs involve the purchase of a state hunting license and a deer permit. Indirect costs are determined by the individual hunter, depending on his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license ($8.50 for residents) and a deer permit ($17.50) unless exempt by regulations.

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

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

(b) Reporting and paperwork requirements: Deer hunters will be asked to check their deer at a county deer check station and fill out a game check card denoting specific information about the deer.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $500,000.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Approximately 211,000 deer hunters may be expected to expend money for equipment, transportation, food and lodging. The annual expenditure for these items averages $25 per day of hunting according to the 1980 National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to the necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based on the wise use of renewable resources and the fact that white-tailed deer populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.

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

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

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Only parts of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerk's office serves as a distribution system for the hunting licenses required by this regulation. The County Circuit Courts are where violators of these regulations are prosecuted.

4. How does this administrative regulation affect the local government or any service it provides? The County Clerk's office personnel are involved in the sale of hunting licenses and deer tags. This office receives a $.75 fee for selling licenses and deer tags. The County Circuit Courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 4:010. Districts.

RELATES TO: KRS 150.010, 150.022(1), 150.025
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation designates the counties within each wildlife district. It is necessary to place each county in one (1) of the nine (9) wildlife districts specified in KRS 150.022. This amendment is necessary to move Elliott County from the seventh to the eighth wildlife district. [in order to simplify travel and provide coordinated services within an area as set forth in KRS 150.022(1).]

Section 1. For the purposes of representation on the Fish and Wildlife Resources Commission, each county in Kentucky is assigned to a wildlife district as indicated below. [The Commissioner of the Department of Fish and Wildlife Resources with the concurrence of the Department of Fish and Wildlife Resources Commission after giving due regard to the division of the state into wildlife districts so as to simplify travel and economy, does hereby set aside and divide the state into nine (9) wildlife districts, with the counties of each district designated as follows:]

DISTRICT I - Fulton, Hickman, Carlisle, Ballard, McCracken, Graves, Calloway, Marshall, Livingston, Lyon, Trigg, Caldwell, Crittenden, Christian.

DISTRICT II - Union, Webster, Hopkins, Muhlenberg, Todd, Henderson, McLean, Logan, Simpson, Allen, Warren, Butler, Ohio, Daviess, Hancock.

DISTRICT III - Meade, Bullitt, Jefferson, Spencer, Oldham, Breckinridge, Shelby.

DISTRICT IV - Hardin, Grayson, Nelson, Washington, Marion, Larue, Taylor, Adair, Cumberland, Monroe, Barren, Green, Hart, Edmonson, Metcalfe.

DISTRICT V - Carroll, Owen, Grant, Harrison, Robertson, Bracken, Pendleton, Gallatin, Boone, Kenton, Campbell, Trimble, Henry.

DISTRICT VI - Franklin, Scott, Anderson, Woodford, Fayette, Mercer, Jessamine, Boyle, Casey, Lincoln, Garrard, Rockcastle, Lee, Estill, Powell, Clark, Madison.

DISTRICT VII - Lawrence, Magoffin, Johnson, Martin, Pike, Floyd, Breathitt, Knott, Perry, Letcher, Leslie[, Elliott].

DISTRICT VIII - Mason, Lewis, Greenup, Carter, Boyd, Morgan, Wolfe, Menifee, Montgomery, Bath, Rowan, Fleming, Nicholas, Bourbon, Elliott.

DISTRICT IX - Clinton, Russell, Wayne, Pulaski, McCreary, Whitley, Laurel, Clay, Owsley, Knox, Bell, Harlan, Jackson.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman
APPROVED BY AGENCY: March 5, 1990
FILED WITH LRC: April 12, 1990 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 23, 1990 at 9 a.m. in the Commission Room, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 18, 1990,

five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Don R. McCormick, Commissioner, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Wilson
(1) Type and number of entities affected: Residents of Elliott County.
(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: None anticipated.
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect
(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative was to leave Elliott County in District 7, against the wishes of the majority.
(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: This is an administrative move requested and supported by citizens of Elliott County.
TIERING: Was tiering applied? Yes

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 April 13 [February 15], 1990 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
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 4/13/90)
KSP 060000-01	Special Security Unit
KSP 060000-02	Special Management Units: Assignment, Classification Review and Release [(Amended 2/15/90)]
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/Safety Inspections of Inmate Work Locations [(Amended 2/15/90)]
KSP 090000-03	Correctional Industries
KSP 100000-02	Visiting Program (Amended 4/13/90)
KSP 100000-03	Disposition of Unauthorized Property
KSP 100000-04	Inmate Grooming and Dress Code
KSP 100000-05	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 100000-06	Inmate Mail and Packages
KSP 100000-07	Inmate Telephone Access
KSP 100000-08	Behavioral Counseling Record [(Amended 2/15/90)]
KSP 100000-09	Due Process/Disciplinary Procedures [(Amended 2/15/90)]
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 (Amended 4/13/90)
KSP 100000-20	Legal Services Program

KSP 100000-21	Photocopies for Nonindigent Inmates with Special Court Deadlines
KSP 110000-04	Preparole Progress Report
KSP 110000-06	General Guidelines of the Classification Committee (Amended 4/13/90)
KSP 110000-07	Statutory Good Time Restoration
KSP 110000-08	Award of Meritorious Good Time
KSP 110000-10	Special Needs Inmates
KSP 110000-12	Unit Classification Committee - Inmate Work Assignments
KSP 110000-13	Classification Document (Amended 4/13/90)
KSP 110000-14	Vocational School Placement
KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-16	Consideration of Further Treatment Requirements for Inmates Prior to Release
KSP 110000-18	Functions of the Classification Committee
KSP 120000-04	Academic Education [(Amended 2/15/90)]
KSP 120000-07	Community Center Program [(Amended 2/15/90)]
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: April 13, 1990
FILED WITH LRC: April 13, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 25, 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, 754 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:070. Kentucky Correctional Institution for Women.

RELATES TO: KRS Chapters 196, 197, 439
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 April 13 [February 15], 1990 and hereinafter should be referred to as Kentucky Correctional Institution for Women Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel on weekdays between 8 a.m. to 4:30 p.m.

KCIW 01-06-01	Legal Assistance for Corrections Staff
KCIW 01-08-01	News Media Access
KCIW 02-01-01	Comprehensive Insurance Coverage
KCIW 02-02-01	Fiscal Management: Audits
KCIW 02-02-03	Fiscal Management: Checks
KCIW 02-02-04	Institution Purchasing Procedures
KCIW 02-03-01	Inventory Control of Nonexpendable Personal Property
KCIW 02-03-03	Criteria for Selection of Bidders and Vendors
KCIW 02-04-01	Accounting Procedures
KCIW 02-05-01	Inmate Canteen/Staff Canteen
KCIW 02-07-01	Release of CETA Money Earned
KCIW 06-01-01	Inmate Records
KCIW 06-01-02	Transfers to Community Centers and the Minimum Security Unit
KCIW 06-01-03	Storage of Expunged Records
KCIW 10-01-01	Special Management Unit General Operation and Regulations [(Amended 2/15/90)]
KCIW 10-01-02	Special Management Unit Programs, Placement and Review
KCIW 10-01-04	Special Security Inmates
KCIW 11-01-01	Food Service Operation Inspections
KCIW 11-01-02	Budgeting, Accounting, and Purchasing Procedures for Food Products

KCIW 11-02-01	Menu Preparation/Special Diets
KCIW 11-03-01	General Guidelines for Food Service Workers
KCIW 11-03-02	General Guidelines for Food Service Workers
KCIW 11-04-01	Health Regulations and General Guidelines for the Food Service Area
KCIW 12-01-01	Control of Pests and Vermin
KCIW 12-02-01	Laundry Facilities/Clothing Issuance
KCIW 12-02-03	Donated Items
KCIW 12-04-01	Sanitation and General Living Conditions
KCIW 13-01-01	Provision of Medical and Dental Care
KCIW 13-01-02	Preliminary Health Screening and Appraisal
KCIW 13-01-03	Use of Pharmaceutical Products
KCIW 13-03-01	Emergency Care
KCIW 13-03-02	Infirmary Care and Outside Services
KCIW 13-03-03	Outside Hospital Security
KCIW 13-04-01	Medical Alert System
KCIW 13-04-02	Psychiatric/Psychological Services [(Amended 2/15/90)]
KCIW 13-06-01	Informed Consent
KCIW 13-07-01	Detoxification and Alcohol or Chemical Dependency Guidelines [(Amended 2/15/90)]
KCIW 13-08-01	Medical Exams for New Employees
KCIW 13-09-01	Suicide Prevention and Intervention Program
KCIW 13-11-01	Infection Control
KCIW 14-01-02	Inmate Rights
KCIW 14-02-01	Access to Attorneys and Designated Counsel Substitutes
KCIW 14-03-01	Inmates Are Not Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap, or Political Beliefs
KCIW 14-04-01	Inmate Grievance Procedure
KCIW 15-01-01	Offenses and Penalties [(Amended 2/15/90)]
KCIW 15-01-02	Adjustment Committee Procedures and Programs [(Amended 2/15/90)]
KCIW 15-03-01	Inmate Rule Book
KCIW 15-04-01	Incentive Levels System
KCIW 15-06-01	Restriction Guidelines
KCIW 16-01-01	Inmate Correspondence (Amended 4/13/90)
[KCIW 16-01-02	Inmate Mail Distribution (Deleted 4/13/90)]
KCIW 16-01-03	Staff Mail
KCIW 16-02-01	Inmate Access to Telephone (Amended 4/13/90)
KCIW 16-02-02	Intra-Institution Phone Calls [(Amended 2/15/90)]
KCIW 16-03-01	Inmate Visiting Regulations
KCIW 16-03-02	Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages
KCIW 16-04-01	Inmate Indigent Fund
KCIW 16-05-01	Commercial Vendor Packages, Appliance and Drug Store Orders
KCIW 17-01-01	Assessment Center Operation and Reception Programs
KCIW 17-01-02	Assessment/Classification Center Operations, Rules and Regulations
KCIW 17-01-03	Assessment and Classification Unit Property Guidelines
KCIW 17-02-01	Identification Department Admissions
KCIW 17-03-01	Notifying Inmates Families of Admission and Procedures for Mail and Visiting
KCIW 17-05-01	Inmate Personal Property Guidelines
KCIW 18-01-02	Institutional Housing Assignments
KCIW 18-02-01	Classification Procedures
KCIW 18-05-01	Special Needs Inmates
KCIW 18-06-01	Institutional Status Codes
KCIW 19-01-01	Inmate Work/Program Assignments
KCIW 19-03-01	Landscape and Maintenance Work Details
KCIW 20-01-01	Education Programs
KCIW 20-01-03	Vocational Education: Curriculum Flexible Schedule, Upgrade Programs and Release Preparation Program
KCIW 20-01-04	Entry - Exit Vocational School
KCIW 20-01-05	Vocational Programs: Approved, Assessed and Contain Guidelines for Vocational Records
KCIW 20-01-06	Vocational Education: Staffing Patterns/Requirements
KCIW 20-01-07	Vocational Counselor
KCIW 20-01-08	Vocational Education: Community Resources and the Integration with Academic Progress
KCIW 20-01-09	Vocational Education: Support Equipment
KCIW 20-01-10	Control of Flammable, Hazardous, Toxic and Caustic Materials in the Vocational Area
KCIW 22-01-04	Inmate Club Activities
KCIW 23-01-01	Religious Services
KCIW 25-01-01	Preparole Progress Report
KCIW 25-02-01	Temporary Release/Community Center
KCIW 25-02-02	Furloughs
KCIW 25-03-01	Escorted Leave into the Community

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: April 13, 1990
FILED WITH LRC: April 13, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 25, 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: 111 employees of the Kentucky Correctional Institution for Women, 279 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.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(Proposed Amendment)

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

RELATES TO: KRS 156.070
STATUTORY AUTHORITY: KRS 156.070
NECESSITY AND FUNCTION: KRS 156.070 gives the State Board for Elementary and Secondary Education the management and control of the common schools, including interscholastic athletics therein, and allows the state board to designate an agency to manage athletics pursuant to rules approved by the state board. This regulation designates such an agent for high school athletics and adopts the constitution, bylaws, procedures and rules of that agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) is hereby designated as the State Board for Elementary and Secondary Education's agent to manage interscholastic athletics at the high school level in the common schools, including any private schools desiring to associate with KHSAA and to compete with the common schools.

Section 2. The constitution, bylaws, tournament rules, due process procedures, and officials' rules of the KHSAA Handbook, 1989-90, as amended March 14, 1990, are hereby approved, adopted, and incorporated herein by reference. This material may be inspected and copied at the Office of Legal Services Department of Education, First Floor, Capital Plaza Tower, Frankfort, 8 a.m. - 4:30 p.m., Monday - Friday.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: March 14, 1990
FILED WITH LRC: March 26, 1990 at 4 p.m.
PUBLIC HEARING: A public hearing has been scheduled on Thursday, May 24, 1990, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board for Elementary and Secondary Education at its March meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before May 19, 1990. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gary Bale
(1) Type and number of entities affected: Approximately 240 member high schools and their student/athletes and personnel staffing athletic teams.
(a) Direct and indirect costs or savings to those affected: Reduced costs of eligibility hearings and appeals.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Reduced administrative costs of eligibility investigations, hearings, and appeals.
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: Alternative methods have not worked efficiently and fairly.
(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: NA
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Education
(Proposed Amendment)

705 KAR 4:010. General standards.

RELATES TO: KRS 156.032 [156.031], 163.020, 163.030[, 163.087]
STATUTORY AUTHORITY: KRS 156.032 [156.031], 163.030[, 163.087]
NECESSITY AND FUNCTION: KRS 156.032 [156.031] gives the State Board for Adult, Vocational [of] Education and Vocational Rehabilitation the function and authority to develop and adopt policies and regulations by which the Department of Education is to be governed in planning, coordinating, administering, supervising, operating, and evaluating vocational-technical [occupational] education programs, services, and activities; and KRS 163.020 and 163.030 mandate a state vocational education program with certain purposes[; and KRS 163.087 gives the State Board authority to set fees]. This regulation establishes general standards for all vocational-technical education programs.

Section 1. Vocational education programs shall be designed to serve one (1), or combinations,

of the following groups of persons: secondary, postsecondary, short term adult, long term adult, disadvantaged, and handicapped. Instructional programs shall [will] not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or handicap.

Section 2. Vocational instruction shall be provided to serve occupations within the following vocational program areas: agribusiness, business and office, health and personal services, home economics, industrial, marketing and distributive, practical arts, public service, and special vocational.

Section 3. Objectives of the instruction shall be designed to:
(1) Prepare individuals for gainful employment as semiskilled or skilled workers, technicians, or semiprofessionals in recognized occupations and in new or emerging occupations;
(2) Prepare individuals for enrollment in advanced or highly skilled vocational and technical education programs;
(3) Assist individuals in the career development process of career awareness and in-depth career exploration necessary for making meaningful occupational choices;
(4) Upgrade and update individuals in their present occupations; or
(5) Achieve any combination of the above.

Section 4. The content of instruction in vocational education programs shall:
(1) Be based on a consideration of the skills, attitude, and knowledge required to achieve the objective of such instruction and include a planned sequence of those essentials of education or experience (or both) deemed necessary for the individual to achieve such objectives.
(2) Be developed and conducted in consultation with potential employers and other individuals having skills and substantive knowledge of the occupation or the occupational fields included in instruction.
(3) Include the most up-to-date knowledge and skills necessary for competencies required to meet the objectives of such instruction.
(4) Be sufficiently extensive in duration and intensive within a scheduled unit of time to enable the student to achieve the objectives of instruction.

Section 5. The vocational program of instruction shall combine and coordinate classroom instruction with field, shop, laboratory, cooperative work, or other occupational experience which:
(1) Is appropriate to the objectives of instruction;
(2) Is of the sufficient duration to develop competencies necessary for the student to achieve such objectives; and
(3) Is supervised, directed, or coordinated by persons qualified under the Kentucky State Plan for the Administration of Vocational Education.

Section 6. Secondary vocational education programs shall provide a variety of learning experiences and related services. Programs in grades seven (7) and eight (8) shall be coordinated to allow students to explore clusters of occupations. Programs at grades nine (9) and ten (10) shall provide in-depth exploration courses by occupational area. Programs at grades eleven (11) and twelve (12) shall provide specialized skill development to make individuals more employable in one (1) group of occupations than any other. Students enrolled in public or private schools shall be permitted to enroll in state-operated vocational programs consistent with that school's student enrollment quota for cooperating local school districts.

Section 7. Long-term adult (postsecondary) programs shall be designed for occupational preparation of persons sixteen (16) years of age or older who have completed or left the regular high school. The programs shall be organized on a full-time basis during the day or evening hours. Students may enroll in all or any part of the scheduled program. [The initial registration fee for half-time and full-time in-state, adult students in state-operated schools shall be twenty (20) dollars; and for out-of-state students, forty (40) dollars. The monthly tuition for half-time, in-state adult students shall be eight (8) dollars; and for out-of-state students, thirty (30) dollars. The monthly tuition for full-time, in-state adult students shall be sixteen (16) dollars; and for out-of-state students, sixty (60) dollars.]

Section 8. Short-term adult programs shall be designed to meet the needs of persons who have entered the labor market or are temporarily unemployed and who need training in preparing or supplementing knowledge and skills for employment or job advancement. Courses shall consist of either single or multiple units of intensive instruction. [Effective September, 1988 the fees for adult short-term classes for the general public for one (1) to eleven (11) hours of instruction per week shall be a minimum of twenty-five (25) cents per hour and a maximum of five (5) dollars per hour for in-state and out-of-state students. Fees shall be established within each vocational region subject to the approval of the Superintendent of Public Instruction or his designee, and fees for individual programs shall be on a cost recovery basis, taking into account administrative and facilities costs, teacher costs, and costs for instructional materials, supplies, and equipment. Compensation for industry-specific training may be negotiated in accordance with 705 KAR 5:100.]

Section 9. The vocational program shall be designed to accommodate students with special learning needs mainstreamed into the regular program. Special vocational programs in specific occupational areas or incorporating a variety of occupational areas shall be permitted when the handicapping [handicapped] conditions warrant.

Section 10. Instructional personnel in vocational education except teachers of short-term adult programs shall be fully certified under the provisions of the Kentucky State Plan for Vocational Education and other regulations of the State Board for Adult, Vocational [of] Education and Vocational Rehabilitation. Work experience requirements not included as a part of certification programs shall be approved by the Superintendent of Public Instruction. Persons employed to teach

short-term adult programs shall request approval of their work experience or other qualifications from the Office of Vocational Education. A statement of approval shall be issued to qualified individuals for teaching the specific subject of the program.

Section 11. All instructional personnel shall attend district, regional, or state in-service education meetings called or approved by the Superintendent of Public Instruction when such meetings are reimbursed by funds from the Office of Vocational Education. Instructional personnel may be excused by the local superintendent when the reasons are justified and submitted in writing to the Superintendent of Public Instruction.

Section 12. Annual plans for vocational programs and applications for funds for the next school year shall be submitted by local educational agencies to the regional program coordinator for vocational education by April 15. The program plan shall be reviewed by the regional staff and the Office of Vocational Education staff and approved by the Superintendent of Public Instruction prior to program implementation.

Section 13. Recognized vocational student organizations shall be an integral part of the instructional program and shall be supervised by qualified vocational education personnel.

Section 14. Each occupational preparation program area shall have an active program advisory committee to assist in planning, implementing, and evaluating programs.

Section 15. A continuous evaluation of the vocational education program shall be conducted by the local educational agency in accordance with requirements and instruments developed or approved by the Department of Education and by the local educational agency to determine the effectiveness of the program in terms of its objectives. The evaluation shall include a follow-up of students after their termination from the program. The Superintendent of Public Instruction shall designate the records and reports to be kept by local educational agencies operating approved vocational education programs. Staff from the Department of Education shall make periodic evaluation visits for program improvement purposes.

Section 16. Where applicable, all vocational education programs shall operate according to guidelines developed by state or national licensure, certification, and registration agencies having jurisdiction over graduates who seek employment in occupations governed by such agencies.

Section 17. Classrooms, libraries, shops, laboratories, and other facilities, including instructional equipment, supplies, teaching aids, and other materials, shall be provided in quantity and quality to meet the objectives in the vocational instruction. Although the amount of supplies needed by each class will vary in local districts, the districts shall provide an appropriate portion of the operating money allotted with each vocational unit. The facilities for any vocational education program shall be of adequate size and design to accommodate the activities and number of work stations unique to each program. Facilities and equipment shall be approved by the Superintendent of Public Instruction.

Section 18. Vocational preparation programs shall provide a curriculum of sufficient length to permit students to secure entry-level skills in the occupations for which they are training. They shall conform to the requirements in the Kentucky Program of Studies.

Section 19. Minimum and maximum class size shall be based on program design and available facilities. No class shall be offered for less than ten (10) students.

Section 20. A five (5) dollar shop fee shall be charged for each live work project accepted by the school requiring more than one (1) hour of labor. No shop fees shall be charged for projects in schools located in correctional institutions. Student exemptions may be made in compliance with written school policies. Customers shall [will] purchase the necessary materials for a shop job or be charged the cost of the materials plus twenty (20) percent markup when they do not provide their own materials. Cosmetology charges shall be based on the State Cosmetology Board requirements.

Section 21. A vocational school may be permitted to provide an optional senior plan for students from secondary schools being served by that vocational school. A senior plan provides that a student may choose to attend a vocational school for six (6) hours a day while enrolled in a high school for the senior year. The local district shall receive ADA credit for students participating in this plan.

(1) The vocational school requesting permission to implement an optional senior plan shall receive approval from the State Superintendent of Public Instruction in accordance with this and other Kentucky Administrative Regulations.

(2) For ADA calculation purposes, students accepted in the senior plan shall be enrolled in a public school in Kentucky.

(3) The local school superintendent shall certify that students participating in this program shall [will] be eligible for graduation upon successful completion of the program.

(4) An annual evaluation of the senior plan shall be submitted to the State Board.

(5) With approval of the local board of education, a local high school may choose to participate in the senior plan. Individual students shall [will] have the option of participating in the senior plan or the usual plan of attending a vocational school three (3) hours a day for the junior and senior year.

(6) Participation in the senior plan shall in no way jeopardize the student's high school standing in terms of participation in other high school activities. Participation in the high school activities shall be the responsibility of the local board of education and appropriate arrangements for such participation shall [will] be ensured by the vocational school.

Section 22. Requests for exceptions to any standards for vocational instructional programs shall be submitted in writing by the local

educational agency, recommended by the appropriate program unit director, and approved by the Superintendent of Public Instruction. Exceptions shall be limited to experimental programs, innovative programs, and unusual cases and shall be approved on an individual and annual basis.

GEORGE R. SIEMENS, JR., Chairman
APPROVED BY AGENCY: March 20, 1990
FILED WITH LRC: April 5, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing has been scheduled on May 24, 1990 at 10 a.m. EST, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its March 20meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Frankfort, Kentucky 40601, on or before May 18, 1990. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joyce Logan
(1) Type and number of entities affected: 17 state vocational-technical schools, 5 postsecondary health occupations schools, 1 KATC, and 54 area vocational centers (postsecondary students).
(a) Direct and indirect costs or savings to those affected:
1. First year: No additional cost.
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Similar to present requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: No additional cost.
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: Similar to present requirements.
(3) Assessment of anticipated effect on state and local revenues: No effect on revenues for the remaining part of the regulation.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Changes were made based upon study of present regulation and requirements by staff and a representative committee of school and regional personnel.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: No conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: This change deletes references to tuition and fees for postsecondary and adult students. Tuition and fees are being placed in a separate new regulation.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal programs for financial aid, veterans' administration regulations, and JTPA relate only indirectly to tuition and fee charges in calculations of aid for students. Financial Aid (CFR 668.14); Veterans (CFR 21.4253; Section 1775, Chapter 36, Title 38, U.S.C.); JTPA (P.L. 97-300).
2. State compliance standards. 705 KAR 4:010 relates primarily to general standards for programs. This regulation amendment only deletes the references to tuition and fees and places the revised tuition and fee schedule into a new regulation 705 KAR 4:220 which also includes a refund schedule.
3. Minimum or uniform standards contained in the federal mandate. Federal regulations do not contain standards for tuition and fees. The tuition and fees established for accredited schools are acceptable for federal legislation.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal regulations allow requirements to be set by the school; therefore, there is not a specific federal requirement for comparison.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The six-year plan for adult and technical education proposes an increase in tuition and fees as a part of the programming and school improvement effort. The new regulation provides a phase-in of the tuition and fee increases over the biennium and also establishes a refund policy. Creating a separate regulation pertaining to tuition and fees permits only deletions to 705 KAR 4:010.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Programs
(Proposed Amendment)

709 KAR 1:020. Testing program.

RELATES TO: KRS 156.010 [156.070], 156.485
STATUTORY AUTHORITY: KRS 156.070 [Chapter 13A]
NECESSITY AND FUNCTION: KRS 156.010(12) recognizes the responsibility of the Department of Education for adult education; and KRS 156.485 recognizes the GED certificate and the State Board for Adult, Vocational Education and Vocational Rehabilitation's responsibility for such. This regulation establishes [To establish] the means whereby adults can be tested by official GED testing centers to determine their eligibility for receiving a High School Equivalency Diploma [Certificate].

Section 1. (1) The GED test shall provide a valid means of measuring the educational achievement of adults who are nonhigh school graduates and of comparing their competency with that of high school graduates. The tests shall be high school level batteries consisting of five (5) comprehensive examinations: English, literature, mathematics, natural science, and social studies.
(2) The GED test shall be administered to:
(a) Any person seventeen (17) years of age or older who has been out of a formal classroom

situation for a period of one (1) year before making application, or whose high school class (the class of which he was or would have been a member) has graduated; or

(b) To any person sixteen (16) years of age who has been committed or placed in a state correctional facility, and one (1) of the following:

(c) Who has completed a program of instruction provided by such agencies as the Job Corps and the Postal Service Academy, an apprenticeship program, or other similar programs of instruction for which completion of training is certified by the director of the program and presented to a chief examiner of an official GED center with a request that the subject adult be tested;

(d) Who presents a written request from an employer certifying that the applicant for job opportunity must establish high school equivalency on the basis of GED test scores;

(e) Who presents a written request from a college or university official certifying that the institution will consider accepting the applicant for admission on the basis of GED test scores;

(f) Who presents a written request for testing from a recruiting official for the subject adult who wishes to enter a branch of the Armed Forces for which high school equivalency is a prerequisite; or

(g) Who is a resident of Kentucky.

(3) Official GED testing centers shall be established under contract with the GED Testing Service of the Commission on Accreditation with locations authorized by the State Board for Adult, Vocational [of] Education and Vocational Rehabilitation. GED testing services for individuals confined to state correctional and health institutions shall be provided by the State Board [of Education].

(4) Testing fees shall be established by the State Board [of Education] at a uniform fee of ten (10) dollars. The State Board [of Education] shall charge no fee for testing services provided for individuals confined to state correctional and health institutions.

(5) Applicants seeking a high school equivalency diploma shall [certificate must] complete the appropriate application form provided for this purpose prior to taking the GED test. This form shall be available upon request from local school superintendents or the State Board [of Education]. Military personnel shall not be required to complete the application form prior to taking the test; however, the application form shall [must] be completed before a high school equivalency diploma shall [certificate will] be issued.

(6) If an applicant passes all five (5) tests with a minimum test score of thirty-five (35) but does not attain an average standard score of forty-five (45), he shall be eligible to retake any one (1) or all tests in an attempt to raise the overall standard score to meet the requirements. However, the testing center proctor shall [will] recommend which test or tests to be retaken.

GEORGE R. SIEMENS, JR., Chairman
APPROVED BY AGENCY: March 20, 1990
FILED WITH LRC: April 5, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing has been scheduled on May 24, 1990 at 10 a.m. EST, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its March 20 meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Frankfort, Kentucky 40601, on or before May 18, 1990. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gippy Graham
(1) Type and number of entities affected: State Board for Adult, Vocational, and Vocational Rehabilitation and approximately 20,000 individuals who take the GED test each year.
(a) Direct and indirect costs or savings to those affected:
1. First year: There are no additional costs to the individuals affected but there could be benefits from improved job opportunities and promotion.
2. Continuing costs or savings: No additional costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional costs - individual may become more competitive in securing jobs or promotion.
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Approximately $100 for computer services to make name changes to diploma.
1. First year:
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: There could be increased revenues at the state and local levels with individual having a more favorable opportunity in securing jobs and promotions.
(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: No conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Programs
(Proposed Amendment)

709 KAR 1:030. High school equivalency certificate.

RELATES TO: KRS 156.485
STATUTORY AUTHORITY: KRS [13A.100,] 156.07
NECESSITY AND FUNCTION: KRS 156.485

establishes and recognizes the GED test for high school equivalency purposes in Kentucky and allows a five (5) dollar fee to be assessed for duplicate equivalency certificates. This regulation establishes the means whereby a high school equivalency diploma [certificate] can be issued through the Department of Education to adults who pass the GED test.

Section 1. All GED test scanner sheets from official testing centers shall be sent to the State Department of Education for scoring. The State Department of Education shall provide a high school equivalency diploma [certificate] to local boards of education to be issued to each applicant who has taken the GED test and who Has scored at least thirty-five (35) on each of the five (5) GED tests and has an overall average standard score of forty-five (45) on all five (5) tests when they are considered as a whole.

Section 2. There shall be no minimum age requirement for issuance of a high school equivalency diploma [certificate] to military personnel or veterans.

Section 3. GED test scores shall be accepted as official only when they are reported by official testing centers; the United States Armed Forces Institute; directors of Veterans Administration hospitals; and[, in special cases,] the GED testing service.

Section 4. There shall be no charge for the issuance of a high school equivalency diploma [certificate]. A five (5) dollar fee shall be assessed for the issuance of a duplicate GED diploma [certificate]. Said fees shall be used to support the adult education program.

GEORGE R. SIEMENS, JR., Chairman
APPROVED BY AGENCY: March 20, 1990
FILED WITH LRC: April 5, 1990 at 9 a.m.
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gippy Graham
(1) Type and number of entities affected: State Board for Adult, Vocational, and Vocational Rehabilitation and approximately 20,000 individuals who take the GED test each year.
(a) Direct and indirect costs or savings to those affected:
1. First year: There are no additional costs to the individuals affected but there could be benefits from improved job opportunities and promotion.
2. Continuing costs or savings: No additional costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional costs - individual may become more competitive in securing jobs or promotion.
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Approximately $100 for computer services to make name changes to diploma.
1. First year:
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: There could be increased revenues at the state and local levels with individual having a more favorable opportunity in securing jobs and promotions.
(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: No conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Programs
(Proposed Amendment)

709 KAR 1:060. Standard for academic progress for postsecondary and adult students.

RELATES TO: KRS 163.020, 163.030
STATUTORY AUTHORITY: KRS 156.032, 156.070, 163.030
NECESSITY AND FUNCTION: KRS 163.020 establishes a state vocational education program, and KRS 163.030 gives the State Board for Adult, Vocational Education and Vocational Rehabilitation all necessary power and authority in administering the state's vocational education program. This regulation is necessary in order to set a statewide standard for academic progress for postsecondary and adult students in the state's vocational technical schools and area vocational education centers to meet in order to remain in good academic standing in such schools.

Section 1. Any postsecondary or adult student enrolled in a state operated vocational school shall maintain satisfactory progress toward completion of the prescribed competencies in all requirements for a diploma or certificate program. Evaluation of [based upon the student's skill development.] the quality of the student's performance shall include the grades of [quality of any] shop or laboratory work, technical knowledge, and occupational work experiences such as clinical or cooperative education. Work habits and attitudes, as well as [attitude, conduct, and] completion of assigned tasks and learning activities are evaluated.

Section 2. Postsecondary and adult students shall complete each course required for a diploma or certificate program with a "C" average or above prior to completion of the program. Any course identified as a prerequisite to an advanced level course shall be completed with a "C" average or above prior to enrolling in the advanced course. A required course completed with less than a "C" average may be repeated one (1) time at no charge to the students. For a repeated course, the highest grade earned is used in calculation of the overall grade point average. [must maintain an overall "C" average, i.e., seventy (70) percent passage, in each requirement for completion of an occupational program. A student who falls below a "C" average in any of the requirements at the end of a specified grading period shall be placed on academic probation for not less than one (1) grading period. A grading period consists of an academic quarter (fifty-five (55) days). Remedial assistance shall be offered the student in those instructional areas below the "C" in an effort to allow them to proceed in the program. If satisfactory academic progress is still not being made at the end of the probationary period, the student shall be academically expelled, without the right of formal hearing, by the principal.]

Section 3. Remedial assistance shall be offered during the course to students in those instructional areas below the "C" in an effort to allow them to successfully complete the course and program. Remediation may include tutorial service, clearly defined independent study, scheduled time in the learning center, or other appropriate assistance.

Section 4. A student whose overall cumulative grade point average (GPA) is below a "C" at the end of a term shall be placed on academic probation for one (1) term. If, at the end of the probationary period, the cumulative overall GPA is less than a "C", the student shall be academically expelled by the principal, without the right of formal hearing.

Section 5. [3.] (1) Clear and specific notice of the academic progress policy set forth herein shall be included in each school's student handbook, which shall be disseminated to each student upon [his] entrance into a vocational program, and each teacher shall clearly explain to each student the grading criteria to be used at the outset of a student's participation in that teacher's course or program.

(2) Any student being placed on academic probation shall be clearly advised of such by the school, the duration of such probation, and the consequences of continued failure to make satisfactory academic progress.

Section 6. [4.] (1) A student expelled for academic reasons, shall, unless extenuating circumstances or the facts of individual cases warrant shorter expulsions, be readmitted to school on the basis of waiting list priorities at the time of expulsion or on the basis of two (2) academic quarters, whichever is longer.

(2) A school shall not be obligated to, but may, readmit a student to the school after a second academic expulsion.

Section 7. Readmission to the same program after academic dismissal from this school or another state vocational school shall be conditional admission, and continuation in the program shall be contingent upon attaining a cumulative grade point average of a "C" or above by the end of the first term. Students dismissed from one (1) vocational school may not be readmitted to another vocational school for a period of at least one (1) academic quarter after dismissal.

Section 8. Graduates of any vocational-technical program may return to the vocational school within two (2) years after program completion to repeat one (1) or more courses one (1) time at no charge if his or her employer files a letter with the school certifying the need for such course(s) for continued employment.

GEORGE R. SIEMENS, JR., Chairman
APPROVED BY AGENCY: March 20, 1990
FILED WITH LRC: April 5, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing has been scheduled on May 24, 1990 at 10 a.m. EST, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its March 20 meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Frankfort, Kentucky 40601, on or before May 18, 1990. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joyce Logan
(1) Type and number of entities affected: 17 state vocational-technical schools, 5 postsecondary health occupations schools, 1 KATC, and 54 area vocational centers (postsecondary students).
(a) Direct and indirect costs or savings to those affected:
1. First year: No additional cost.
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Similar to present requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: No additional cost.
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: Similar to present requirements.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Changes were made based upon study of present regulation and requirements by staff and a representative committee of school and regional personnel.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in

conflict: No conflict.

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

(6) Any additional information or comments: Presently the state-operated vocational schools have a regulation defining academic progress but due to the general nature of the regulation a variety of interpretations are being applied. This revision is more specific and less restrictive on the student in regard to academic probation and dismissal without sacrificing program completion with a qualitative factor.

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal programs for financial aid, veterans' administration regulations, and JTPA require evidence of satisfactory progress. Specific references: Financial Aid (CFR 668.14); Veterans (CFR 21.4253; Section 1775, Chapter 36, Title 38, U.S.C.); JTPA (P.L. 97-300).

2. State compliance standards. Presently, academic progress for postsecondary and adult students in state-operated vocational schools is based on 709 KAR 1:060. This regulation amendment clarifies and states more specifically standards pertaining to academic probation, academic dismissal, and satisfactory program completion.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations require the school to establish and publish regulations or policies governing satisfactory progress. Specific academic progress or satisfactory progress standards are not stated in the federal laws and regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal regulations allow requirements to be set by the school; therefore, there is not a specific federal requirement for comparison.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The present regulation for state-operated vocational schools defines academic progress, academic probation, and academic dismissal; however, a variety of interpretations are being applied in the schools. This revision states the regulation more specifically to bring about uniform interpretation and application and is based on recommendations of a committee composed of school representatives.

LABOR CABINET
Department for Workplace Standards
(Proposed Amendment)

803 KAR 1:090. Handicapped and [,] sheltered workshop [and student] employee's wages.

RELATES TO: KRS 337.275, 337.285

STATUTORY AUTHORITY: KRS 337.295

NECESSITY AND FUNCTION: KRS 337.295 authorizes the commissioner to issue regulations permitting handicapped workers and [,] sheltered workshop employees[, and students] to be employed at less than the established minimum wage. KRS 337.010(2)(a)5[(v)] requires that the wages be set for a period of time fixed by the commissioner. The function of this regulation is to set certain standards to be used in obtaining these special rates.

Section 1. As used in this regulation, unless the context requires otherwise:

(1) "Commissioner" means Commissioner of Workplace Standards or any person authorized to act in his behalf, having jurisdiction over laws or regulations governing wages and hours of employees working in this state;

(2) "Department" means Department of Workplace Standards;

(3) "Handicapped worker" means an individual whose earning or productive capacity is impaired by age or physical or mental deficiency or injury for the work he is to perform;

(4) "Sheltered workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers, and/or providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature. [; and]

[(5) "Student" means a person who receives primarily daytime instruction at the physical location of a bona fide educational institution, in accordance with the institution's accepted definition of a student. A student retains that status during Christmas, summer, and other vacations.]

Section 2. (1) No employer shall employ a handicapped worker or sheltered workshop employee at less than the applicable minimum wage, unless such employment has been authorized by a special certificate issued by the commissioner or by the U.S. Department of Labor. The rate of pay and the period of time effective shall be fixed by the certificate.

(2) When the minimum wage provided by KRS 337.275 is less than or equal to the federal minimum wage the commissioner will not issue certificates for persons whose employment is subject to the federal minimum wage provisions of the Fair Labor Standards Act of 1938, as amended (FLSA). For such persons the employer shall [should] request a certificate from the U.S. Department of Labor. Valid certificates issued by the U.S. Department of Labor, Wage Hour Division, which authorize rates of pay lower than the applicable Kentucky minimum wage, will be accepted as authority to pay such subminimum wage rates, provided that the information submitted in the applications is complete and accurate. If there is any reason to believe that the employment is, or may be in the future, subject to the FLSA minimum wage, the federal certificate shall [should] be obtained and a state certificate will not be necessary.

(3) For handicapped workers or sheltered workshop clients not covered by the minimum wage provisions of the FLSA, certificates may be issued by the commissioner if all of the requirements for federal certification are met. These requirements are published in Title 29, Part 525 of the Code of Federal Regulations [the following regulations]. These regulations may be obtained from the U.S. Department of Labor Wage Hour Regional and Area Offices and Field Stations. The common use of the criteria and procedures outlined in this [these]

regulation[s] will serve to eliminate duplication and to standardize special minimum wage certification within the state. For state certification the commissioner will generally exercise the authority and functions which the administrator has for the federal certificates.

[(a) For handicapped workers in competitive employment: Title 29, Part 524 of the Code of Federal Regulations.]

[(b) For employment of handicapped clients in sheltered workshops: Title 29, Part 525 of the Code of Federal Regulations.]

[(c) For employment of handicapped patient workers in hospitals and institutions: Title 29, Part 529 of the Code of Federal Regulations.]

(4) In the event an employer misuses a certificate in any way, the commissioner reserves the right to revoke such certificate and to refuse to issue another certificate in the future. If the certificate was issued by the U.S. Department of Labor, the commissioner will revoke any authority for payment of less than the minimum wage provided by KRS 337.275.

(5) Application for Kentucky special minimum wage certificates for handicapped and sheltered workshop employees will be submitted on Form ES [LS]-61 which is available from Division of Employment Standards and Mediation, Kentucky Department of Workplace Standards, Labor Cabinet, Frankfort, Kentucky 40601. In all cases the application will be accompanied by the [following] completed federal special minimum wage certificate applications as appropriate under Title 29, Part 525 of the Code of Federal Regulations. [The forms may be obtained from the U.S. Department of Labor Wage Hour Regional Office in Atlanta, Ga.]

[(a) For individual handicapped worker in competitive employment: Form WH-222.]

[(b) For sheltered workshop group rates: Forms WH-373, WH-226, WH-227, WH-247.]

[(c) For individual rates for sheltered workshop clients: Form WH-249.]

[(d) For Work Activity Center client with productivity substantially exceeding average for the center, and for training sheltered workshop clients in commercial industry: Form WH-222.]

[(6) Special minimum wage certificates issued by the Commissioner under provisions of this section will specify the rate authorized. The wages paid may not be lower than the certificate rate and may not be lower than wages which are commensurate with those paid nonhandicapped workers in the industry in the vicinity for the same type, quality and quantity of work.]

[Section 3. (1) No employer shall employ a student at less than the applicable minimum wage, unless he has been granted a special certificate from the commissioner authorizing such employment. The certificate, if issued, will permit the student to be paid no less than eighty-five (85) percent of the applicable minimum wage.]

[(2) A student shall not be permitted to work at subminimum wages for more than twenty (20) hours a week. A student worker who exceeds these limitations shall be paid the applicable minimum wage for hours worked in excess of twenty (20) hours per week.]

[(3) Certificates authorizing the employment of students at subminimum wages shall not be issued unless the following conditions are met:]

[(a) Students are available for employment at subminimum wages.]

[(b) The employment of students will not create a substantial probability of reducing the full-time employment opportunities for persons other than those employed under such certificates. To insure against the probability of reducing the full-time employment opportunities for persons, the employer shall be limited to ten (10) percent of his full-time employees or four (4) student employees at subminimum wages, whichever is the least.]

[(c) Abnormal labor conditions such as a strike or lockout do not exist at the establishment for which a certificate is requested.]

[(d) There are no outstanding violations of the provisions of a student certificate previously issued to the employer, nor have there been any violations of any minimum wage laws or child labor regulations which provide reasonable grounds to conclude that the terms of a certificate may not be complied with.]

[(e) The application for a special certificate shall be in writing and addressed to the Kentucky Department of Workplace Standards, Labor Cabinet, Frankfort, Kentucky 40601. The application shall contain the following information:]

[1. Name and address of employer requesting certificate.]

[2. Name and address of student to be employed at special minimum wage.]

[3. Social security number of student.]

[4. Total number of full-time employees presently employed by employer requesting certificate.]

[5. A statement that abnormal labor conditions such as a strike or lockout do not exist at the establishment for which a certificate is requested.]

[6. A statement that there are no outstanding violations of the provisions of a student certificate previously issued to the employer, nor have there been any violations of any minimum wage laws or child labor regulations in the past.]

[7. Signature and title of employer or authorized representative requesting certificate.]

[(4) The employer shall not be permitted to employ such worker at less than the applicable minimum wage until the certificate has been returned to him approved by the commissioner.]

[(5) In the event that an employer misuses the certificate in any way, the commissioner reserves the right to revoke such certificate and refuse to issue such certificate in the future.]

CAROL M. PALMORE, Secretary

APPROVED BY AGENCY: February 2, 1990

FILED WITH LRC: April 12, 1990 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on May 29, 1990 at 10 a.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 24, 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: Mr. Charles E. McCoy, Kentucky Labor Cabinet, Division of Employment Standards and Mediation, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles E. McCoy

(1) Type and number of entities affected: All employers subject to the requirements of KRS 337.275. Approximately 35,000 employers subject to KRS 337.275.

(a) Direct and indirect costs or savings to those affected: There will be a substantial savings in administrative time and paper by not having to duplicate the application process for both state and federal. Also, the employer will only pay wages according to the employee's productivity in comparison to nonhandicapped employees.

1. First year: Savings will be in administrative time and paper as set forth in (a).

2. Continuing costs or savings: Same as 1.

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

(b) Reporting and paperwork requirements: The paperwork requirements will be reduced substantially.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There will be a savings in printing costs by using the U.S. Department of Labor forms.

1. First year: See (2)(a).

2. Continuing costs or savings: See (2)(a).

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: 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: None

TIERING: Was tiering applied? No. This proposed regulation applies equally to all employers subject to KRS 337.275.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes___ No_X_

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will only benefit local government if they choose to employ handicapped individuals and want to pay less than the minimum wage.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation does not relate to any aspect or service of local government.

4. How does this administrative regulation affect the local government or any service it provides? It does not affect local government.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:403. Adoption of 29 CFR Part 1926.50-.59.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.50-.59 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with the following additions, exceptions, and deletions:

(1) 29 CFR 1926.58, "Asbestos, Tremolite, Anthophylite, and Actinolite," as published in the Federal Register, Volume 51, Number 119, June 20, 1986 is adopted by reference with the following amendments:

(a) 29 CFR 1926.58(e)(6)(iii) is amended to read: "The employer shall ensure that contractors provide in writing that they have a competent person meeting the requirements of paragraph (b) "competent person" and paragraphs (e)(6)(ii) and (III) before work commences."

(b) 29 CFR 1926.58(f)(3) is amended to read: "The respirators required by this exception are to be Type "C" supplied - air respirators; continuous flow or pressure - demand class."

(c) 29 CFR 1926.58(f)(5)(ii) is amended to read: "The employer shall ensure that all sampling is conducted in accordance with the ORM in Appendix A before sampling commences."

(d) 29 CFR 1926.58(f)(5)(iii) is amended to read: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all asbestos counters meet the qualifications listed in Appendix A. This notice shall be given prior to the start of the analyses."

(e) 29 CFR 1926.58(h)(3)(i) is amended to read: "Where respiratory protection is used, the

employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 - 1980, with the exception of Appendix A5, Suggested Procedures for Carrying Out Qualitative Respirator - Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator - Fitting Tests."

(f) 29 CFR 1926.58(j)(2)(1) is amended to read: "The decontamination area shall be separated from the regulated area by an air lock. Air locks shall be used to separate the clean room, shower area and equipment room. An "air lock" is an open area used to separate the clean room, shower room and equipment room from each other; and to separate the decontamination area from the work area. It is accessible through doorways protected by two overlapping polyethylene sheets."

(g) 29 CFR 1926.58(k)(1)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (k)(1)(i) of this section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"

(h) 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.

(i) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.

(j) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 54, Number 243, December 20, 1989, is incorporated by reference.

(k) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 55, Number 24, February 5, 1990, is incorporated by reference.

(2) 29 CFR 1926.59, "Hazard Communication," as published in Federal Register, August 24, 1987, Volume 52, Number 163, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: April 12, 1990

FILED WITH LRC: April 13, 1990 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on May 22, 1990 at 9 a.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield, Kembra Taylor

(1) Type and number of entities affected: Section 1(c), (j), (k), (l), (m), and (o) affects all employers in the Commonwealth with asbestos operations.

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

1. First year: There will be no cost for compliance with Section 1(c), (j), (k), (l), (m), and (o) amendment.

2. Continuing costs or savings: There will be no continuing costs or savings for compliance with the amendment.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this amendment which will increase or decrease costs.

(b) Reporting and paperwork requirements: This amendment does not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This amendment will not affect 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: There will be no reporting or paperwork requirements as a result of this amendment.

(3) Assessment of anticipated effect on state and local revenues: This amendment has no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered, because the federal regulations contain specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting, overlapping, or duplicative administrative regulations or government 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:

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one (1) or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. P.L. 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).
2. State compliance standards. Section 1(c), (j), (k), (l), (m), and (o) amendment requires Kentucky employers to comply with standards governing asbestos operations.
3. Minimum or uniform standards contained in the federal mandate. Section 1(c), (j), (k), (l), (m), and (o) amendment adopts all standards contained in the Federal Register, Volume 54, Number 243, December 20, 1989, and the Federal Register, Volume 55, Number 24, February 5, 1990.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment is identical to the changes contained in the federal standards cited in item 3 above.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment imposes no stricter, additional or different responsibilities or requirements than the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Section 1(c), (j), (k), (l), (m), and (o) amendment affects all local government entities that are within the scope of the asbestos standard.
3. State the aspect or service of local government to which this administrative regulation relates. The proposed amendment affects local government employees' safety and health.
4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to "Asbestos" regarding occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. This amendment will have no effect on the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:415. Adoption of 29 CFR Part 1926.650-.653.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.650-.653 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with following additions, exceptions, and deletions. Revisions to 29 CFR 1926, Subpart P, "Excavations," as published in Federal Register, Volume 54, Number 209, October 31, 1989, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.
(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: April 12, 1990
FILED WITH LRC: April 13, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation shall be held on May 22, 1990 at 9 a.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield, Kembra Taylor
(1) Type and number of entities affected: Section 1(1) affects all employers in the Commonwealth of Kentucky with excavation operations.
(a) Direct and indirect costs or savings to those affected:
1. First year: There will be a savings of $760,000 with compliance with Section 1(1), because this standard which replaces an eighteen year old standard, is performance oriented, allowing contractors several options.
2. Continuing costs or savings: There will be a savings of $760,000 with compliance with Section 1(1), because this standard which

replaces an eighteen year old standard, is performance oriented, allowing contractors several options.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this revision which will increase or decrease costs.

(b) Reporting and paperwork requirements: This revision does not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This revision will not affect 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: There will be no reporting or paperwork requirements as a result of this revision.

(3) Assessment of anticipated effect on state and local revenues: This revision has no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered, because the federal regulations contain specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting, overlapping, or duplicative administrative regulations or government 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:

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one (1) or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. P.L. 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(1) revision requires Kentucky contractors to comply with federal standards governing excavation work.

3. Minimum or uniform standards contained in the federal mandate. Section 1(1) revision adopts all standards contained in the Federal Register, "Excavations," Volume 54, Number 209, October 31, 1989.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This revision is identical to the changes contained in the federal standards cited in item 3 above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This revision imposes no stricter, additional or different responsibilities or requirements than the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes___ No_X_

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Section 1(1) revision affects all local government entities that are within the scope of the excavation standard.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects local government employees' safety and health.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this revision is to comply with federal OSHA regulations relating to "Excavations" regarding occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. This revision will have no effect on the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:416. Adoption of 29 CFR Part 1926.700-.702.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national concensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.700-.702 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with the following additions, exceptions, and deletions:

(1) Revisions to 29 CFR 1926, Subpart Q, "Concrete, Concrete Forms and Shoring," (now "Concrete and Masonry Construction"), as published in Federal Register, Volume 53, Number 116, June 16, 1988, are incorporated by reference.

(2) Revisions to Subpart Q of 1926.704(b), "Concrete and Masonry Construction Safety Standards," as published in Federal Register, Volume 54, Number 192, October 5, 1989, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: April 12, 1990

FILED WITH LRC: April 13, 1990 at 10 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on May 22, 1990 at 9 a.m. at the Kentucky Labor Cabinet, U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield, Kembra Taylor

(1) Type and number of entities affected: This revision affects all employers in the Commonwealth subject to concrete and masonry operations.

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

1. First year: This revision will not result in any additional direct or indirect costs to those affected (this revision is a result of a typographical error in the original standard that was revised).

2. Continuing costs or savings: This revision will not result in any additional costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): This revision will have no effect upon competitiors.

(b) Reporting and paperwork requirements: This revision will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: There will be no effects on the promulgating administrative body by this revision.

(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: There will be no reporting or paperwork requirements as a result of this revision.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This revision concerns no alternative method being considered, because the regulations concern specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication as a result of this revision.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. P.L. 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(2) revision requires employers to adhere to regulations concerning precast concrete requirements.

3. Minimum or uniform standards contained in the federal mandate. Section 1(2) revision relates to the standard contained in the Federal Register, "Requirements for Precast Concrete," Volume 54, Number 192, October 5, 1989.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no change in this revision to the Federal Register identified in item 3.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This revision imposes no stricter standards, additional or different responsibilities or requirements than the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Section 1(2) revision affects all divisions of local government that are engaged in precast concrete operations.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects local government employees' safety and health.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of Section 1(2) revision is to adopt federal regulations relating to precast concrete operations.

PUBLIC PROTECTION & REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:050. Steeplechase racing.

RELATES TO: KRS 230.361
STATUTORY AUTHORITY: KRS 230.215
NECESSITY AND FUNCTION: To regulate conditions on which steeplechase races shall be conducted when there is pari-mutuel wagering.

Section 1. Definitions. (1) "Steeplechase race" means a running contest between thoroughbred horses, ridden by jockeys, over a prescribed course which may include obstacles or jumps and which is conducted at a racing association licensed by the Kentucky State Racing Commission.

(2) For steeplechase races, "recognized meeting" means any meeting with regularly scheduled races for thoroughbreds, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority which has reciprocal relations with the Jockey Club and whose race records can be provided an association by the Jockey Club.

(3) A foreign substance is defined as all substances except those which exist naturally in the untreated horse at normal physiological concentration, and substances or metabolites thereof, which are contained in equine feeds or feed supplements, do not contain pharmacodynamic or chemotherapeutic agents, and do not interfere with the detection of prohibited foreign substances.

Section 2. All steeplechase races on which pari-mutuel wagering is conducted shall be in accord with this regulation and all other provisions of KAR Title 810 except as noted in the sections of this regulation.

Section 3. For steeplechase races, "maiden" means a horse which, at the time of starting, has never won a race at a recognized meeting, except as follows:

(1) In the races on the flat, a horse is still a maiden although the winner of a steeplechase.

(2) In a steeplechase, a horse is still a maiden although the winner of a flat race.

Section 4. For steeplechase races, a horse shall be considered a "starter" immediately upon the assistant starter dropping the flag.

Section 5. For steeplechase races, the "weight for ages" schedule in 810 KAR 1:014, Section 1(12) shall not apply. Each association desiring to conduct steeplechase races shall submit to the commission for its approval a "weight for ages schedule for steeplechase races" as a part of its application for race dates.

Section 6. For steeplechase races, 810 KAR 1:006, Section 33 shall not apply.

Section 7. For steeplechase races, 810 KAR 1:012, Section 7 shall not apply.

Section 8. For steeplechase racing 810 KAR 1:012, Section 9(3) shall not apply.

Section 9. Notwithstanding other provisions of KAR Title 810, spurs shall be allowed for steeplechase races.

Section 10. For licensed steeplechase associations [races], the provisions of 810 KAR 1:013, Section 4 [3] shall not apply. For steeplechase races, the provisions of 810 KAR 1:013, Section 3(7) shall not apply.

Section 11. Notwithstanding the provisions of 810 KAR 1:018 for steeplechase races, no horse participating in any race shall carry in its body any foreign substance.

Section 12. For steeplechase races, stewards shall serve from one (1) minute after midnight on the day before entries are made until one (1) minute before midnight on the day after the last racing day of the race meeting for which they are appointed; provided, in the event a dispute or controversy arises during a race meeting which is not settled at the conclusion of the race meeting, then the power of the stewards shall be extended over the period necessary to resolve the matter, or until the matter is referred or appealed to the commission.

Section 13. For steeplechase races, 810 KAR 1:009, Section 4(1) and (2) shall not apply. For such steeplechase races, the apprentice allowance shall be ten (10) pounds until he has ridden a winner, seven (7) pounds until he has ridden an additional four (4) winners; five (5) pounds until he has ridden ten (10) winners.

Section 14. For steeplechase races, the Jockey Club registration certificate of each horse must be filed with the horse identifier within one (1) hour after the horse's arrival on the grounds.

Section 15. For steeplechase races, 810 KAR 1:014, Section 1(11) shall not apply and ten (10) pounds is the limit of overweight any horse is permitted to carry with the exception of when the rider is an amateur, in which case there is no limit.

LYLE C. ROBEY, Chairman
APPROVED BY AGENCY: March 28, 1990
FILED WITH LRC: March 28, 1990 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on May 24, 1990 at 10 a.m. at the offices of the Kentucky State Racing Commission at the Kentucky Horse Park, 4063 Iron Works Pike, Bldg. B, Lexington, Kentucky 40511. Individuals interested in attending the hearing should notify this agency in writing by May 19, 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: Michael A.

Fulkerson, 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: All owners, trainers, and horses entered at Dueling Grounds and the KSRC.
(a) Direct and indirect costs or savings to those affected:
1. First year: Will save the KSRC approximately $5,000 per year.
2. Continuing costs or savings: This savings will be annual.
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: Deletes a requirement that would be difficult and expensive to accomplish.
(a) Direct and indirect costs or savings:
1. First year: Same savings as noted above.
2. Continuing costs or savings: See above.
3. Additional factors increasing or decreasing costs: See above.
(b) Reporting and paperwork requirements: There are none.
(3) Assessment of anticipated effect on state and local revenues: Removing the work-out requirement will probably keep several horses from being scratched which will increase mutuel taxes.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This is standard practice for steeplechase racing even though different from thoroughbred.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are none.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. A different set of rules will be applied relating to "off-track stabling" and "work-outs" for steeplechase racing and one day events.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 13:080. Authorized procedures.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964
NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt rules and regulations relating to emergency medical technicians. The function of this regulation is to establish procedures which EMTs are authorized to perform.

Section 1. Authorized Certified EMT Procedures. (1) Except as otherwise provided in subsections (2) and (3) of this section, certified EMTs may perform any of the procedures as set forth in the "Basic Emergency Medical Technician: National Standard Curriculum," Third Edition, 1984, published by the United States Cabinet of Transportation, National Highway and Traffic Safety Administration, Washington, D. C. 20590, and in the accompanying text entitled "Emergency Care," Fifth [Fourth] Edition, 1990 [1986], published by The Brady Company, Prentice-Hall, Inc., Englewood Cliffs, N.J. 07632. A copy of both publications, included by reference as if fully incorporated herein, shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and shall be available for public inspection.
(2) EMTs shall not perform any of the following procedures:
(a) The administration of intravenous fluids or plasma expanders, or both;
(b) Perform a cricothyrotomy;
(c) Relieve a tension pneumothorax through the use of needles;
(d) Insert an esophageal obturator airway or esophageal gastric tube airway.
(3) An EMT shall not use medical antishock trousers unless:
(a) He has completed a Kentucky emergency medical technician course during which the use of medical antishock trousers was taught after July 1, 1985; or
(b) He is currently certified as an emergency medical technician and completes the four (4) hour training session on the medical antishock trousers and successfully passes an examination administered by the cabinet consisting of both written and practical application examinations. The standards for such examinations shall be the same as for an EMT course. The training and examination shall be conducted by an EMT instructor or instructor trainer in accordance with the criteria set forth in the "Basic Emergency Medical Technician: National Standard Curriculum," Third Edition, 1984 and the standards and protocols of the Cabinet for Human Resources; or
(c) He has completed an emergency medical technician course in another state which included the use of medical antishock trousers and has taken and passed, as a part of his Kentucky challenge examination, an examination in the use of medical antishock trousers; and
(d) He uses medical antishock trousers in accordance with the standards and the protocol of the cabinet.

Section 2. All EMTs are to be certified in use of medical antishock trousers prior to January 1, 1988. Any EMT who is not certified in the use of medical antishock trousers as provided in this regulation shall obtain such certification by a method provided herein no later than January 1, 1988 in order to qualify for renewal of his certification as an EMT in Kentucky.

Section 3. EMT-defibrillation Pilot Program. EMTs who have successfully completed the cabinet's ten (10) hour training course for the [automatic and] semiautomatic defibrillation pilot program and have successfully passed an examination consisting of both written and practical application examinations, shall be authorized to perform defibrillation procedures in accordance with the standards and protocols established by the cabinet. Such authorization shall expire on June 30, 1991 [1990].

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: March 16, 1990
FILED WITH LRC: April 6, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor, CHR Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Calhoun
(1) Type and number of entities affected: Limited to participation of four ambulance services.
(a) Direct and indirect costs or savings to those affected: Ambulance services selected for voluntary participation in the pilot program will be responsible for purchasing the necessary equipment. There are no mandated costs involved, since participation will be on a voluntary basis if the program is implemented statewide.
1. First year:
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: This regulation will not increase reporting and paperwork requirements.
(2) Effects on the promulgating administrative body: This will create a slight increase in duties for staff who will monitor and evaluate the program.
(a) Direct and indirect costs or savings: Regulation affects no costs or savings.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: Will require a written evaluation of the program.
(3) Assessment of anticipated effect on state and local revenues: This regulation will not affect state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives at this time, due to this being a pilot program.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No other statute, regulation or policy conflicts with, overlaps or duplicates this regulation.
(a) Necessity of proposed regulation if in conflict: No conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Regulation applies equally to all participants in the Emergency Medical Technician-defibrillation pilot program. If the program is adopted statewide, the regulations would apply only to the services that choose to participate, for these regulations would not be mandated for all ambulance services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute mandating this regulation.
2. State compliance standards. Compliance standards will not be a part of this regulation, other than that the EMT will be trained and perform procedures according to protocols established by the cabinet.
3. Minimum or uniform standards contained in the federal mandate. There are no federally mandated standards.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Again, there is no federal mandate for this regulation.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no mandated federal standard with which to compare.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 17:020. State health plan process.

RELATES TO: KRS 194.050(1), 216B.015(23)[, Executive Order 86-366]
STATUTORY AUTHORITY: KRS 194.050(1)
NECESSITY AND FUNCTION: KRS 194.050 requires the Secretary <u>of the Cabinet</u> for Human Resources to adopt, administer and enforce all rules and regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet<u>.</u> [for Human Resources. The cabinet and the Statewide Health Coordinating Council are responsible for development of the state health plan. The Commission for Health Economics Control in Kentucky utilizes the state health plan in the review of applications for certificates of need to establish and modify health services and health facilities in the Commonwealth.]

Section 1. Purpose. The purpose of this regulation is to establish the process by which the state health plan is prepared, amended, and revised. [The state health plan shall serve as a major health policy document which provides a coordinated approach for identifying statewide health needs and addressing major health issues.]

Section 2. Definitions. (1) "Council" means the State Health <u>Planning</u> [Coordinating] Council [which for administrative purposes is attached to the Department for Health Services, Cabinet for Human Resources].
(2) "Cabinet" means the Cabinet for Human Resources.
(3) "State health plan" means the document duly adopted by the Statewide Health <u>Planning</u> [Coordinating] Council and approved by the Governor.

Section 3. State Health Plan Development. [(1) The cabinet shall determine the statewide health needs of the Commonwealth after consultation with the council and after providing reasonable opportunity for the submission of written recommendations respecting such needs from appropriate state agencies and other agencies

designated by the Governor for the purpose of making such recommendations.]

[(2) The cabinet shall prepare, review at least triennially and, revise as necessary, a preliminary state health plan.]

(1) [(3)] Proposed revisions to the state health plan shall be submitted by the cabinet [The cabinet shall submit the preliminary state health plan] to the council for adoption [approval or disapproval and for use in developing the state health plan].

(2) Upon adoption of the state health plan by the council, the cabinet shall submit the plan to the Governor for approval.

[(4) The council shall review the preliminary state health plan and direct the cabinet to make revisions and amendments as necessary.]

[(5) The preliminary state health plan shall become the proposed state health plan upon the approval of its contents by the council.]

(3) [(6)] Upon approval of the [preliminary] state health plan by the Governor [council], the cabinet shall file a proposed administrative regulation with the Legislative Research Commission which incorporates such plan by reference. [those policies, planning criteria, and review standards which are utilized by the Commission on Health Economics Control in Kentucky pursuant to KRS Chapter 216B.040, in the commission's consideration of proposal's consistency with the state health plan.]

[(7) Prior to submission of the proposed state health plan to the Governor, the council and the cabinet shall conduct a joint public hearing on the proposed plan to receive comments orally or in writing from interested parties. This hearing shall serve as the public hearing required by KRS Chapter 13A for those portions of the plan incorporated by reference into the proposed regulation filed by the cabinet pursuant to subsection (6) of this section.]

[(8) Not less than thirty (30) days prior to such hearing, the cabinet shall publish in at least two (2) newspapers of general circulation in the state, a notice of the council's consideration of the proposed plan, the time and place of the hearing, the place at which interested persons may consult the plan prior to the hearing and the place and period within which written comments on the proposed plan may be submitted.]

[(9) The council shall give written consideration to all comments received at the public hearing. The statement of consideration shall summarize the comments received at the hearing, specify what changes are being made in the plan in response to comments, and, if changes are not being made, specify the reasons for not changing the plan. A copy of the statement of consideration shall be available for public review and shall be provided to all persons who submitted comments on the plan.]

[(10) The cabinet shall prepare a statement of consideration and file it with the Legislative Research Commission pursuant to KRS Chapter 13A for those portions of the plan incorporated by reference into the proposed regulation filed by the cabinet pursuant to subsection (6) of this section. The cabinet's statement of consideration shall be based on the response of the council to the comments received.]

[(11) After approval of the proposed state health plan and any revisions or amendments made subsequent to the public hearing, the council shall submit the proposed plan to the Governor for approval or disapproval.]

[(12) If the Governor determines the proposed plan does not effectively meet statewide health needs as determined by the cabinet and disapproves the proposed plan, the Governor shall make public a detailed statement of the basis for the determination and shall specify the changes in the plan which the Governor determines are needed to meet such needs. The council shall review the changes in the plan which the Governor specifies and shall implement any such revisions within thirty (30) days. Such revisions shall not be subject to the provisions of subsections (7), (8), and (9) of this section.]

[(13) All revisions and amendments to the state health plan except those specified by the Governor under subsection (10) of this section shall follow the procedures set forth in this regulation for development of the plan.]

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: April 12, 1990
FILED WITH LRC: April 13, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the DES Conference Room, Second Floor, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Mel Counts, Director
NOTE: There are no direct or indirect costs or savings to affected entities because this administrative regulation simply amends the process for developing the state health plan to comply with KRS Chapter 13A.
(1) Type and number of entities 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: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was

not applied bacause the state health plan process applies to all entities equally.

CABINET FOR HUMAN RESOURCES
Office of the Inspector General
(Proposed Amendment)

902 KAR 20:026. Operations and services; skilled nursing facilities.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990
STATUTORY AUTHORITY: KRS 216B.042 [216B.040], 216B.105[(3), Executive Order 86-366]
NECESSITY AND FUNCTION: KRS 216B.042 [216B.040] and 216B.105[(3)] mandate that the Cabinet for Human Resources [Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. [Executive Order 86-366 transferred the authority to regulate health services and health facilities from the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to the Office of the Inspector General.] This regulation establishes [provides for the] licensure requirements for the operation of skilled nursing facilities [and the services to be provided by skilled nursing facilities].

[Section 1. Scope of Operations and Services. Skilled nursing facilities are establishments with permanent facilities including inpatient beds. Services provided include medical services, and continuous nursing services to provide treatment for patients. Patients in a skilled nursing facility are patients who require inpatient care but are not in an acute phase of illness, and who currently require primarily convalescent or rehabilitative services and have a variety of medical conditions.]

Section 1. [2.] Definitions. (1) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.
(2) "Board" means the Commission for Health Economics Control in Kentucky.
(3) "Facility" means a skilled nursing facility.
(4) "License" means an authorization issued by the Board for the purpose of operating a skilled nursing facility and offering skilled nursing services.
(5) "Occupational therapist" means a person who is registered by the American Occupational Therapy Association or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association in collaboration with the American Occupational Therapy Association and who is engaged in or has completed the required supervised clinical experience period prerequisite to registration by the American Occupational Therapy Association.
(6) "Speech pathologist" means a person who:
(a) Meets the education and experience requirements for a Certificate of Clinical Competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or
(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.
(7) "Qualified dietician" or "nutritionist" means:
(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or
(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or
(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.
(8) "Qualified medical record practitioner" means a person who has graduated from a program for medical record administrators or technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as a Registered Records Administrator or an Accredited Record Technician by the American Medical Record Association.
(9) "Qualified social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Work Education.
(10) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.
(11) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 2. Scope of Operations and Services. Skilled nursing facilities are establishments with permanent facilities including inpatient beds. Services provided include medical services, and continuous nursing services to provide treatment for patients. Patients in a skilled nursing facility are patients who require inpatient care but are not in an acute phase of illness, and who currently require primarily convalescent or rehabilitative services and have a variety of medical conditions.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.
(2) Administrator. All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.
(3) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:
(a) Personnel policies, practices and procedures that support sound patient care.
(b) Notification of changes in patient status and service cost. There shall be written policies and procedures relating to notification of responsible person(s) in the event of significant changes in patient status, patient charges, billings, and other related

administrative matters.

(c) Patient care policies. The facility shall have written policies to govern the skilled nursing care and related medical and other services provided, which shall be developed with the advice of professional personnel, including one (1) or more physicians and one (1) or more registered nurses and other health personnel (e.g., social workers, dieticians, pharmacists, speech pathologists and audiologists, physical and occupational therapists and mental health personnel). Pharmacy policies and procedures shall be developed with the advice of a subgroup of physicians and pharmacists who serve as a pharmacy and therapeutics committee. A physician or a registered nurse shall be responsible for assuring compliance with and annual review of these policies. In addition to written policies for services, the facility shall have written policies to include:

1. Admission, transfer, and discharge policies including categories of patients accepted and not accepted by the facility.
2. Medication stop orders;
3. Medical records;
4. Transfer agreement;
5. Utilization review; and
6. Use of restraints.

(d) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(e) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who require medical and continuous skilled nursing care and who currently require primarily convalescent or rehabilitative services for a variety of medical conditions. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. The facility shall obtain a medical evaluation within forty-eight (48) hours of admission, unless an evaluation was performed within five (5) days prior to admission. The medical evaluation shall include current medical findings, rehabilitation potential, a summary of the course of treatment followed in the hospital or intermediate care facility (a current hospital discharge summary containing the above information shall be acceptable).

(c) If the physician's orders for the immediate care of a patient are unobtainable at the time of admission, the facility shall contact the physician with responsibility for emergency care to obtain temporary orders.

(d) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility to include: fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

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

(7) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients, shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient, and shall arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to an appropriate level of care.

(c) The agreement shall provide for the transfer of personal effects, particularly money and valuables, and for the transfer of information related to these items.

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

(e) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least the following: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(f) Except in an emergency, the patient, his next of kin, or responsible person(s) if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(8) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, tuberculosis testing in long term care facilities.

(9) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, evaluation of performance, records of in-service training and ongoing education, along with employee's name, address and social security number.

(c) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no

longer be transmitted.

(d) Staffing classification requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients, and the amount and kind of personal care, nursing care, supervision, and program needed to meet the needs of the patients, as determined by medical orders and by services required by this regulation.

2. If the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

3. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, who shall be a registered nurse, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel;

b. Recommending to the administrator the number and level of nursing personnel to be employed, participating in their recruitment and selection, and recommending termination of employment when necessary;

c. Assigning and supervising all levels of nursing personnel;

d. Participating in planning and budgeting for nursing care;

e. Participating in the development and implementation of patient care policies and bringing patient care problems requiring changes in policy to the attention of the professional policy advisory group;

f. Coordinating nursing services with other patient care services;

g. Planning and conducting orientation programs for new nursing personnel and continuing in-service education for all nursing personnel;

h. Participating in the selection of prospective patients in terms of nursing services they need and nursing competencies available;

i. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary;

j. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

4. Supervising nurse. Nursing care shall be provided by or under the supervision of a full-time registered nurse. The supervising nurse shall be a licensed registered nurse who may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and reviewing medical records, medication cards, patient care plans, and staff assignments, and whenever possible accompanying physicians when visiting patients.

5. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times and who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

6. Pharmacist. The facility shall employ a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

7. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multidisciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in subsection (8)(d)7a of this section may be assigned duties appropriate to their training and experience.

8. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and who shall be on duty a minimum of thirty-five (35) hours each week.

9. The administrator shall designate a person for each of the following areas who will be responsible for:

a. Medical records. The person responsible for the records shall maintain, complete and preserve all medical records. If the person is not a qualified medical record practitioner he shall be trained by and receive regular consultation from a qualified medical record practitioner.

b. Social services. There shall be a full-time or part-time social worker employed by the facility, or a person who has training and experience in related fields to find community resources, to be responsible for the social services. If the facility does not have a qualified social worker on its staff, consultation shall be provided by a qualified social worker. The person responsible for this area of service shall have information promptly available on health and welfare resources in the community.

c. Patient activities. This person shall have training or experience in directing group activities.

(e) In-service educational programs.

1. There shall be an in-service education program in effect for all nursing personnel at regular intervals in addition to a thorough job orientation for new personnel. Opportunities shall be provided for nursing personnel to attend training courses in rehabilitative nursing and other educational programs related to the care of long-term patients. Skill training for nonprofessional nursing personnel shall begin during the orientation period, to include demonstration, practice and supervision of simple nursing procedures applicable in the individual facility. It shall also include simple rehabilitative nursing procedures to be followed in emergencies. All patient care personnel shall be instructed and supervised in the care of emotionally disturbed and confused patients, and shall be assisted to understand the social aspects of patient care.

2. Social services training of staff. There shall be provisions for orientation and in-service training of staff directed toward understanding emotional problems and social needs of sick and infirm aged persons and recognition of social problems of patients and the means of taking appropriate action in relation to them. Either a qualified social worker on the staff, or one (1) from outside the facility, shall participate in training programs, case conferences, and arrangements for staff orientation to community services and patient needs.

(10) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, or an intermediate care facility if done within five (5) days prior to admission.)

3. The physician's orders for medication, diet, and therapeutic services. These shall be dated and signed by the physician.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication or prescription number, dosage and name of prescribing physician.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, visits by physician and phone calls to the physician, medically prescribed diets and restorative nursing measures.

8. Nursing supervisor's written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services.

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary completed, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of each patient shall be under supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first ninety (90) days following admission. Subsequent to the 90th day following admission, the patients shall be evaluated by a physician every sixty (60) days. There shall be evidence in the patient's medical record of the physician's visits to the patient at appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses, licensed practical nurses, aides and orderlies. The amount of nursing time available for patient care shall be exclusive of nonnursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;

2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;

3. Shall be protected from accident and injury by the adoption of indicated safety measures;

1. Shall be treated with kindness and respect.

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast patients;

b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities;

c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self care, transfer and ambulation activities;

d. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary;

e. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Nursing care plan. There shall be written nursing care plans for each patient based on the nature of illness, treatment prescribed, long and short term goals and other pertinent information.

1. The nursing care plan shall be a personalized, daily plan for individual patients. It shall indicate what nursing care is needed, how it can best be accomplished for each patient, what are the patient's preferences, what methods and approaches are most successful, and what modifications are necessary to insure best results.

2. Nursing care plans shall be available for use by all nursing personnel.

3. Nursing care plans shall be reviewed and revised as needed.

4. Relevant nursing information from the nursing care plan shall be included with other medical information when patients are transferred.

(3) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribed specific modalities to be used and frequency of physical, speech and occupational therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which include:

a. Services in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;

c. Determination and recommendation of appropriate speech and hearing services.

3. Occupational therapy services which includes:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;

b. Guiding the patient in his use of therapeutic creative and self-care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.

(5) Pharmaceutical services.

(a) Procedures for administration of pharmaceutical services. The facility shall provide appropriate methods and procedures for obtaining, dispensing and administering of drugs and biologicals, which have been developed with the advice of a staff pharmacist, or a consultant pharmacist, in cooperation with the facility's pharmacy and therapeutics committee.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provisions for promptly and conveniently obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician.

Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy or stop orders. The registered nurse or the pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review each patient's medications at the time of the medical evaluation pursuant to subsection (1)(b) of this section. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act of (KRS Chapter 314). Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one (1) patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and of sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

f. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance, remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

4. Use of restraints or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care. No form of restraints or protective devices shall be used except under written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such reports shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints

shall be comfortable and easily removed in case of an emergency.

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

5. Infection control and communicable diseases.

a. There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

(i) Policies which address the prevention of disease transmission to and from patients, visitors and employees, including:

i. Universal blood and body fluid precautions;

ii. Precautions for infections which can be transmitted by the airborne route; and

iii. Work restrictions for employees with infectious diseases.

(ii) Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

b. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

c. The facility shall provide an AIDS and HIV training program for all staff who provide direct patient care, utilizing a preapproved curriculum obtained from: Cabinet for Human Resources, Department for Health Services, Division of Epidemiology, Communicable Diseases Branch, 275 East Main Street, Frankfort, Kentucky 40621.

d. Sharp wastes.

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

(ii) Needles shall not be recapped, purposely bent or broken, or otherwise manipulated by hand.

(iii) The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

e. Disposable waste.

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

(ii) The facility shall establish specific written policies regarding handling and disposal of all wastes.

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

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

f. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, encephalitis, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus, and any other disease designated by the Commissioner for Health Services as posing a threat to health in long-term care facilities.

[a. Except as provided by clauses b, c, and d of this subparagraph no patient who is infected with a communicable disease which is reportable to the health department, pursuant to KRS Chapter 214 and applicable regulations shall knowingly be admitted to the facility.]

[b. The following specific diseases, although reportable, do not preclude a person from being admitted to a facility, and do not necessitate any special procedures on the part of the facility upon patient admission: animal bites, asbestosis, botulism, histoplasmosis, Kawasaki's disease, lead poisoning, Lyme disease, mesothelioma, pneumoconiosis, Reye's syndrome, Rocky Mountain spotted fever, silicosis, toxic shock syndrome, and trichinosis.]

g. [c.] A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

h. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

[d. The following specific diseases, although reportable, also do not preclude a person from being admitted to a facility: acquired immune deficiency syndrome (AIDS), hepatitis B or non-A non-B, herpes (genital), leprosy, malaria and syphilis (late latent only); however, if a facility chooses to admit persons with these diseases, the following conditions shall be met:]

[(i) Staff of facility have completed a training program approved by the cabinet.]

[(ii) The facility has developed strict written procedures and protocols for staff to follow in order to avoid exposure to blood or body fluids of the affected residents; and to follow if such an exposure occurs.]

[(iii) The facility must apprise the public and the residents of the facility, that persons having one (1) or more of these specific disease(s) in clause d of this subparagraph are admissible to that facility, and which disease(s) are involved. Identifying information on these residents shall not be disclosed except as provided by law or regulation of the Cabinet for Human Resources.]

i. [e.] If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(6) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and regulations. All diagnostic services shall be provided only on the request of a physician. The physician shall be notified promptly of the test results.

Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(8) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(9) Patient activities. Activities suited to the needs and interests of patients shall be provided as an important adjunct to the active treatment program and to encourage restoration to self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients.

(a) The activity leader shall use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patients' request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(10) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are

necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories, and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well-balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

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

(b) Housekeeping and maintenance services.

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

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Hand-washing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

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

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

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

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

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if

appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.
3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.
4. Basement rooms shall not be used for sleeping rooms for patients.
5. Patients may have personal items and furniture when it is physically feasible.
6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.
7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.
8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.
9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: January 9, 1990
FILED WITH LRC: April 5, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the Department for Employment Services, Second Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander
(1) Type and number of entities affected: 101
(a) Direct and indirect costs or savings to those affected: Most facilities, because of the requirements of the Federal Occupational Health and Safety Administration requirements, already conform to the amended version of this regulation; as such, additional costs should be minimal.
1. First year: Depending upon the waste management system in place, a facility could spend approximately $300 per resident per year.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There could be costs associated with the purchase of latex gloves and the development of infection control policies. Competition would not be effected since all facilities would have to comply with these standards.
(b) Reporting and paperwork requirements: This amendment would require facilities to document infection control policies.
(2) Effects on the promulgating administrative body: There will be an additional cost of $500 dollars for printing new regulations and survey forms.
(a) Direct and indirect costs or savings: Cost of $500 dollars.
1. First year: $500 for printing costs.
2. Continuing costs or savings: No continuing costs should be associated with this amendment since reprinting of regulation is a part of this agency's continuing budget.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: This amendment poses no additional paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There should be no effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation does not conflict, overlap or duplicate any statutes, regulation or policy.
(a) Necessity of proposed regulation if in conflict: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: No
TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to al regulated entities equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR 405 Subpart K - Conditions of Participation: Skilled Nursing Facilities.
2. State compliance standards. 902 KAR 20:026, Operation and services: skilled nursing facilities.
3. Minimum or uniform standards contained in the federal mandate. Federal standards include the areas of administration, staffing, medications, patient's rights, staff training, patient records, care planning, safety, nutrition, health services, and other services.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No standards which do, are not already imposed, either through the federal mandate or through the Occupational Health and Safety Administration are required by this regulation.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standards are imposed.

CABINET FOR HUMAN RESOURCES
Office of the Inspector General
(Proposed Amendment)

902 KAR 20:048. Operations and services; nursing homes.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990
STATUTORY AUTHORITY: KRS 216B.042 [216B.040], 216B.105(3)[, Executive Order 86-366]
NECESSITY AND FUNCTION: KRS 216B.042 [216B.040] and 216B.105(3) mandate that the Cabinet for Human Resources [Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. [Executive Order

86-366 transferred the authority to regulate health services and health facilities from the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to the Office of the Inspector General.] This regulation establishes [provides for the] licensure requirements for [the operation of] existing nursing homes [and the services to be provided by existing nursing homes]. This regulation does not address the establishment of new nursing homes.

[Section 1. Scope of Operations and Services. Nursing homes are establishments with permanent facilities that include inpatient beds. Services provided include medical services, and continuous nursing services. Patients in a nursing home facility require inpatient care but do not currently require inpatient hospital services, and have a variety of medical conditions.]

Section 1. [2.] Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and/or dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) "Board" means the Commission on Health Economics Control in Kentucky.

(4) "Facility" means a nursing home facility.

(5) "License" means an authorization issued by the Board for the purpose of operating a nursing home and offering nursing home services.

(6) "PRN medications" means medications administered as needed.

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

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

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

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

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

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

Section 2. Scope of Operations and Services. Nursing homes are establishments with permanent facilities that include inpatient beds. Services provided include medical services, and continuous nursing services. Patients in a nursing home facility require inpatient care but do not currently require inpatient hospital services, and have a variety of medical conditions.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator.

(a) All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.

(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing service supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(c) Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who have a variety of medical conditions and require medical services, continuous medical services, and inpatient care but do not currently require inpatient hospital services. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the

transfer form. Within forty-eight (48) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physical examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or nursing facility, if done within five (5) days prior to admission.

(c) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

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

(8) Transfer procedures and agreements.

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

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource.

(c) When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

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

(f) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(10) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and social security number.

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this regulation.

2. When the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

4. Volunteers shall not be counted to make up minimum staffing requirements.

5. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing personnel.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other patient care services.

g. Planning and conducting orientation programs for new nursing personnel and continuing in-service education for all nursing personnel.

h. Participating in the screening of prospective patients in terms of required nursing services and nursing skills available.

i. Assuring that a written monthly assessment of the patient's general condition is completed.

j. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary.

k. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

l. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

6. Supervising nurse. Nursing care shall be provided by or under the direction of a full-time registered nurse. The supervising nurse may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and reviewing medical records, medication cards, patient care plans, and staff assignments, and whenever possible accompanying physicians when visiting patients.

7. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

8. Pharmacist. The facility shall retain a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

9. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multidisciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine the goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in subsection (9)(c)9a of this section may be assigned duties appropriate to their training and experience.

10. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

11. Each facility shall designate a person for the following areas who will be responsible for:

a. Medical records;

b. Arranging for social services; and

c. Developing and implementing the activities program and therapeutic recreation.

12. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(e) Orientation program. The facility shall conduct an orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and emergency and disaster procedures.

(f) In-service training.

1. All employees shall receive in-service training and ongoing education to correspond with the duties of their respective jobs.

2. All nursing personnel shall receive in-service or continuing education programs at least quarterly.

(11) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within five (5) days prior to admission.)

3. The physician's dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication dosage, name of prescribing physician and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of every patient shall be under the supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first sixty (60) days following admission. Subsequent to the 60th day following admission, the patients shall be evaluated by a physician every sixty (60) days unless justified and documented by the attending physician in the patient's medical record. There shall be evidence in the patient's medical record of the physician visits to the patient at appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses, licensed practical nurses, aides and orderlies. The amount of nursing time available for patient care shall be exclusive of nonnursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;

2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;

3. Shall be protected from accident and injury by the adoption of indicated safety measures;

4. Shall be treated with kindness and respect.

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast patients;

b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities;

c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self care, transfer and ambulation activities;

d. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary;

e. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Nursing care plan. There shall be written nursing care plans for each patient based on the nature of illness, treatment prescribed, long and short term goals and other pertinent information.

1. The nursing care plan shall be a personalized, daily plan for individual patients. It shall indicate what nursing care is needed, how it can best be accomplished for each patient, what are the patients preferences, what methods and approaches are most successful, and what modifications are necessary to insure best results.

2. Nursing care plans shall be available for use by all nursing personnel.

3. Nursing care plans shall be reviewed and revised as needed.

4. Relevant nursing information from the nursing care plan shall be included with other medical information when patients are transferred.

(3) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribes specific modalities to be used and frequency of physical, speech and occupational therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and

electricity.

2. Speech therapy which includes:

a. Service in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;

c. Determination and recommendation of appropriate speech and hearing services.

3. Occupational therapy services which include:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;

b. Guiding the patient in his use of therapeutic creative and self care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.

(5) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review the patient's medical profile at least every two (2) months. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act (KRS Chapter 314) or by personnel who have completed a state approved training program. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse. Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one (1) patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of

medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

4. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

5. Use of restraints or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care. No form of restraints or protective devices shall be used except under written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

6. Infection control and communicable diseases.

a. There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

(i) Policies which address the prevention of disease transmission to and from patients, visitors and employees, including:

i. Universal blood and body fluid precautions;

ii. Precautions for infections which can be transmitted by the airborne route; and

iii. Work restrictions for employees with infectious diseases.

(ii) Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

b. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

c. The facility shall provide an AIDS and HIV training program for all staff who provide direct patient care, utilizing a preapproved curriculum obtained from: Cabinet for Human Resources, Department for Health Services, Division of Epidemiology, Communicable Diseases Branch, 275 East Main Street, Frankfort, Kentucky 40621.

d. Sharp wastes.

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

(ii) Needles shall not be recapped, purposely bent or broken, or otherwise manipulated by hand.

(iii) The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

e. Disposable waste.

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

(ii) The facility shall establish specific written policies regarding handling and disposal of all wastes.

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

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

f. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, encephalitis, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies

(human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus, and any other disease designated by the Commissioner for Health Services as posing a threat to health in long-term care facilities.

[a. Except as provided by clauses b, c, and d of this subparagraph, no patient who is infected with a communicable disease which is reportable to the health department, pursuant to KRS Chapter 214 and applicable regulations, shall knowingly be admitted to the facility.]

[b. The following specific diseases, although reportable, do not preclude a person from being admitted to a facility, and do not necessitate any special procedures on the part of the facility upon patient admission: animal bites, asbestosis, botulism, histoplasmosis, Kawasaki's disease, lead poisoning, Lyme disease, mesothelioma, pneumoconiosis, Reye's syndrome, Rocky Mountain spotted fever, silicosis, toxic shock syndrome, and trichinosis.]

g. [c.] A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

h. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

[d. The following specific diseases, although reportable, also do not preclude a person from being admitted to a facility: acquired immune deficiency syndrome (AIDS), hepatitis B or non-A non-B, herpes (genital), leprosy, malaria and syphilis (late latent only); however, if a facility chooses to admit persons with these diseases, the following conditions shall be met:]

[(i) Staff of facility have completed a training program approved by the cabinet.]

[(ii) The facility has developed strict written procedures and protocols for staff to follow in order to avoid exposure to blood or body fluids of the affected residents; and to follow if such an exposure occurs.]

[(iii) The facility must apprise the public and the residents of the facility, that persons having one (1) or more of these specific disease(s) in clause d of this subparagraph are admissible to that facility, and which disease(s) are involved. Identifying information on these residents shall not be disclosed except as provided by law or regulation of the Cabinet for Human Resources.]

i. [e.] If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients, the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(6) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and regulations. All diagnostic services shall be provided only on the request of a physician. The physician shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(8) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working

relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(9) Patient activities. Activities suited to the needs and interests of patients shall be provided as an important adjunct to the active treatment program and to encourage restoration to self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients.

(a) The activity leader shall use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patients' request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(10) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(11) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's

independence in eating.

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

(b) Housekeeping and maintenance services.

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

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Hand-washing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. .Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

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

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

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

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

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: January 9, 1990

FILED WITH LRC: April 5, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the Department for Employment Services, Second Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: 101

(a) Direct and indirect costs or savings to those affected: Most facilities, because of the requirements of the Federal Occupational Health and Safety Administration requirements, already conform to the amended version of this regulation; as such, additional costs should be minimal.

1. First year: Depending upon the waste management system in place, a facility could spend approximately $300 per resident per year.

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

3. Additional factors increasing or decreasing costs (note any effects upon competition): There could be costs associated with the purchase of

latex gloves and the development of infection control policies. Competition would not be effected since all facilities would have to comply with these standards.

(b) Reporting and paperwork requirements: This amendment would require facilities to document infection control policies.

(2) Effects on the promulgating administrative body: There will be an additional cost of $500 dollars for printing new regulations and survey forms.

(a) Direct and indirect costs or savings: Cost of $500 dollars.

1. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs should be associated with this amendment since reprinting of regulation is a part of this agency's continuing budget.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment poses no additional paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There should be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation does not conflict, overlap or duplicate any statutes, regulation or policy.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

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

(6) Any additional information or comments: No

TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

CABINET FOR HUMAN RESOURCES
Office of the Inspector General
(Proposed Amendment)

902 KAR 20:051. Operation and services; intermediate care.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.042 [216B.040], 216B.105[(3), Executive Order 86-366]

NECESSITY AND FUNCTION: KRS 216B.042 [216B.040] and 216B.105[(3)] mandate that the Cabinet for Human Resources [Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. [Executive Order 86-366 transferred the authority to regulate health services and health facilities from the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to the Office of the Inspector General.] This regulation establishes [provides for the] licensure requirements for the operation of [intermediate care facilities] and [the] services [to be] provided by intermediate care facilities.

[Section 1. Scope of Operations and Services. Intermediate care facilities are establishments with permanent facilities including inpatient beds. Services provided include twenty-four (24) hour supervision of patients, services including physician, nursing, pharmaceutical, personal care, activities and residential services. Patients in an intermediate care facility must have a physical or mental condition that requires intermittent nursing services along with continuous supervision of the activities of daily living.]

Section 1. [2.] Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and/or dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) "Board" means the Commission on Health Economics Control in Kentucky.

(4) "Facility" means an intermediate care facility.

(5) "License" means an authorization issued by the Board for the purpose of operating an intermediate care facility and offering intermediate care services.

(6) "PRN medications" means medications administered as needed.

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

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

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

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

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

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

Section 2. Scope of Operations and Services. Intermediate care facilities are establishments with permanent facilities including inpatient beds. Services provided include twenty-four (24) hour supervision of patients, services including physician, nursing, pharmaceutical, personal care, activities and residential services. Patients in an intermediate care facility must have a physical or mental condition that requires intermittent nursing services along with continuous supervision of the activities of daily living.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator.

(a) All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence. The administrator shall not be the nursing services supervisor in a facility with more than sixty (60) beds.

(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing service supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Department for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(c) Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. The facility shall admit only persons who have a physical or mental condition which requires intermittent nursing services and continuous supervision of activities of daily living. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. Within seventy-two (72) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physical examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or long-term facility if done within fourteen (14) days prior to admission.

(c) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

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

(8) Transfer procedures and agreements.

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

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource.

(c) When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

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

(f) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care

facilities.

(10) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and social security number.

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this regulation.

2. When the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

4. Volunteers shall not be counted to make up minimum staffing requirements.

5. Supervision of nursing services shall be by a registered nurse or licensed practical nurse employed on the day shift seven (7) days per week. The supervisor shall have training in rehabilitative nursing. When a licensed practical nurse serves as the supervisor, consultation shall be provided by a registered nurse at regular intervals, not less than four (4) hours weekly. The responsibilities of the nursing services supervisor shall include:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing care.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other patient care services.

g. Participating in the screening of prospective patients in terms of required nursing services and nursing skills available.

h. Assuring that a written monthly assessment of the patient's general condition is completed.

i. Assuring that the establishment, review and modification of nursing care plans for each patient is done by licensed nursing personnel.

j. Assuring that all medications are administered by licensed personnel or by other personnel who have completed a state-approved training program.

k. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

6. The facility shall employ a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

7. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

8. Each facility shall designate a person for the following areas who will be responsible for:

a. Medical records;

b. Arranging for social services; and

c. Developing and implementing the activities program and therapeutic recreation.

9. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(e) Orientation program. The facility shall conduct an orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and emergency and disaster procedures.

(f) In-service training.

1. All employees shall receive in-service training and ongoing education to correspond with the duties of their respective jobs.

2. All nursing personnel shall receive in-service or continuing education programs at least quarterly.

(11) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within fourteen (14) days prior to admission.)

3. The physician's dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication dosage, name of prescribing physician and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses,

attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive, maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or, in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) General requirements.

(a) Patient care equipment. There shall be a sufficient quantity of patient care equipment of satisfactory design and in good condition to carry out established patient care procedures. The equipment shall include:

1. Wheelchairs with brakes;
2. Walkers;
3. Bedside rails;
4. Bedpans and urinals (permanent or disposable);
5. Emesis basins and wash basins (permanent or disposable);
6. Footstools;
7. Bedside commodes;
8. Foot cradles;
9. Foot boards;
10. Under-the-mattress bed boards;
11. Trapeze frames;
12. Transfer board; and
13. An autoclave for sterilization of nursing equipment and supplies or an equivalent alternate method of sterilization.

(b) Infection control and communicable diseases.

1. There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

a. Policies which address the prevention of disease transmission to and from patients, visitors and employees, including:

(i) Universal blood and body fluid precautions;

(ii) Precautions for infections which can be transmitted by the airborne route; and

(iii) Work restrictions for employees with infectious diseases.

b. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

2. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

3. The facility shall provide an AIDS and HIV training program for all staff who provide direct patient care, utilizing a preapproved curriculum obtained from: Cabinet for Human Resources, Department for Health Services, Division of Epidemiology, Communicable Diseases Branch, 275 East Main Street, Frankfort, Kentucky 40621.

4. Sharp wastes.

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

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

c. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

5. Disposable waste.

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

b. The facility shall establish specific written policies regarding handling and disposal of all wastes.

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

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

6. Patients infected with the following diseases shall not be admitted to the facility unless the patient's attending physician certifies in writing that the condition of the patient is not communicable to others in the long-term care environment: anthrax, campylobacteriosis, cholera, diphtheria, encephalitis, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus, and any other disease designated by the Commissioner for Health Services as posing a threat to health in long-term care facilities. If an attending physician is in doubt regarding the communicability of a patient's condition, he may contact the Department for Health Services.

[1. Except as provided by subparagraphs 2, 3 and 4 of this paragraph, no patient who is infected with a communicable disease which is reportable to the health department, pursuant to KRS Chapter 214 and applicable regulations.]

[2. The following specific diseases, although reportable, do not preclude a person from being admitted to a facility, and do not necessitate any special procedures on the part of the facility upon patient admission: animal bites, asbestosis, botulism, histoplasmosis, Kawasaki's disease, lead poisoning, Lyme disease, mesothelioma, pneumoconiosis, Reye's syndrome, Rocky Mountain spotted fever, silicosis, toxic shock syndrome, and trichinosis.]

7. [3.] A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

8. Patients with active tuberculosis may be admitted to the facility whose isolation

facilities and procedures have been specifically approved by the cabinet.

[4. The following specific diseases, although reportable, also do not preclude a person from being admitted to a facility: acquired immune deficiency syndrome (AIDS), hepatitis B or non-A non-B, herpes (genital), leprosy, malaria and syphilis (late latent only); however, if a facility chooses to admit persons with these diseases, the following conditions shall be met:]

[a. Staff of facility have completed a training program approved by the cabinet. In addition, the facility shall have appropriately registered or licensed nurses on a twenty-four (24) hour basis in order to meet the needs of these residents.]

[b. The facility has developed strict written procedures and protocols for staff to follow in order to avoid exposure to blood or body fluids of the affected residents; and to follow if such an exposure occurs.]

[c. The facility must apprise the public and the residents of the facility, that persons having one (1) or more of these specific disease(s) in subparagraph 4 of this paragraph are admissible to that facility, and which disease(s) are involved. Identifying information on these residents shall not be disclosed except as provided by law or regulation of the Cabinet for Human Resources.]

9. [5.] If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(c) Use of restraints or protective devices.

1. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care.

2. No form of restraints or protective devices shall be used except upon written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

(2) Physician services. All patients shall be under the medical supervision of a licensed physician. These services shall include:

(a) Physician's visit for medical evaluation as often as necessary and in no case less often than every sixty (60) days, unless justified and documented by the attending physician in the patient's medical report.

(b) Physician services for medical emergencies available on a twenty-four (24) hour, seven (7) days-a-week basis.

(3) Nursing services. Nursing services shall include:

(a) The establishment of a nursing care plan for each patient. Each plan shall be reviewed and modified as necessary, or at least quarterly. Each plan shall include goals and nursing care needs;

(b) Rehabilitative nursing care to achieve and maintain the highest degree of function, self-care and independence. Rehabilitative measures shall be practiced on a twenty-four (24) hour, seven (7) day week basis. Those procedures requiring medical approval shall be ordered by the attending physician. Rehabilitative measures shall include:

1. Positioning and turning. Nursing personnel shall encourage and assist patients in maintaining good body alignment while standing, sitting, or lying in bed.

2. Exercises. Nursing personnel shall assist patients in maintaining maximum joint range of motion or active range of motion.

3. Bowel and bladder training. Nursing personnel shall make every effort to train incontinent patients to gain bowel and bladder control.

4. Training in activities of daily living. Nursing personnel shall encourage and when necessary teach patients to function at their maximum level in appropriate activities of daily living for as long as, and to the degree that, they are able.

5. Ambulation. Nursing personnel shall assist and encourage patients with daily ambulation unless otherwise ordered by the physician.

(c) Administration of medications including oral, rectal, hypodermic, and intramuscular;

(d) Written monthly assessment of the patient's general condition by licensed nursing personnel;

(e) Treatments such as: enemas, irrigations, catheterizations, applications of dressings or bandages, supervision of special diets;

(f) The recording of any changes, as they occur, in the patient's condition, actions, responses, attitudes, appetite, etc.

(g) Implementing a regular program to prevent decubiti with emphasis on the following:

1. Procedures to maintain cleanliness of the patient, his clothes and linens shall be followed each time the bed or the clothing is soiled. Rubber, plastic, or other type of linen protectors shall be properly cleaned and completely covered to prevent direct contact with the patient.

2. Special effort shall be made to assist the patient in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient cannot move

himself, he shall have his position changed as often as necessary but not less than every two (2) hours.

(4) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(e) Medication requirement and services.

1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing. Oral orders shall be given only to a licensed nurse or pharmacist, immediately reduced to writing, and signed. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or the pharmacist shall review each patient's medical profile monthly. Medications shall be reviewed at least quarterly by the attending or staff physician. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications shall be released to patients on discharge or visits only after being labeled appropriately and on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed nurses or personnel who have completed a state-approved training program. Each dose administered shall be recorded in the medical record. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse.

a. The nursing station shall have items required for the proper administration of medications.

b. Medications prescribed for one (1) patient shall not be administered to any other patient.

c. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician and a predischarge program under the supervision of a licensed nurse.

d. Medication errors and drug reactions shall be immediately reported to the patient's physician and pharmacist and an entry thereof made in the patient's medical record as well as on an incident report.

3. The facility shall provide up-to-date medication reference texts for use by the nursing staff (e.g., Physician's Desk Reference).

4. Labeling and storing medications. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring - between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

5. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient; the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

(5) Personal care services.

(a) All facilities shall provide services to assist patients to achieve and maintain good personal hygiene including the level of assistance necessary with:

1. Bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the facility shall provide soap, clean towels, and wash cloths for each patient. Toilet articles such as brushes and combs shall not be used in common.

2. Shaving.

3. Cleaning and trimming of fingernails and toenails.

4. Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All patients shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

5. Washing, grooming, and cutting of hair.

(b) The staff shall encourage and assist the patients to dress in their own street clothing (unless otherwise indicated by the physician).

(6) Dental services. The facility shall assist patients in obtaining dental services. Conditions necessitating dental services shall be noted and such dental procedures and services provided shall be recorded in the patient's

record.

(7) Social services. The facility shall provide or arrange for social services as needed by the patient.

(a) Social services shall be integrated with other elements of the plan of care.

(b) A plan for such care shall be recorded in the patient's record and periodically evaluated in conjunction with the patient's total plan of care.

(c) Social services records shall be maintained as an integral part of case record maintained on each patient.

(8) Activities and therapeutic recreation.

(a) All facilities shall provide a program to stimulate physical and mental abilities to the fullest extent, to encourage and develop a sense of usefulness and self respect and to prevent, inhibit or correct the development of symptoms of physical and mental regression due to illness or old age. The program shall provide sufficient variety to meet the needs of the various types of patients in the facility. When possible, the patient shall be included in the planning of activities.

(b) All facilities shall meet the following program requirements:

1. Staff. A person designated by the administrator shall be responsible for the program.

2. A program shall be developed for each patient and shall be incorporated in the patient's plan of care and revised according to the patient's needs. Changes in his response to the program shall be recorded in the medical record.

3. There shall be a planned and supervised activity period each day. The schedule shall be current and posted.

4. The program shall be planned for group and individual activities, both within and outside of the facility, weather permitting.

5. The person responsible for activities shall maintain a current list of patients on which precautions are noted regarding a patient's condition that might restrict or modify his participation in the program.

6. A living or recreation room and outdoor recreational space shall be provided for patients and their guests.

7. The facility shall provide supplies and equipment for the activities program.

8. Reading materials, radios, games and TV sets shall be provided for the patients.

9. The program may include religious activities for each patient if it is the desire of the patient to participate. Requests from a patient to be seen by a clergyman shall be acted upon as soon as possible, and an area of private consultation shall be made available.

10. The facility shall allow the patient to leave the facility to visit, shop, attend church, or other social activities provided this does not endanger his health or safety.

(9) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(10) Residential care services. All facilities shall provide residential care services to all patients including: room accommodations, housekeeping and maintenance services, and dietary services. All facilities shall meet the following requirements relating to the provision of residential care services.

(a) Room accommodations.

1. Each patient shall be provided a standard size bed at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

(b) Housekeeping and maintenance services.

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

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Hand-washing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered by the facility as often as is necessary. Patients' personal clothing shall be laundered by the facility unless the patient or the patient's family accepts this responsibility. Patients capable of laundering their own personal clothing and wishing to do so may, instead, be provided the facilities to do so. Patient's personal clothing laundered by the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

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

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

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

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

(c) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conferences.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or leftover food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

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

Section 5. Separability. If any clause, sentence, paragraph, section or part of these regulations shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate

the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof, directly involved in the controversy in which the judgment was rendered.

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: January 9, 1990
FILED WITH LRC: April 5, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the Department for Employment Services, Second Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander
(1) Type and number of entities affected: 204
(a) Direct and indirect costs or savings to those affected: Most facilities, because of the requirements, already conform to the amended version of this regulation; as such, additional costs should be minimal.
1. First year: Depending upon the waste management system in place, a facility could spend approximately $300 per resident per year.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There could be costs associated with the purchase of latex gloves and the development of infection control policies. Competition would not be effected since all facilities would have to comply with these standards.
(b) Reporting and paperwork requirements: This amendment would require facilities to document infection control policies.
(2) Effects on the promulgating administrative body: There will be an additional cost of $500 dollars for printing new regulations and survey forms.
(a) Direct and indirect costs or savings: Cost of $500 dollars.
1. First year: $500 for printing costs.
2. Continuing costs or savings: No continuing costs should be associated with this amendment since reprinting of regulation is a part of this agency's continuing budget.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: This amendment poses no additional paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There should be no effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation does not conflict, overlap or duplicate any statutes, regulation or policy.
(a) Necessity of proposed regulation if in conflict: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: No
TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR 442 Subparts E and F - Standards for Intermediate Care Facilities other than facilities for the mentally retarded.
2. State compliance standards. 902 KAR 20:051, Operation and services, intermediate care.
3. Minimum or uniform standards contained in the federal mandate. Federal standards include the areas of administration, staffing, medications, patient's rights, staff training, patient records, care planning, safety, nutrition, health services, and other services.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No standards which do are not already imposed either through the federal mandate or through the Occupational Health and Safety Administration are required by this regulation.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standards are imposed.

CABINET FOR HUMAN RESOURCES
Office of the Inspector General
(Proposed Amendment)

902 KAR 20:086. Operation and services; intermediate care facilities for the mentally retarded and developmentally disabled.

RELATES TO: KRS 216B.010 to 216B.131 [216B.130], 216B.990(1), (2), 222.210 et. seq.
STATUTORY AUTHORITY: KRS 216B.042 [216B.040], 216B.105[, Executive Order 86-366]
NECESSITY AND FUNCTION: KRS 216B.042 [216B.040] mandates that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. [Executive Order 86-366 transferred the authority to regulate health services and health facilities from the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to the Office of the Inspector General.] This regulation provides [for the] licensure requirements for the operation and services of intermediate care facilities for the mentally retarded/developmentally disabled (MR/DD).

[Section 1. Scope of Operation and Services. Intermediate care facilities for mentally retarded and developmentally disabled persons provide services for all age groups on a twenty-four (24) hour basis, seven (7) days a week, in an establishment with permanent facilities including resident beds for persons whose mental or physical condition requires developmental nursing services along with a planned program of active treatment. The

facility provides special programs as indicated by individual care plans to maximize the resident's mental, physical, and social development in accordance with the normalization principle. The intermediate care facilities for the mentally retarded and developmentally disabled must comply with the facility specifications for Intermediate Care Facilities, 902 KAR 20:056.]

Section 1. [2.] Definitions. (1) "Active treatment" means daily participation, in accordance with an individual plan of care and service, in activities, experiences, or therapy which are part of a professionally developed and supervised program of health, social and/or habilitative services offered by or procured by contract or other written agreement by the institution for its residents.

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) "Aversive stimuli" means things or events that the resident finds unpleasant or painful that are used to immediately discourage undesired behavior.

[(4) "Commission" means the Commission on Health Economics Control in Kentucky.]

(4) [(5)] "Developmental disability" means a severe chronic disability which is attributable to a mental or physical impairment or combination of mental and physical impairments manifested before the person attains the age of twenty-two (22) and is likely to continue indefinitely. This disability results in substantial limitations in three (3) or more areas of major life activity including self-care, receptive and expressive language, learning, self direction, mobility, capacity for independent living and economic sufficiency and requires individually planned and coordinated services of a lifelong or extended duration.

(5) [(6)] "Developmental nursing services" means treatment of a person's developmental needs by designing interventions to modify the rate and/or direction of the individual's development especially in the areas of self-help skills, personal hygiene, and sex education while also meeting his physical and medical needs.

(6) [(7)] "Facility" means an intermediate care facility for the mentally retarded and the developmentally disabled (MR/DD).

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

(8) [(9)] "Interdisciplinary team" means the group of persons responsible for the diagnosis, evaluation and individualized program planning and service implementation for the resident. The team is composed of relevant professionals, and may include the resident, the resident's family, or the guardian.

(9) [(10)] "License" means an authorization issued by the commission for the purpose of offering intermediate care MR/DD services.

(10) [(11)] "MR/DD" means the mentally retarded and the developmentally disabled persons.

(11) [(12)] "Normalization principle" is the utilization of means which are as culturally normative as possible in order to establish and maintain personal behavior and characteristics which are as culturally normative as possible.

(12) [(13)] "Qualified dietician or nutritionist" means:

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

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

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

(13) [(14)] "Qualified occupational therapist" means a graduate of a program of occupational therapy approved by the Council on Medical Education of the American Medical Association and licensed in the state, if required.

(14) [(15)] "Qualified speech pathologist or audiologist" means a person who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent education and experimental requirements for such a certificate.

(15) [(16)] "Qualified social worker" means a person who is licensed or exempt from licensure pursuant to KRS Chapter 335 with bachelor's degree in social work from an accredited program or a bachelor's degree in a field other than social work and at least three (3) years of social work experience under the supervision of a qualified social worker.

(16) [(17)] "A qualified mental retardation professional" means a person who has specialized training or one (1) year of experience in treating or working with the mentally retarded and/or developmental disabilities and is one (1) of the following:

(a) A psychologist with a master's degree from an accredited program;

(b) A licensed physician;

(c) A educator with a degree in education from an accredited program;

(d) A social worker who is licensed or exempt from licensure pursuant to KRS Chapter 335 with a bachelor's degree in:

1. Social work from an accredited program; or

2. A field other than social work and at least three (3) years of social work experience under the supervision of a qualified social workers;

(e) A physical or occupational therapist who is a graduate of a program of physical or occupational therapy approved by the Council on Medical Education of the American Medical Association.

(f) A speech pathologist or audiologist who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent educational and experimental requirements for such a certificate;

(g) A registered nurse;

(h) A therapeutic recreation specialist who is graduate of an accredited program and is licensed in the state, if required, or who has:

1. A bachelor's degree in recreation, or in a speciality area, such as art, music, or physical education; or

2. An associate degree in recreation and one (1) year of experience in recreation; or

3. A high school diploma, or an equivalency certificate; and

a. Two (2) years of experience in recreation; or

b. One (1) year of experience in recreation plus completion of comprehensive in-service training in recreation; or

4. Demonstrated proficiency and experience in conducting activities in one (1) or more recreation program areas; or

(i) A "rehabilitation/counselor" who is certified by the Committee on Rehabilitation Counselor Certification.

(17) [(18)] "Restraint" means any chemical agent or any physical or mechanical device used to restrict the movement of an individual or the movement or normal function of a portion of the individual's body, excluding only those devices used to provide support for the achievement of functional body position or proper balance (such as positioning chairs) and devices used for specific medical and surgical (as distinguished from behavioral) treatment.

(18) [(19)] "Seclusion" means the retention of a resident alone in a locked room.

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

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

(21) [(22)] "Time out" means a procedure which involves removing the person from a reinforcing situation, for a period of time when the person engages in a specified inappropriate behavior.

Section 2. Scope of Operation and Services. Intermediate care facilities for mentally retarded and developmentally disabled persons provide services for all age groups on a twenty-four (24) hour basis, seven (7) days a week, in an establishment with permanent facilities including resident beds for persons whose mental or physical condition requires developmental nursing services along with a planned program of active treatment. The facility provides special programs as indicated by individual care plans to maximize the resident's mental, physical, and social development in accordance with the normalization principle. The intermediate care facilities for the mentally retarded and developmentally disabled must comply with the facility specifications for Intermediate Care Facilities, 902 KAR 20:056.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator. All facilities shall have an administrator who is responsible for the operation of the facility and delegating such responsibility in his absence. The administrator shall not be the nursing services supervisor.

(3) Contracted services. The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the residents. The contract shall be in writing.

(4) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological resident registry showing date of admission, name of resident and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a resident (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing services supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(5) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Services including medical, nursing, habilitation, pharmaceutical (including medication stop orders policy), and residential services;

(b) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Department for Human Resources pursuant to KRS Chapter 209 and 199.335;

(c) Use of restraints. The facility shall have a written policy that defines the use of restraints and supportive devices and a mechanism for monitoring and controlling their use; and

(d) Missing resident procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a resident is determined to be lost, unaccounted for or other unauthorized absence.

(6) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(7) Admission.

(a) Patients shall be admitted only upon the approval of a physician. The facility shall admit only persons who have a physical or mental condition which requires developmental nursing services and a planned program of active treatment.

(b) The interdisciplinary team shall consist of a physician, a psychologist, a registered nurse, a social worker and other professionals, at least one of whom is a qualified mental retardation professional. The interdisciplinary team shall:

1. Conduct a comprehensive evaluation of the individual, not more than three (3) months before admission, covering physical, emotional, social, and cognitive factors; and

2. Prior to admission define the need for service without regard to availability of those services. The team shall review all available and applicable programs of care, treatment, and training and record its findings.

(c) If admission is not the best plan but the

individual must be admitted nevertheless, the facility shall clearly acknowledge that the admission is inappropriate and initiate plans to actively explore alternatives;

(d) Before admission, the resident and a responsible member of his family or committee shall be informed in writing of the established policies of the facility and fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services offered; and

(e) The facility shall provide and maintain a system for identifying each resident's personal property and facilities for safekeeping of his declared valuables. Each resident's clothing and other property shall be reserved for his own use.

(8) Discharge planning. Prior to discharge the facility shall have a postinstitutional plan which identifies the residential setting and support services which would enable the resident to live in a less restrictive alternative to the current setting. Before a resident is released, the facility shall:

(a) Offer counseling to parents or guardians who requests the release of a resident concerning the advantages and disadvantages of the release;

(b) Plan for release of the resident, to assure that appropriate services are available in the resident's new environment, including protective supervision and other follow-up services; and

(c) Prepare and place in the resident's record a summary of findings, progress, and plans.

(9) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of residents to other health care facilities which can provide a level of health care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of resident, and shall establish responsibility for notifying the other institution promptly of the impending transfer of a resident and shall arrange for appropriate and safe transportation.

(b) When the resident's condition exceeds the scope of services of the facility, the resident, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource.

(c) When changes and progress occur which would enable the resident to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for residents to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the resident, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any resident.

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

(f) If the resident is transferred to another health care facility or other community resource, a transfer form shall accompany the resident. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with a history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for resident care, and pertinent social information on the resident and family.

(10) Medical records.

(a) The facility shall maintain a record for each resident for:

1. Planning and continuous evaluation of the resident's habilitation program;

2. Furnishing documentary evidence of each resident's progress and response to his habilitation program; and

3. Protecting the rights of the residents, the facility and the staff.

(b) All entries in the resident's record shall be legible, dated and signed.

(c) At the time a resident is admitted, the facility must enter in the individual's record the following information:

1. Name, date of admission, birth date and place, citizenship status, martial status, and social security number;

2. Father's name and birthplace, mother's maiden name and birthplace, and parents' marital status;

3. Name and address of parents, legal guardian, and next of kin if needed;

4. Sex, race, height, weight, color of hair, color of eyes, identifying marks, and recent photograph;

5. Reason for admission or referral problem;

6. Type and legal status of admission;

7. Legal competency status;

8. Language spoken or understood;

9. Sources of support, including social security, veterans' benefits, and insurance;

10. Religious affiliation, if any;

11. Reports of the preadmission evaluations; and

12. Reports of previous histories and evaluations, if any.

(d) Within one (1) month after the admission of each resident, the ICF/MR must enter the following in the resident's record:

1. A report of the review and updating of the preadmission evaluation;

2. A prognosis that can be used for programming and placement; and

3. A comprehensive evaluation and individual program plan, designed by an interdisciplinary team.

(e) The facility must enter the following information in a resident's record during his residence:

1. Reports of accidents, seizures, illnesses, and treatments for these conditions;

2. Records of immunizations;

3. Records of all time periods that restraints were used, with justification and authorization for each;

4. Reports of regular, at least annual, review and evaluation of the program, developmental progress, and status of each resident;

5. Observations of the resident's response to his program to enable evaluation of its effectiveness;

6. Records of significant behavior incidents;

7. Records of family visits and contacts;

8. Records of attendance and absences;
9. Correspondence pertaining to the resident;
10. Periodic updates of the information recorded at the time of admission; and
11. Appropriate authorizations and consent.

(f) The ICF/MR must enter a discharge summary in the resident's record at the time he is discharged.

(11) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and social security number.

(c) Staffing requirements. The facility shall have adequate personnel to meet the needs of the residents on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of residents, the amount and the kind of personal care, nursing care, supervision and program needed to meet the needs of the resident as determined by the interdisciplinary team, and the services required by this regulation.

(d) The licensee shall have a qualified mental retardation professional who is responsible for:

1. Supervising the delivery of each resident's individual plan of care;
2. Supervising the delivery of training and habilitation services;
3. Integrating the various aspects of the facility program;
4. Recording each resident's progress; and
5. Initiating a periodic review of each individual plan of care for necessary changes.

(e) Each resident living unit, regardless of organization or design, must have, as a minimum, overall staff-resident ratios (allowing for a five (5) day work week plus holiday, vacation, and sick time) as follows unless program needs justify otherwise:

1. For units serving children under the age of six (6) years, severely and profoundly retarded, severely physically handicapped, or residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the overall ratio is one (1) to two (2);
2. For units serving moderately retarded residents requiring habit training, the overall ratio is one (1) to two and five tenths (2.5); and
3. For units serving residents in vocational training programs and adults who work in sheltered employment situations, the overall ratio is one (1) to five (5).

(f) When the staff/resident ratio does not meet the needs of the residents, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

(g) A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in case of injury, illness, or fire or other emergencies.

(h) Volunteers shall not be counted to make up minimum staffing requirements.

(i) Supervision of nursing services shall be by a registered nurse or licensed practical nurse employed on the day shift seven (7) days per week. The supervisor shall have training and experience in the field of developmental disabilities and mental retardation. When a licensed practical nurse serves as the supervisor, consultation shall be provided by a registered nurse preferably with a baccalaureate degree, at regular intervals, not less than four (4) hours weekly. The responsibilities of the nursing services supervisor shall include:

1. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job description for each level of nursing personnel;
2. Nursing service personnel at all levels of experience and competence shall be assigned responsibilities in accordance with their qualifications, delegate authority commensurate with their responsibility, and provide appropriate professional nursing supervision; and
3. Participate in the development and implementation of resident care policies.

(j) The facility shall retain a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

(k) Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

(l) Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(m) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted. The facility shall comply with the following tuberculosis testing requirements:

1. The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually on or before the anniversary of their last skin test.
2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis or the individual can document the previous completion of a course of

prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly, if symptoms persist.

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

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

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

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

(n) The facility shall have a staff training program adequate for the size and nature of the facility with a person designated the responsibility for staff development and training. The program shall include:

1. Orientation for each new employee to acquaint him with the philosophy, organization, program, practices, and goals of the facility;

2. In-service training for any employee who has not achieved the desired level of competence;

3. Continuing in-service training for all employees to update and improve their skills; and

4. Supervisory and management training for each employee who is in, or a candidate for, a supervisory position.

Section 4. Provision of Services. (1) The professional interdisciplinary team shall assure that the health needs of the residents are met and that plans are developed for each resident which include treatments, medications, dietary requirements, and other program services. All activities shall reflect adherence to the normalization principle. The active treatment program shall assure:

(a) An individual written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experiences or therapies necessary for the individual to reach those goals or objectives. The plan is to help the individual function at the greatest physical, intellectual, social, or vocational level he can presently or potentially achieve.

(b) Regular participation, in accordance with an individualized plan, in a program of activities that are designed to attain the optimum physical, intellectual, social, and vocational functioning of which a resident is capable.

(c) Reevaluation medically, socially, and psychologically at least annually by the staff involved in carrying out the resident's individual plan of care. This must include review of the individual's progress toward meeting the plan objectives, the appropriateness of the individualized plan of care, assessment of his continuing need for institutional care, and consideration of alternate methods of care.

(2) Infection control and communicable Diseases.

(a) There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

1. Policies which address the prevention of disease transmission to and from patients, visitors and employees, including:

a. Universal blood and body fluid precautions;

b. Precautions for infections which can be transmitted by the airborne route; and

c. Work restrictions for employees with infectious diseases.

2. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

(b) The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

(c). The facility shall provide an AIDS and HIV training program for all staff who provide direct patient care, utilizing a preapproved curriculum obtained from: Cabinet for Human Resources, Department for Health Services, Division of Epidemiology, Communicable Diseases Branch, 275 East Main Street, Frankfort, Kentucky 40621.

(d). Sharp wastes.

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

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

3. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

(e) Disposable waste.

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

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

3. The following wastes shall be disposed of by incineration, autoclaved before disposal, or

carefully poured down a drain connected to a sanitary sewer; blood, blood specimens, used blood tubes, or blood products.

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

(f) Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, encephalitis, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus, and any other disease designated by the Commissioner for Health Services as posing a threat to health in long-term care facilities.

(g) A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

(h) Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

[(a) No resident shall knowingly be admitted to the facility with a communicable disease which is reportable to the health department, pursuant to KRS 214 and applicable regulations except a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.]

[(b) If, after admission, a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the resident with the communicable disease and the other residents.]

(3) Use of control and discipline of residents.

(a) The facility must have written policies and procedures for the control and discipline of residents that are available in each living unit and to parents and guardians.

(b) The facility shall not allow:

1. Corporal punishment of a resident;

2. A resident to discipline another resident, unless it is done as part of an organized self-government program conducted in accordance with written policy; or

3. Seclusion of a resident.

(c) On orders of a physician, or in the case of an emergency until a physician is contacted, the facility may allow the use of physical restraint on a resident only if absolutely necessary to protect the resident from injuring himself or others but may not use physical restraint as punishment, for the convenience of the staff, or as a substitute for activities or treatment.

(d) The facility must have a written policy that specifies how and when physical restraint may be used, the staff members who must authorize its use, and the method for monitoring and controlling its use.

(e) An order for physical restraint may not be in effect longer than twelve (12) hours. Appropriately trained staff must check a resident placed in a physical restraint at least every thirty (30) minutes and keep a record of these checks. A resident who is in a physical restraint must be given an opportunity for motion and exercise for a period of not less than ten (10) minutes during each two (2) hours of restraint. Mechanical devices used for physical restraint must be designed and used in a way that causes the resident no physical injury and the least possible physical discomfort. Restraints that require lock and key shall not be used.

(f) Mechanical supports used as protective devices must be designed and applied under the supervision of a qualified professional, and in accordance with principles of good body alignment, concern for circulation, and allowance for change of position.

(g) The facility may not use chemical restraint excessively, as punishment, for the convenience of the staff, as a substitute for activities or treatment, or in quantities that interfere with a resident's habilitation program.

(h) Behavior modification programs involving the use of aversive stimuli or time-out devices shall be:

1. Reviewed and approved by the facility's human rights committee or a qualified mental retardation professional;

2. Conducted only with the consent of the affected resident's parents or legal guardian; and

3. Described in written plans that are kept on file in the ICF/MR.

(i) A physical restraint used as a time-out device may be applied only during behavior modification exercises and only in the presence of the trainer.

(j) Time-out devices and aversive stimuli may not be used for longer than one (1) hour, and then only during the behavior modification program and only under the supervision of the trainer.

(4) Medical supervision of residents. The facility shall maintain policies and procedures to assure that each resident shall be under the medical supervision of a physician.

(a) The resident (or his guardian) shall be permitted his choice of physician.

(b) The physician shall visit the residents as often as necessary and in no case less often than every sixty (60) days, unless justified and documented by the attending physician.

(c) A complete medical evaluation to include social, physical, emotional, and cognitive factors shall be made of the person desiring or requiring institutionalization prior to, but not to exceed three (3) months before admission.

(d) Medical reevaluation at least annually shall be made by the resident's physician, a physician provided by a community service, or a registered visiting nurse, according to the resources for the community and the apparent needs of the resident receiving intermediate care.

(e) Formal arrangements shall be made to provide for medical emergencies on a twenty-four (24) hour, seven (7) days a week basis. This shall be the responsibility of the facility providing care.

(5) Health services. Health services shall include:

(a) The establishment of a nursing care plan as part of the total habilitation program for each resident. Each plan shall be reviewed and modified as necessary, or at least quarterly. Each plan shall include goals, and nursing care needs;

(b) Nursing care to achieve and maintain the highest degree of function, self-care and

independence with those procedures requiring medical approval ordered by the attending physician. Nursing care shall include:

1. Positioning and turning. Nursing personnel shall encourage and assist residents in maintaining good body alignment while standing, sitting, or lying in bed to prevent decubiti.

2. Exercises. Nursing personnel shall assist residents in maintaining maximum range of motion.

3. Bowel and bladder training. Nursing personnel shall make every effort to train incontinent residents to gain bowel and bladder control.

4. Training in habits of personal hygiene, family life, and sex education that includes but is not limited to family planning and venereal disease counseling.

5. Ambulation. Nursing personnel shall assist and encourage residents with daily ambulation unless otherwise ordered by the physician.

6. Administration of medications and appropriate treatment.

7. Written monthly assessment of the resident's general condition with any changes in the resident's condition, actions, responses, attitudes, or appetite recorded in the resident's record by licensed personnel.

(6) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacist.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(e) Medication requirement and services.

1. Conformance with physician's orders. All medications administered to residents shall be ordered in writing. Oral orders shall be given only to a licensed nurse or pharmacist, immediately reduced to writing, and signed. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. The pharmacist or nurse shall review the resident's medication profile on a regular basis. The resident's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the resident's therapeutic regimen is not interrupted. Medications shall be released to residents on discharge or visits only after being labeled appropriately and on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed nurses or personnel who have completed a state approved training program. Each dose administered shall be recorded in the medical record. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or a registered nurse.

a. The nursing station shall have items required for the proper administration of medication readily available.

b. Medications prescribed for one resident shall not be administered to any other resident.

c. Self-administration of medications by residents shall not be permitted except for drugs on special order of the resident's physician and a predischarge program under the supervision of a licensed nurse as a part of the resident's treatment plan.

d. Medication errors and drug reactions shall be immediately reported to the resident's physician and pharmacist and an entry thereof made in the resident's medical record as well as on an incident report.

3. The facility shall provide up-to-date medication reference texts for use by the nursing staff (e.g., Physician's Desk Reference).

4. Labeling and storing medications. All medications shall be plainly labeled with the resident's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each resident shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharge resident until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

5. Controlled substances. Controlled substances shall be kept under double lock, (i.e., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the resident, the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

(7) Personal care services.

(a) Each resident shall be trained to be as independent as possible to achieve and maintain good personal hygiene including:

1. Bathing of the body to maintain clean skin and freedom from offensive odors. In addition to

assistance with bathing, the facility shall provide soap, clean towels, and wash cloths for each resident. Toilet articles such as brushes and combs shall not be used in common.

2. Shaving.

3. Cleaning and trimming of fingernails and toenails.

4. Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

5. Washing, grooming, and cutting of hair.

(b) Each resident who does not eliminate appropriately and independently must be in a regular, systematic toilet training program and a record must be kept of his progress in the program.

(c) A resident who is incontinent must be bathed or cleaned immediately upon voiding or soiling, unless specifically contraindicated by the training program, and all soiled items must be changed.

(d) The staff shall train and when necessary assist the residents to dress in their own street clothing (unless otherwise indicated by the physician).

(8) Dental services.

(a) Comprehensive dental services shall be provided and if not available within the facility, arrangements with specialists in the dental field will be made for such service.

1. Appropriate dental services shall be provided through personal contact with all residents by dentists, dental hygienists, and dental assistants under the supervision of the dentists, health educators, and oral hygiene aids.

2. A dental professional shall participate, as appropriate on the interdisciplinary team serving the facility.

3. There shall be sufficient supporting personnel, equipment, and facilities available to the dental professional if dental services are delivered within the facility.

(b) Dental records shall be part of each resident's record.

(c) A dentist shall be responsible for insuring that direct care staff are instructed in the proper use of oral hygiene methods for residents.

(9) Social services.

(a) Social services shall be available either on staff or by formal arrangement with community resources for all residents and their families, including evaluation and counseling with referral to, and use of, other planning for community placement, discharge and follow up services rendered by or under the supervision of a social worker.

(b) The social worker of the intermediate care facility, providing services for the mentally retarded and developmentally disabled shall be under the supervision of a social worker who is a qualified mental retardation professional.

(c) Social services shall be integrated with other elements of the plan of care.

(d) A plan for such care shall be recorded in the resident's record and periodically evaluated in conjunction with resident's total plan of care.

(e) Social services records shall be maintained as an integral part of case record maintained on each resident.

(10) Recreation services. The facility shall coordinate recreational services with other services and programs provided to each resident and shall:

(a) Provide recreation equipment and supplies in a quantity and variety that is sufficient to carry out the stated objectives of the activities programs.

(b) Keep resident records that include periodic surveys of the residents' recreation interests and the extent and level of the residents' participation in the recreation program.

(c) Have enough qualified staff and support personnel available to carry out the various recreation services with the qualifications as defined in the definitions.

(11) Speech pathology and audiology services. The facility shall provide speech pathology and audiology services as needed to maximize the communication skills of residents needing such services. These services shall be provided by, or under the supervision of, a certified speech pathologist or audiologist who is a member of the interdisciplinary team.

(12) Occupational therapy.

(a) Occupational therapy shall be provided by or under the supervision of a qualified occupational therapist to residents as required by the resident's needs.

(b) The occupational therapist shall act upon the program designed by the professional interdisciplinary team of which the therapist is a member.

(13) Physical therapy.

(a) Physical therapy shall be provided by or under the supervision of a licensed physical therapist to residents as required by the resident's needs.

(b) The physical therapist shall act upon the program designed by the professional interdisciplinary team of which the therapist is a member.

(14) Psychological services. Psychological services as needed shall be provided by a licensed or certified psychologist pursuant to KRS Chapter 319 who shall participate in the evaluation and periodic review, individual treatment, and consultation and training of program staff as a member of the interdisciplinary team.

(15) Transportation.

(a) If transportation of residents is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for residents who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting residents to and from the facility if necessary for the resident's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(16) Residential care services. All facilities shall provide residential care services to all residents including: room accommodations, housekeeping and maintenances services, and dietary services. All facilities shall meet the following requirements relating to the provision of residential care services:

(a) Room accommodations.

1. Each resident shall be provided a standard size bed at least thirty-six (36) inches wide, equipped with substantial spring, a clean comfortable mattress, a mattress cover, two (2)

sheets and a pillow, an such bed covering as is required to keep the resident comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by residents shall be placed so that no resident may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chests or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Residents shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for residents.

5. Residents may have personal items and furniture when it is physically feasible.

6. Each living room or lounge area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

7. Dining room furnishings shall be adequate in number, well constructed, and of satisfactory design for the residents.

8. Each resident shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other residents.

(b) Housekeeping and maintenance services.

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

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one resident shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Hand-washing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of residents or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Resident's personal clothing shall be laundered by the facility as often as necessary. Resident's personal clothing shall be laundered by the facility unless the resident or the resident's family accepts this responsibility. Residents capable of laundering their own personal clothing may be provided the facilities to do so. Resident's personal clothing laundered by the facility shall be marked to identify the resident owner and returned to the correct resident.

9. Maintenance. The premises shall be well kep and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the wide-walks, steps, porches, ramps and fences are in good repair.

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

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

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

(c) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the residents including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full time, part time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting resident care. The company shall comply with all of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours on duty, and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required from regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and kept on file for thirty (30) days.

c. The daily menu shall include regular and all modified diets served within the facility based on a currently approved diet manual. The manual shall be available in the dietary department. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the resident's care with the

resident and resident's chart through such methods as resident instruction, recording diet histories and through participation in rounds and conferences.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all residents. Adjustments shall be made when medically contraindicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet individual needs. (A file of tested recipes, adjusted to appropriate yield shall be maintained.) Food shall be cut, chopped or ground to meet individual needs. If a resident refuses the food served, nutritious substitutions shall be offered.

e. All opened containers or leftover food items shall be covered and dated when refrigerated.

5. Serving of food. When a resident cannot be served in the dining room, trays shall be provided and shall rest on firm supports. Sturdy tray stands of proper height shall be provided for residents able to be out of bed.

a. Correct positioning of the resident to receive his tray shall be the responsibility of the direct-care staff. Residents requiring help in eating shall be assisted according to their training plan.

b. Adaptive self-help devices shall be provided to contribute to the resident's independence in eating, if assessments deem necessary.

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

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: January 9, 1990
FILED WITH LRC: April 5, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the Department for Employment Services, Second Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: 204

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

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $100 for reproduction of regulation.

2. Continuing costs or savings: $50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216B.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR 442 Subpart E and F - Standards for intermediate care facilities.

2. State compliance standards. 902 KAR 20:086, Intermediate care facilities for the mentally retarded and developmentally disabled.

3. Minimum or uniform standards contained in the federal mandate. Federal standards include the areas of administration, staffing, medications, patient's rights, staff training, patient records, care planning, safety, nutrition, health services, and other services.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No standards which do are not already imposed either through the federal mandate or through the Occupational Health and Safety Administration are required by this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standards are imposed.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:010. Definitions.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this regulation is to provide for definitions as applicable to other Cabinet for Human Resources radiation regulations.

Section 1. Definitions. As used in these regulations, these terms have the definitions set forth below:

(1) "A_1" and "A_2."

(a) "A_1" means the maximum activity of special form radioactive material permitted in a Type A package;

(b) "A_2" means the maximum activity of radioactive material, other than special form radioactive material, permitted in a Type A package;

(c) These values are either listed in 902 KAR 100:070, Section 21, or may be derived in accordance with the procedure prescribed in 902 KAR 100:070, Section 20.

(2) "Accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one (1) MeV. It includes, but is not limited to, the cyclotron, synchrotron, synchrocyclotron, betatron, linear accelerator, and Van de Graaff electrostatic generator.

(3) "Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

(4) "Act" means KRS 211.842 to 211.852.

(5) "Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

(6) [(5)] "Agreement state" means any state with which the United States Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

(7) [(6)] "Airborne radioactive material" means any radioactive material dispersed in the air in the form of dusts, fumes, mists, vapors, or gases.

(8) [(7)] "Airborne radioactivity area" means:

(a) Any room, enclosure, or operating area in which airborne radioactive material exists in concentrations in excess of the amounts specified in Table 1, Column 1, of 902 KAR 100:025; or

(b) Any room, enclosure, or operating area in which airborne radioactive material exists in concentrations which, averaged over the number of hours in any week during which individuals are in the area, exceed twenty-five (25) percent of the amounts specified in Table I, Column 1, of 902 KAR 100:025.

(9) [(8)] "Aluminum equivalent" means the thickness of aluminum affording the same attenuation, under specified conditions, as the material in question.

(10) [(9)] "Analytical x-ray systems" means any system which utilizes x-rays for the examination of the structure of materials. This includes, but is not limited to, all types of x-ray diffraction and spectrographic equipment.

(11) "Area of use" means a portion of a physical structure that has been set aside for the purpose of receiving, using or storing radioactive material.

(12) [(10)] "As low as reasonably achievable (ALARA)" means as low as is reasonably achievable taking into account the state of technology, and the economics of improvement in relation to benefits to the public health and safety and in relation to the utilization of atomic energy in the public interest.

(13) [(11)] "Attenuation" means the reduction of exposure rate upon passages of radiation through matter.

(14) [(12)] "Attenuation block" means a block or stack, having dimensions twenty (20) cm by twenty (20) cm by three and eight-tenths (3.8) cm, of type 1100 aluminum alloy or other materials having equivalent attenuation.

(15) "Authorized user" means a practitioner of the healing arts who is identified as an authorized user on a cabinet, U.S. Nuclear Regulatory Commission or another agreement state license that authorizes the medical use of radioactive material.

(16) [(13)] "Beam limiting device" (collimator) means a device which provides a means to restrict the dimensions of the x-ray field.

(17) [(14)] "Brachytherapy" means a method of radiation therapy in which an encapsulated source or group of sources is utilized to deliver beta or gamma radiation at a distance of up to a few centimeters, by surface, intracavitary, or interstitial application.

(18) [(15)] "Broker" (waste broker) means any person who takes possession of low-level waste solely for the purposes of consolidation and shipment.

(19) [(16)] "By-product material" means:

(a) Any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(20) [(17)] "Cabinet" means Cabinet for Human Resources, or its duly authorized representatives.

(21) [(18)] "Cabinet x-ray systems" means an x-ray system with the x-ray tube installed or used in a permanent enclosure in which the enclosure is intended to contain at least that portion of the material being irradiated. The enclosure may be the architectural structure or may be independent of the architectural structure, but in either case, the structure of the enclosure must provide attenuation of the radiation to meet the requirements of 902 KAR 100:105, relating to the possession, use, and operation of x-ray systems, and must exclude personnel from its interior during the generation of x-radiation. This definition does not include x-ray systems used by licensed

practitioners of the healing arts.

(22) [(19)] "Calendar quarter" means not less than twelve (12) consecutive weeks nor more than fourteen (14) consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged so that no day is included in more than one (1) calendar quarter and no day in any one (1) year is omitted from inclusion within a calendar quarter. No licensee or registrant shall change the method observed by him of determining calendar quarters for purposes of these regulations except at the beginning of a calendar year.

(23) [(20)] "Calibration" means the determination of:

(a) The response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) The strength of a source of radiation relative to a standard.

(24) [(21)] "Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(25) [(22)] "Certified components" means components of x-ray systems which are subject to regulations promulgated under P.L. 90-602.

(26) [(23)] "Certified system" means any x-ray system which has one (1) or more certified component(s).

(27) [(24)] "CFR" means Code of Federal Regulations.

(28) [(25)] "Control panel" means that part of the x-ray control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors.

(29) [(26)] "Cooling curve" means the graphical relationship between heat units stored and cooling time.

(30) [(27)] "Curie" means a quantity of radioactivity. One (1) curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} disintegrations per second (dps). Commonly used submultiples of the curie are the millicurie and the microcurie. One (1) millicurie (mCi) = 0.001 curie = 3.7×10^{7} dps. One (1) microcurie (uCi) = 0.000001 curie = 3.7×10^{4} dps.

(31) [(28)] "Dead man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(32) "Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years. The source may also be used for other purposes.

(33) [(29)] "Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

(34) [(30)] "Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

(35) [(31)] "Diagnostic-type protective tube housing" means an x-ray tube housing so constructed that the leakage radiation measured at a distance of one (1) meter from the source cannot exceed 100 milliroentgens in one (1) hour when the tube is operated at its maximum continuous rated current for the maximum tube potential.

(36) [(32)] "Direct scatter radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam. (See also "scattered radiation").

(37) [(33)] "Disposal" means the disposition of waste as authorized by 902 KAR 100:021.

(38) [(34)] "Dose" means absorbed dose or dose equivalent as appropriate:

(a) "Absorbed dose" is the energy imparted to matter by ionizing radiation per unit mass of irradiated material at the place of interest. The special unit of absorbed dose is the rad (see "Rad").

(b) "Dose equivalent" is a quantity that expresses on a common scale for all radiation a measure of the postulated effect on a given organ. It is defined as the absorbed dose in rads times certain modifying factors. The unit of dose equivalent is the rem (see "Rem").

(39) [(35)] "Dose commitment" means the total radiation dose to a part of the body that will result from retention in the body of radioactive material. For purposes of estimating the dose commitment, it is assumed that from the time of intake the period of exposure to retained material will not exceed fifty (50) years.

(40) [(36)] "Entrance exposure rate" means the roentgens per unit time at the point where the center of the useful beam enters the patient.

(41) [(37)] "Exclusive use" (also referred to in other regulations as "sole use" or "full load") means the sole use of a conveyance by a single consignor and for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee.

(42) [(38)] "Exposure" means the quotient of dQ by dm where dQ is the absolute value of the total charge of the ions of one (1) sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass dm are completely stopped in air. (The special unit of exposure is the roentgen (R).) Exposure also means one (1) or more irradiations of a person for a healing arts purpose.

(43) [(39)] "Exposure rate" means the exposure per unit of time, such as roentgen per minute and milliroentgen per hour.

(44) [(40)] "Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

(45) [(41)] "Filter" is the material in the useful beam which usually absorbs preferentially the less penetrating radiations.

(a) "Inherent filtration" means the filter permanently in the useful beam. It includes the window of the x-ray tube and any permanent tube enclosure.

(b) "Added filter" means the filter added to the inherent filtration.

(c) "Total filter" means the sum of the inherent and added filters.

(46) [(42)] "Fissile material" means any special nuclear material consisting of or containing one (1) or more fissile radionuclides. Fissile radionuclides are plutonium-238, plutonium-239, plutonium-241, uranium-233, and uranium-235. Neither natural or depleted uranium is fissile material. (Cabinet jurisdiction extends only to special nuclear material if quantities are not sufficient to form a critical mass as defined in this regulation.)

(a) Fissile Class I: a package which may be transported in unlimited numbers and in any arrangement, and which requires no nuclear criticality safety controls during transportation. A transport index is not assigned for purposes of nuclear criticality safety but may be required because of external radiation levels.

(b) Fissile Class II: a package which may be transported together with other packages in any arrangement but, for criticality control, in numbers which do not exceed an aggregate transport index of fifty (50). These shipments require no other nuclear criticality safety control during transportation. Individual packages may have a transport index not less than 0.1 and not more than ten (10).

(47) [(43)] "Fluoroscopic imaging assembly" means a component which comprises a reception system in which x-ray photons produce a fluoroscopic image. It includes equipment housings, electrical interlocks if any, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

(48) [(44)] "Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

(49) [(45)] "Generator" (waste generator) means any person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, education or other activity.

(50) [(46)] "Half-value layer (HVL)" means the thickness of specified material which attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half (1/2) of its original value. In this definition the contribution of all scattered radiation, other than any which might be present initially in the beam concerned, is deemed to be excluded.

(51) [(47)] "High radiation area" means any area, accessible to individuals, in which there exists radiation at such levels that a major portion of the body could receive in any one (1) hour a dose in excess of 100 millirems.

(52) [(48)] "Human use" means the internal or external administration of radiation or radioactive materials to human beings.

(53) [(49)] "Image intensifier" means a device which converts instantaneously by means of photoemissive surfaces and electronic circuitry an x-ray pattern into a light pattern of greater intensity than would have been produced by the original x-ray pattern.

(54) [(50)] "Image receptor" means any device such as a fluorescent screen or radiographic film which transforms incident radiation either into a visual image or into another form which can be made into a visual image by further transformations.

(55) [(51)] "Individual" means any human being.

(56) [(52)] "Industrial radiography" means the examination of the macroscopic structure of materials by nondestructive methods utilizing sources of radiation.

(57) [(53)] "Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

(58) [(54)] "Inspection" means an examination or observation including but not limited to, tests, surveys, and monitoring to determine compliance with rules, regulations, orders, and requirements of the cabinet.

(59) [(55)] "Interlock" means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(60) [(56)] "Kilovolt peak (kVp)" means the crest value in kilovolts of the potential difference of a pulsating potential generator. When only one-half (1/2) of the wave is used, the value refers to the useful half of the wave.

(61) [(57)] "Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(62) [(58)] "Leakage technique factors" means the technique factors associated with the tube housing assembly which are used in measuring leakage radiation. They are defined as follows:

(a) For capacitor energy storage equipment, the maximum rated number of exposures in an hour for operation at the maximum rated peak tube potential with the quantity of charge per exposure being ten (10) milliampere seconds (mAs) or the minimum obtainable from the unit, whichever is larger.

(b) For field emission equipment rated for pulsed operation, the maximum rated number of x-ray pulses in an hour for operation at the maximum rated peak tube potential.

(c) For all other equipment, the maximum rated continuous tube current for the maximum rated peak tube potential.

(63) [(59)] "License" means a license issued by the cabinet in accordance with these regulations.

(64) [(60)] "Licensed material" means radioactive material received, possessed, used, or transferred under a general or specific license issued by the cabinet pursuant to these regulations.

(65) [(61)] "Licensee" means any person who is licensed by the cabinet in accordance with these regulations and the Act.

(66) "Logging assistant" means any individual who, under the personal supervision of a logging supervisor, handles sealed sources or tracers that are not in logging tools or shipping containers or who uses survey instruments in well-logging activities.

(67) [(62)] "Logging supervisor" means the individual who provides personal supervision of the utilization of sources of radiation at the well site.

(68) [(63)] "Logging tool" means a device used subsurface to perform well-logging.

(69) [(64)] "Low specific activity material" means any of the following:

(a) Uranium or thorium ores and physical or chemical concentrates of those ores;

(b) Unirradiated natural or depleted uranium or unirradiated natural thorium;

(c) Tritium oxide in aqueous solutions provided the concentration does not exceed five (5.0) millicuries per milliliter;

(d) Material in which the radioactivity is essentially uniformly distributed and in which the estimated average concentration per gram of contents does not exceed:

1. 0.0001 millicurie of radionuclides for which the A_2 quantity in 902 KAR 100:070 is not more than 0.05 curie;

2. 0.005 millicurie of radionuclides for which the A_2 quantity in 902 KAR 100:070 is more than 0.05 curie, but not more than one (1) curie; or

3. 0.3 millicurie of radionuclides for which the A_2 quantity in 902 KAR 100:070 is more than one (1) curie.

(e) Objects of nonradioactive material externally contaminated with radioactive material, provided that the radioactive material is not readily dispersible and the surface contamination, when averaged over an area of one (1) square meter, does not exceed 0.0001 millicurie (220,000 disintegrations per minute) per square centimeter of radionuclides for which the A_2 quantity in 902 KAR 100:070 is not more than 0.05 curie, or 0.001 millicurie (2,200,000 disintegrations per minute) per square centimeter for other radionuclides.

(70) [(65)] "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel or by-product material as defined in Section 11e(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

(71) "Management" means the chief executive officer or that individual's designee.

(72) "Medical institution" means an organization in which several medical disciplines are practiced.

(73) "Medical use" means the intentional internal or external administration of radioactive material, or the radiation therefrom, to humans in the practice of the healing arts.

(74) [(66)] "Microscopic analytical x-ray equipment" means any device which utilizes x-rays for examining the microscopic structure of materials. This includes all types of x-ray diffraction and spectographic equipment.

(75) "Misadministration" means the administration of:

(a) A radiopharmaceutical or radiation from a sealed source other than that one intended;

(b) A radiopharmaceutical or radiation to the wrong patient;

(c) A radiopharmaceutical or radiation by a route of administration other than the intended by the prescribing physician;

(d) A diagnostic dosage of a radiopharmaceutical differing from the prescribed dosage by more than fifty (50) percent;

(e) A therapeutic dosage of a radiopharmaceutical differing from the prescribed dosage by more than ten (10) percent; or

(f) A therapeutic radiation dose from a sealed source such that errors in the source calibration, time of exposure, and treatment geometry resulted in a calculated total treatment dose differing from the final prescribed total treatment dose by more than ten (10) percent.

(76) [(67)] "Mineral logging" means any logging performed for the purpose of mineral exploration other than oil or gas.

(77) "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

(78) [(68)] "Occupational dose" means exposure of an individual to radiation:

(a) In a restrictive area; or

(b) In the course of employment in which the individual's duties involve exposure to radiation; provided, that occupational dose shall not be deemed to include any exposure of an individual to radiation for the purpose of medical diagnosis or medical therapy of such individual.

(79) "Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

(80) [(69)] "Normal form radioactive material" means radioactive material which has not been demonstrated to qualify as "special form radioactive material."

(81) [(70)] "Operating procedures" means detailed written instructions including but not limited to the normal operation of equipment and movable shielding, closing of interlock circuits, manipulation of controls, radiation monitoring procedures for personnel and areas, testing of interlocks, and recordkeeping requirements.

(82) [(71)] "Package" means the packaging together with its radioactive contents as presented for transport.

(83) [(72)] "Packaging" means the assembly of components necessary to ensure compliance with the packaging requirements of 902 KAR 100:070. It may consist of one (1) or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(84) [(73)] "Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

(85) [(74)] "Permanent radiographic installation" means an installation or structure designed or intended for radiography and in which radiography is regularly performed.

(86) [(75)] "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state or any other state, or political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing.

(87) [(76)] "Personal supervision" means guidance and instruction by the supervisor who is physically present at the job site and watching the performance of the operation in such proximity that contact can be maintained and immediate assistance given as required.

(88) [(77)] "Personnel monitoring equipment" means a device designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual (e.g., film badges, pocket dosimeters, and thermoluminescent dosimeters (TLD)).

(89) [(78)] "Physician" means an individual licensed to practice medicine or osteopathy in this state.

(90) [(79)] "Protective apron" means an apron made of radiation absorbing materials of at least 0.25 mm lead equivalency. This requirement may be assumed to have been met if the HVL of the apron is not less than 0.25 mm lead at normal operating voltages.

(91) [(80)] "Protective barrier" means a barrier of radiation absorbing material(s) used to reduce radiation exposure.

(a) "Primary protective barrier" means a barrier sufficient to attenuate the useful beam

to the required degree.

(b) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(92) [(81)] "Protective glove" means a glove made of radiation absorbing materials of at least 0.25 mm lead equivalency. This requirement may be assumed to have been met if the HVL of the glove is not less than 0.25 mm lead at normal operating voltages.

(93) [(82)] "Qualified expert" means an individual who has demonstrated to the satisfaction of the cabinet that he possesses the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs.

(94) [(83)] "Rad" means the special unit of absorbed dose. One (1) rad equals 0.01 joule per kilogram of material; for example, if tissue is the material of interest, then one (1) rad equals 100 ergs per gram of tissue.

(95) [(84)] "Radiation" means ionizing radiation which includes any or all of the following: gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, high-speed protons, and other atomic particles. This definition does not include nonionizing radiations such as sound, microwave, radio wave, or visible, infrared, or ultraviolet light.

(a) "Leakage radiation" means all radiation coming from within the tube or source housing except the useful beam.

(b) "Scattered radiation" means radiation that, during passage through matter, has been deviated in direction. It may also have been modified by a decrease in energy.

(c) "Useful radiation" means radiation which passes through the window, aperture, cone, or other beam limiting device of the tube or source housing. Sometimes called "primary beam."

(d) "Stray radiation" means the sum of leakage and scattered radiation.

(96) [(85)] "Radiation area" means any area, accessible to individuals, in which there exists radiation at such levels that a major portion of the body could receive in any one (1) hour a dose in excess of five (5) millirems, or in any five (5) consecutive days a dose in excess of 100 millirems.

(97) [(86)] "Radiation machine" means any device capable of producing radiation except devices which produce radiation only from radioactive material.

(98) [(87)] "Radiation safety officer" means one who has the knowledge and responsibility to apply appropriate radiation protection regulations.

(99) [(88)] "Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

(100) [(89)] "Radioactive material" means any solid, liquid, or gas, which emits radiation spontaneously.

(101) [(90)] "Radioactivity" means the disintegration of unstable atomic nuclei by the emission of radiation.

(102) [(91)] "Radiographer" means any individual who performs or who, in attendance at the site where sources of radiation are being used, personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of these regulations and all license conditions.

(103) [(92)] "Radiographer's assistant" means any individual who, under the personal supervision of a radiographer, uses sources of radiation, related handling tools, or survey instruments in industrial radiography.

(104) [(93)] "Radiographic exposure device" means any instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure.

(105) [(94)] "Registrant" means any person who is registered with the cabinet and is legally obligated to register with the cabinet pursuant to these regulations.

(106) [(95)] "Registration" means registration with the cabinet in accordance with these regulations.

(107) [(96)] "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189.

(108) [(97)] "Rem" means a special unit of dose equivalent. One (1) millirem (mrem) = 0.001 rem. For the purposes of these regulations, any of the following is considered to be equal to one (1) rem:

(a) An exposure of one (1) roentgen due to x or gamma radiation;

(b) An absorbed dose of one (1) rad due to x, gamma, or beta radiation;

(c) An absorbed dose of 0.05 rad due to particles heavier than protons and with sufficient energy to reach the lens of the eye;

(d) An absorbed dose of one-tenth (0.1) rad due to neutrons or high energy protons. If it is more convenient to measure the neutron flux, or equivalent, than to determine the neutron dose in rads, one (1) rem of neutron radiation may, for purposes of these regulations, be assumed to be equivalent to fourteen (14) million neutrons per square centimeter incident upon the body; or, if there exists sufficient information to estimate with reasonable accuracy the approximate distribution in energy of the neutrons, the incident number of neutrons per square centimeter equivalent to one (1) rem may be estimated from the following table:

Neutron Flux Dose Equivalence

Neutron energy (MeV)	Number of neutrons per square centimeter for a dose equivalent of 1 rem (neutrons/square cm)	Average flux to deliver 100 mrem in 40 hrs. (neutrons/square cm per second)
Thermal	970×10^6	670
0.0001	720×10^6	500
0.005	820×10^6	570
0.02	400×10^6	280
0.1	120×10^6	80
0.5	43×10^6	30
1.0	26×10^6	18
2.5	29×10^6	20
5.0	26×10^6	18
7.5	24×10^6	17
10.0	24×10^6	17
10 to 30	14×10^6	10

(109) [(98)] "Research and development" means:

(a) Theoretical analysis, exploration, or experimentation; or

(b) The extension of investigative findings

and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

(110) [(99)] "Restricted area" means any area access to which is controlled by the licensee or registrant for purposes of protection of individuals from exposure to radiation and radioactive materials. A restricted area shall not include any areas used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

(111) [(100)] "Roentgen" means the special unit of exposure. One (1) roentgen (R) equals 2.58×10^{-4} coulombs per kilogram of air (see "Exposure").

(112) [(101)] "Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent leakage or escape of the radioactive material.

(113) [(102)] "Secretary" means the Secretary of the Cabinet for Human Resources.

(114) [(103)] "Shielded position" means the location within the radiographic exposure device or storage container which, by manufacturer's design, is the proper location for storage of the sealed source.

(115) [(104)] "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those source changers also used for transporting and storage of sealed sources.

(116) [(105)] "Source holder" means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source.

(117) [(106)] "Source image receptor distance (SID)" means the distance from the source to the center of the input surface of the image receptor.

(118) [(107)] "Source material" means:

(a) Uranium or thorium, or any combination thereof, in any physical or chemical form; or

(b) Ores which contain by weight one-twentieth (1/20) of one (1) percent (0.05 percent) or more of:

1. Uranium;
2. Thorium; or
3. Any combination thereof.

(c) Source material does not include special nuclear material.

(119) [(108)] "Source of radiation" means any radioactive material or any device or equipment emitting or capable of producing radiation.

(120) [(109)] "Special form" means radioactive material which satisfies the following conditions:

(a) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) The piece or capsule has at least one (1) dimension not less than five (5) millimeters (0.197 inch); and

(c) It satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission (NRC). A special form encapsulation designed in accordance with the NRC requirements in effect on June 30, 1983 and constructed prior to July 1, 1985 may continue to be used. A special form encapsulation either designed or constructed after June 30, 1985 must meet requirements of this definition applicable at the time of its design or construction.

(121) [(110)] "Special nuclear material" means:

(a) Plutonium, uranium 233, uranium enriched in the isotope U-233 or in the isotope U-235, and any other material which the Governor declares by order to be special nuclear material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or

(b) Any material artificially enriched by any of the foregoing, but does not include source material.

(122) [(111)] "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; U-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: for each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one (1). For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

(123) [(112)] "Specific activity" means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(124) [(113)] "Spot film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

(125) [(114)] "Storage" (waste storage) means the holding of waste for treatment or disposal for a period of twenty-four (24) hours or more.

(126) [(115)] "Storage container" means a device in which sealed sources are transported or stored.

(127) [(116)] "Subsurface tracer study" means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

(128) [(117)] "Survey" means an evaluation of the production, use, release, disposal, or presence of sources of radiation under a specific set of conditions to determine actual or potential radiation hazards. When appropriate, such evaluation includes, but is not limited to, tests, physical examinations, and measurements of levels of radiation or concentrations of radioactive material present.

(129) [(118)] "Technique factors" means the conditions of operation. They are specified as follows:

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge

in mAs.

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses.

(c) For all other equipment, peak tube potential in kV and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

(130) [(119)] "Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

(131) [(120)] "Temporary job site" means a location to which radioactive material has been dispatched to perform a job, operation, or study.

(132) [(121)] "Tests" means the process of verifying compliance with an applicable regulation.

(133) [(122)] "Therapeutic-type protective tube housing" means:

(a) For x-ray therapy equipment not capable of operating at 500 kVp or above, the following definition applies: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one (1) roentgen in one (1) hour when the tube is operated at its maximum rated tube potential;

(b) For x-ray therapy equipment capable of operating at 500 kVp or above, the following definition applies: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one-tenth (0.1) percent of the useful beam exposure rate at one (1) meter from the target, for any of its operating conditions;

(c) In either case, small areas of reduced protection are acceptable providing the average reading over any 100 square centimeter area at one (1) meter distance from the target does not exceed the values given above.

(134) [(123)] "These regulations" means radiation regulations adopted by the Cabinet for Human Resources, Kentucky's Administrative Regulations on radiation, 902 KAR Chapter 100.

(135) [(124)] "Transport index" means the dimensionless number (rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the number expressing the maximum radiation level in millirem per hour at one (1) meter from the external surface of the package.

(136) [(125)] "Treatment" (waste treatment) means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render the waste for transport, storage or disposal, amendable to recovery, convertible to another usable material or reduced in volume.

(137) [(126)] "Tube" means an x-ray tube, unless otherwise specified.

(138) [(127)] "Tube housing assembly" means the tube housing with tube installed. It includes high-voltage or filament transformers and other appropriate elements when they are contained within the tube housing.

(139) [(128)] "Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

(140) [(129)] "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in 902 KAR 100:070, Section 21, or may be determined by procedures described in 902 KAR 100:070, Section 20.

(141) [(130)] "Type B package" means a Type B packaging together with its radioactive contents. A Type B package design is designated as B(U) or B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, refer to U.S. Department of Transportation regulations in 49 CFR Part 173. A Type B package approved prior to September 6, 1983 was designated only as Type B. Limitations on its use are specified in 902 KAR 100:070, Section 7.

(142) [(131)] "Type B packaging" means a packaging designed to retain the integrity of containment and shielding required by U.S. Nuclear Regulatory Commission regulations when subjected to the normal conditions of transport and hypothetical accident test conditions set forth in 10 CFR Part 71.

(143) [(132)] "Type B quantity" means a quantity of radioactive material greater than a Type A quantity.

(144) [(133)] "U.S. Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the department exercises functions formerly vested in the U.S. Atomic Energy Commission, its chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c) and (d) of the Energy Reorganization Act of 1974 (Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, effective January 19, 1975) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Public Law 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977).

(145) [(134)] "Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

(146) [(135)] "Unrestricted area" means any area access to which is not controlled by the licensee or registrant for purposes of protection of individuals from exposure to radiation and radioactive material, and any area used for residential quarters.

(147) [(136)] "Useful beam" means the radiation which passes through the tube housing port and the aperture of the beam limiting device when the exposure switch or timer is activated.

(148) [(137)] "User" means any individual who personally utilizes or manipulates a source of radiation.

(149) [(138)] "Variable-aperture beam limiting device" means a beam limiting device which has capacity for stepless adjustment of the x-ray field size at a given SID.

(150) "Visiting authorized user" means an authorized user who is not identified on the license of the licensee being visited.

(151) [(139)] "Waste" (see "low-level radioactive waste").

(152) [(140)] "Well-bore" means a drilled hole in which wire line service operations and subsurface tracer studies are performed.

(153) [(141)] "Well-logging" means the lowering and raising of measuring devices or tools which may contain sources of radiation in well-bores or cavities for the purpose of obtaining information about the well and/or adjacent formations.

(154) [(142)] "Wire line" means a cable containing one (1) or more electrical conductors which is used to lower and raise logging tools in the well-bore.

(155) [(143)] "Wire line service operation" means any evaluation or mechanical service which is performed in the well-bore using devices on a wire line.

(156) [(144)] "Worker" means an individual engaged in activities licensed or registered by the cabinet and controlled by a licensee or registrant, but does not include the licensee or registrant.

(157) [(145)] "X-ray equipment" means an x-ray system, subsystem, or component thereof. X-ray equipment may be used as:

(a) "Mobile" means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

(b) "Portable" means x-ray equipment designed to be hand-carried.

(c) "Stationary" means x-ray equipment which is installed in a fixed location.

(d) "Transportable" means x-ray equipment installed in a vehicle or trailer.

(158) [(146)] "X-ray system" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting [lighting] device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: February 14, 1990
FILED WITH LRC: April 6, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the Department for Employment Services, Second Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald R. Hughes, Sr.

(1) Type and number of entities affected: 613 radioactive material licensees.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to those affected entities.

1. First year: Does not apply.

2. Continuing costs or savings: Does not apply.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Does not apply.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency.

1. First year: Does not apply.

2. Continuing costs or savings: Does not apply.

3. Additional factors increasing or decreasing costs: Does not apply.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations must be identical to those of the U.S. Nuclear Regulatory Commission. No alternative is available.

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

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

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended.

2. State compliance standards. This regulation provides definitions of terms as contained in the Cabinet for Human Resources radiation regulations.

3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are the same.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:012. Fee schedule.

RELATES TO: KRS 211.840 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.848, 1988 Acts, Chapter 437, HB 516 Part IIA #42.d [of the 1988 GA]

NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.848 to provide by regulation for a reasonable schedule of fees and charges to be paid by applicants for registration of radiation producing machines and radioactive material licenses and for the renewal thereof and for inspections and

environmental surveillance activities conducted by the cabinet. The purpose of this regulation is to establish a fee schedule for registration, licensing and inspection services.

Section 1. Applicability. This regulation relating to fees applies to all applicants, registrants and licensees of radiation producing machines and radioactive materials[, except governmental agencies].

Section 2. Radiation Producing Machine Schedule of Annual Fees and Charges. The following schedule of annual fees applies to radiation producing machine registrants. All applications for registration or annual renewals thereof, shall be accompanied by the appropriate fee set forth below:

(1) Each diagnostic x-ray tube; therapeutic x-ray tube capable of operating up to 150 kVp; or industrial x-ray tube - $40 [35].

(2) Each therapeutic x-ray tube capable of operating at 150 kVp or above (including particle accelerators) - $40 [35].

(3) Any other x-ray tube not specified above - $40 [35].

Section 3. Radioactive Material License Schedule of Annual Fees and Charges. The following schedule applies to radioactive material licenses. Initial and renewal applications shall be accompanied by the appropriate fee set forth in this section.

(1) Specific radioactive material licenses initial and annual fee.

(a) Human use.

1. Nuclear medicine - $360 [300].
2. Teletherapy - $300 [250].
3. Mobile scanning - $360 [300].
4. Other - $360 [300].

(b) Industrial radiography - $360 [300].

(c) Wireline service - $360 [300].

(d) Broad scope - $475 [400].

(e) Nuclear laundry - $715 [600].

(f) Irradiator.

1. Self-contained - $180 [150].
2. Unshielded during irradiation - $715 [600].

(g) Manufacturing/processing/distribution.

1. Industrial gauging devices - $600 [500].
2. In vitro/In vivo kits - $475 [400].
3. Radiopharmaceuticals - $715 [600].
4. Other - $715 [600].

(h) Industrial gauging devices - $180 [150].

(i) In vitro and clinical laboratory - $180 [150].

(j) Veterinary use - $300 [250].

(k) Services (e.g., leak testing) - $120 [100].

(l) Other (nonspecified) - $180 [150].

(m) Application for distribution of a new sealed source and device or the application for the use of a custom device in addition to fees specified in paragraphs (a) through (l) of this subsection - $475.

(2) General radioactive material licenses initial and annual fee.

(a) In vitro or medical use specified in 902 KAR 100:050, Sections 4 and 5 - $60 [50].

(b) Measuring, gauging or controlling devices (except emergency exit signs) - $60 [50].

(3) An application to amend an existing specific license - $60 [50].

Section 4. General Requirements. (1) All general radioactive material licenses and registration certificates shall expire on July 31 following the date of issuance.

(2) All general radioactive material license and registration renewal fees shall be paid on or before July 31 of each year. Registration renewals postmarked after September 30 are subject to $100 late payment penalty which is in addition to the registration fee.

(3) All specific radioactive material licenses shall be renewed annually based on the expiration date stated in the license.

(4) Payment of fees and other charges shall be submitted to Radiation Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, in the form of a check or money order payable to the Kentucky State Treasurer. The cabinet may designate the form of payment.

(5) Registration and licensing application fees are nonrefundable.

(6) Failure to submit any applicable fee set forth in this regulation shall be deemed a violation and subject to the provisions of 902 KAR 100:170.

[Section 5. Exemptions. State and local governmental agencies shall be exempt from the payment of fees but shall comply with the other applicable provisions of these regulations.]

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: April 13, 1990
FILED WITH LRC: April 13, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the DES Conference Room, Second Floor, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald R. Hughes, Sr.

(1) Type and number of entities affected: 750 radioactive material licensees; 2970 X-ray registrants.

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

1. First year: Will cost an additional $14,000 for radioactive material licensees, and approximately $37,000 for X-ray registrants.
2. Continuing costs or savings: The fees would remain constant each year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No increasing or decreasing cost factors are involved.

(b) Reporting and paperwork requirements: No additional requirements.

(2) Effects on the promulgating administrative body: Minimal effects since this is a fee increase only.

(a) Direct and indirect costs or savings:

1. First year: $650 (cost).
2. Continuing costs or savings: Continuing costs or savings are not a factor.
3. Additional factors increasing or decreasing costs: Additional computer programming costs would be minimal.

(b) Reporting and paperwork requirements: No

additional requirements.
(3) Assessment of anticipated effect on state and local revenues: Increase annual state revenues by $51,000.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or government policy is in conflict.
(a) Necessity of proposed regulation if in conflict: See (5) above.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See (5) above.
(6) Any additional information or comments: No additional information or comments are provided.
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. There will be a fiscal impact on part of local governments.
3. State the aspect or service of local government to which this administrative regulation relates. Relates to those entities of local government that utilizes radiation producing machines or radioactive materials.
4. How does this administrative regulation affect the local government or any service it provides? Payment required for registration or licensing fees that had not previously been charged.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:017. Special requirements for teletherapy licensees.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. The purpose of this regulation is to specify special requirements for teletherapy licensees.

Section 1. Applicability. This regulation establishes special requirements for all teletherapy licensees.

Section 2. Use of a Sealed Source in a Teletherapy Unit. A licensee shall use cobalt-60 or cesium-137 as a sealed source in a teletherapy unit for medical use only:
(1) In accordance with the manufacturer's radiation safety and operating instructions.
(2) Teletherapy sources manufactured and distributed in accordance with a license issued by the cabinet, the U.S. Nuclear Regulatory Commission or another agreement state.

Section 3. Maintenance and Repair Restrictions. Only a person specifically licensed by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state to perform teletherapy unit maintenance and repair shall install, relocate, or remove a teletherapy sealed source or a teletherapy unit that contains a sealed source or maintain, adjust, or repair the source drawer, the shutter or other mechanism of a teletherapy unit that could expose the source, reduce the shielding around the source, or result in increased radiation levels.

Section 4. Amendments. In addition to the requirements specified in 902 KAR 100:073, Section 3, a licensee shall apply for and receive a license amendment before:
(1) Making any change in the treatment room shielding;
(2) Making any change in the location of the teletherapy unit within the treatment room;
(3) Using the teletherapy unit in a manner that could result in increased radiation levels in areas outside the teletherapy treatment room;
(4) Relocating the teletherapy unit; or
(5) Allowing an individual not listed on the licensee's license to perform the duties of the teletherapy physicist.

Section 5. Safety Instruction. (1) A licensee shall post written instructions at the teletherapy unit console. These instructions shall inform the operator of:
(a) The procedure to be followed to ensure that only the patient is in the treatment room before turning the primary beam of radiation "on" to begin a treatment or after a door interlock interruption;
(b) The procedure to be followed if the operator is unable to turn the primary beam of radiation "off" with controls outside the treatment room or any other abnormal operation occurs; and
(c) The names and telephone numbers of the authorized users and radiation safety officer to be immediately contacted if the teletherapy unit or console operates abnormally.
(2) A licensee shall provide instruction in the topics identified in this section to all individuals who operate a teletherapy unit and shall provide appropriate refresher training to individuals at intervals not to exceed one (1) year.
(3) A licensee shall maintain a record of individuals receiving instruction including, a description of the instruction, the date of instruction, and the name of the individual who gave the instruction for three (3) years.

Section 6. Doors, Interlocks, Warning Systems, and Survey Instruments. (1) A licensee shall control access to the teletherapy room by a door at each entrance.
(2) A licensee shall equip each entrance to the teletherapy room with an electrical interlock system that shall:
(a) Prevent the operator from turning the primary beam of radiation "on" unless each treatment room entrance door is closed;
(b) Turn the beam of radiation "off"

immediately when an entrance door is opened; and

(c) Prevent the primary beam of radiation from being turned "on" following an interlock interruption until all treatment room entrance doors are closed and the beam on-off control is reset at the console.

(3) A licensee shall equip each entrance to the teletherapy room with a beam condition indicator light.

(4) A licensee authorized to use radioactive material in a teletherapy unit shall possess either a portable radiation detection survey instrument capable of detecting dose rates over the range one-tenth (0.1) millirem per hour to fifty (50) millirems per hour or a portable radiation measurement survey instrument capable of measuring dose rates over the range one (1) millirem per hour to 1000 millirems per hour. The instruments shall be operable and calibrated in accordance with 902 KAR 100:073, Section 16.

Section 7. Radiation Monitoring Device. (1) A licensee shall have in each teletherapy room a permanent radiation monitor capable of continuously monitoring beam status.

(2) Each radiation monitor shall be capable of providing visible notice of a teletherapy unit malfunction that results in an exposed or partially exposed source. The visible indicator of high radiation levels shall be observable by an individual entering the teletherapy room.

(3) Each radiation monitor shall be equipped with a backup power supply separate from the power supply to the teletherapy unit. This backup power supply may be a battery system.

(4) A radiation monitor shall be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients.

(5) A licensee shall maintain a record of the check required by this section for three (3) years. The record shall include the date of the check, notation that the monitor indicates when the source is exposed, and the initials of the individual who performed the check.

(6) If a radiation monitor is inoperable, the licensee shall require any individual entering the teletherapy room to use a survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in this section.

(7) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

Section 8. Viewing System. A licensee shall construct or equip each teletherapy room to permit continuous observation of the patient from the teletherapy unit console during irradiation.

Section 9. Dosimetry Equipment. (1) A licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one (1) of the following two (2) conditions shall be met:

(a) The system shall have been calibrated by the National Bureau of Standards or by a calibration laboratory accredited by the American Association of Physicists in Medicine. The calibration shall have been performed within the previous two (2) years and after any servicing that may have affected system calibration; or

(b) The system shall have been calibrated within the previous four (4) years; eighteen (18) to thirty (30) months after that calibration the system shall have been intercompared at an intercomparison meeting with another dosimetry system that was calibrated within the past twenty-four (24) months by the National Bureau of Standards or by a calibration laboratory accredited by the American Association of Physicists in Medicine. The intercomparison meeting shall be sanctioned by a calibration laboratory or radiologic physics center accredited by the American Association of Physicists in Medicine. The results of the intercomparison meeting must have indicated that the calibration factor of the licensee's system had not changed by more than two (2) percent. The licensee shall not use the intercomparison result to change the calibration factor. When intercomparing dosimetry systems to be used for calibrating cobalt-60 teletherapy units, the licensee shall use a teletherapy unit with a cobalt-60 source. When intercomparing dosimetry systems to be used for calibrating cesium-137 teletherapy units, the licensee shall use a teletherapy unit with a cesium-137 source.

(2) The licensee shall have available for use a dosimetry system for spot-check measurements. To meet this requirement, the system may be compared with a system that has been calibrated in accordance with this section. This comparison shall have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system shall be the same system used to meet the requirement in this section.

(3) The licensee shall maintain a record of each calibration, intercomparison, and comparison for the duration of the license. For each calibration, intercomparison, or comparison, the record shall include the date, the model numbers and serial numbers of the instruments that were calibrated, intercompared or compared as required by this section, the correction factors that were determined, the names of the individuals who performed the calibration, intercomparison or comparison, and evidence that the intercomparison meeting was sanctioned by a calibration laboratory or radiologic physics center accredited by the American Association of Physicists in Medicine.

Section 10. [2.] Requirements for Full Calibration Measurements of Teletherapy Units. Any licensee authorized under these regulations to use teletherapy units for treating humans shall cause full calibration measurements to be performed on each teletherapy unit:

(1) Prior to the first medical use of the unit [for treating humans];

(2) Prior to medical uses under the following conditions [treating humans]:

(a) Whenever spot-check measurements indicate that the output value differs by more than five (5) percent from the value obtained at the last full calibration corrected mathematically for physical decay;

(b) Following replacement of the radiation source or following reinstallation of the teletherapy unit in a new location;

(c) Following any repair of the teletherapy

unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(3) At intervals not exceeding one (1) year.

(4) Full calibration measurements required by this section shall include determination of:

(a) The output [exposure rate or dose rate] to an accuracy within plus or minus three (3) percent for the range of field sizes and for the distance or range of distances [(or for the axis distance)] used for medical use [in radiation therapy];

(b) The congruence between the radiation field and the field indicated by the light beam localizing device;

(c) The uniformity of the radiation field and its dependence upon the orientation of the useful beam;

(d) Timer constancy and linearity over the range of use; [accuracy; and]

(e) The accuracy of all distance measuring devices used for medical use; and [treating humans.]

(f) "On-off" error.

(5) A licensee shall use the dosimetry system described in Section 9 of this regulation to measure the output for one (1) set of exposure conditions. The remaining radiation measurements required in this section may then be made using a dosimetry system that indicates relative dose rates.

(6) [(5)] Full calibration measurements shall be made in accordance with either the procedures recommended by the Scientific Committee on Radiation Dosimetry of the American Association of Physicists in Medicine, "Physics in Medicine and Biology," Volume 16, No. 3, 1971, pp. 379-396, filed herein by reference, or by task group 21 of the Radiation Therapy Committee of the American Association of Physicists in Medicine that are described in Medical Physics Volume 10, No. 6, 1983, pp. 741-771 and Volume 11, No. 2, 1984, p. 213, filed herein by reference.

(7) [(6)] The output [exposure rate or dose rate] values determined in this section shall be corrected mathematically for physical decay for intervals not exceeding one (1) month for cobalt-60 and intervals not exceeding six (6) months for cesium-137.

(8) [(7)] Full calibration measurements and physical decay corrections required by this section shall be performed by a teletherapy physicist [an expert] qualified by training and experience in accordance with Section 17 [5] of this regulation and named on the licensee's license.

(9) A licensee shall maintain a record of each calibration for the duration of the license. The record shall include the date of the calibration, the manufacturer's name, model number, and serial number for both the teletherapy unit and the source, the model numbers and serial numbers of the instruments used to calibrate the teletherapy unit, tables that describe the output of the unit over the range of field sizes and for the range of distances used in radiation therapy, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, the timer constancy and linearity for a typical treatment time, the calculated "on-off" error, the estimated accuracy of each distance measuring or localization device, and the signature of the teletherapy physicist.

Section 11. [3. Requirements for] Periodic Spot-checks [Measurements of Teletherapy Units]. (1) Any licensee authorized to use teletherapy units for medical use [treating humans] shall perform output [cause] spot-check measurements [to be performed] on each teletherapy unit at intervals not exceeding one (1) month.

(2) Spot-check measurements shall include determination of:

(a) Timer constancy and timer linearity over the range of use [accuracy];

(b) "On-off" error;

(c) [(b)] The congruence between the radiation field and the field indicated by the light beam localizing device;

(d) [(c)] The accuracy of all distance measuring devices and localization devices used for medical use [treating humans];

(e) [(d)] The output [exposure rate, dose rate, or a quantity relating in a known manner to these rates] for one (1) typical set of operating conditions; and

(f) [(e)] The difference between the measurement made in this section and the anticipated output, expressed as a percentage of the anticipated output [(i.e., the value obtained at last full calibration corrected mathematically for physical decay)] expressed as a percentage of the anticipated output which is the value obtained at last full calibration corrected mathematically for physical decay.

(3) Spot-check measurements shall be performed in accordance with procedures established by a teletherapy physicist [an expert] qualified by training and experience in accordance with Section 16 [5] of this regulation. That individual [A qualified expert] need not actually perform the spot-check measurements. [If a qualified expert does not perform the spot-check measurements, the results of the spot-check measurements shall be reviewed by a qualified expert within fifteen (15) days.]

(4) A licensee shall have the teletherapy physicist review the results of each output spot-check within fifteen (15) days. The teletherapy physicist shall promptly notify the licensee in writing of the results of each output spot-check. The licensee shall keep a copy of each written notification for three (3) years.

(5) A licensee shall use the dosimetry system described in Section 9 of this regulation to make the output spot-check required in this section.

(6) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility at intervals not to exceed one (1) month.

(7) To satisfy the requirement of this section, safety spot-checks shall assure proper operation of:

(a) Electrical interlocks at each teletherapy room entrance;

(b) Electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation restriction of source housing angulation or elevation, carriage or stand travel, and operation of the beam "on-off" mechanism;

(c) Beam condition indicator lights on the teletherapy unit, on the control console, and in the facility;

(d) Viewing systems;

(e) Treatment room doors from inside and outside the treatment room; and

(f) Electrically assisted treatment room doors with the teletherapy unit electrical power turned "off".

(8) A licensee shall lock the control console in the "off" position if any door interlock malfunctions. No licensee shall use the unit until the interlock system is repaired unless specifically authorized by the cabinet.

(9) A licensee shall promptly repair any system identified during safety spot-checks that is not operating properly.

(10) A licensee shall maintain a record of each spot-check required by this section for three (3) years. The record shall include the date of the spot-check, the manufacturer's name, model number, and serial number for both the teletherapy unit and source, the manufacturer's name, model number and serial number of the instrument used to measure the output of the teletherapy unit, the measured timer accuracy, the calculated "on-off" error, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, the measured timer accuracy for a typical treatment time, the calculated "on-off" error, the estimated accuracy of each distance measuring or localization device, the difference between the anticipated output and the measured output, notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system and doors, and the signature of the individual who performed the periodic spot-check.

Section 12. Radiation Surveys for Teletherapy Facilities. (1) Before medical use, after each installation of a teletherapy source and after making any change for which an amendment is required by Section 4 of this regulation, the licensee shall perform radiation surveys with an operable radiation measurement survey instrument calibrated in accordance with 902 KAR 100:073, Section 16 to verify that:

(a) The maximum and average radiation levels at one (1) meter from the teletherapy source with the source in the "off" position and the collimators set for a normal treatment field do not exceed ten (10) millirems per hour and two (2) millirems per hour, respectively; and

(b) With the teletherapy source in the "on" position with the largest clinically available treatment field and with a scattering phantom in the primary beam of radiation, that:

1. Radiation levels in restricted areas are not likely to cause personnel exposures in excess of the limits specified in 902 KAR 100:020, Section 2 of these regulations; and

2. Radiation levels in unrestricted areas do not exceed the limits specified in 902 KAR 100:020, Section 7(1) of these regulations.

(2) If the results of the surveys required in this section indicate any radiation levels in excess of the respective limit specified in that paragraph, the licensee shall lock the control in the "off" position and not use the unit:

(a) Except as may be necessary to repair, replace, or test the teletherapy unit, the teletherapy unit shielding, or the treatment room shielding; or

(b) Until the licensee has received a specific exemption from the cabinet.

(3) A licensee shall maintain a record of the radiation measurements made following installation of a source for the duration of the license. The record shall include the date of the measurements, the reason the survey is required, the manufacturer's name, model number and serial number of the teletherapy unit and the source, and the instrument used to measure radiation levels, each dose rate measured around the teletherapy source while in the "off" position and the average of all measurements, a plan of the areas surrounding the treatment room that were surveyed, the measured dose rate at several points in each area expressed in millirems per hour, the calculated maximum level of radiation over a period of one (1) week for each restricted and unrestricted area, and the signature of the radiation safety officer.

Section 13. Safety Spot-checks for Teletherapy Facilities. (1) A licensee shall promptly spot-check all systems listed in Section 11(7) of this regulation for proper function after each installation of a teletherapy source and after making any change for which an amendment is required by Section 4 of this regulation.

(2) If the results of the spot-checks required in this section indicate the malfunction of any system specified in Section 11 of this regulation, the licensee shall lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(3) A licensee shall maintain a record of the facility checks following installation of a source for three (3) years. The record shall include notations indicating the operability of each entrance door interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system, doors, and the signature of the radiation safety officer.

Section 14. Modification of Teletherapy Unit or Room Before Beginning a Treatment Program. If the survey required by Section 12 of this regulation indicates that an individual in an unrestricted area may be exposed to levels of radiation greater than those permitted by 902 KAR 100:020, Section 7(1) of these regulations before beginning the treatment program the licensee shall:

(1) Either equip the unit with stops or add additional radiation shielding to ensure compliance with 902 KAR 100:020, Section 7(1) of these regulations;

(2) Perform the survey required by Section 12 of this regulation again; and

(3) Include in the report required by Section 15 of this regulation the results of the initial survey, a description of the modification made to comply with this section, and the results of the second survey; or

(4) Request and receive a license amendment under 902 KAR 100:020, Section 7(2) of these regulations that authorizes radiation levels in unrestricted areas greater than those permitted by 902 KAR 100:020, Section 7(1) of these regulations.

Section 15. Reports of Teletherapy Surveys, Checks, Tests, and Measurements. A licensee shall furnish a copy of the records required in Sections 12, 13, and 14 of this regulation and the output from the teletherapy source expressed as roentgens or rads per hour at one (1) meter from the source and determined during the full

calibration required in Section 10 of this regulation to the cabinet within thirty (30) days following completion of the action that initiated the record requirement.

[Section 4. Requirements for Calibration of Instruments used for Full Calibration and Spot-check Measurements. (1) Full calibration measurements required by Section 2 of this regulation shall be performed using a dosimetry system that has been calibrated by the National Bureau of Standards or by a regional calibration laboratory accredited by the American Association of Physicists in Medicine. The dosimetry system shall have been calibrated within the previous two (2) years and after any servicing that may have affected system calibration.]

[(2) Spot-check measurements required by Section 3 of this regulation shall be performed using a dosimetry system that has been calibrated in accordance with subsection (1) of this section. Alternatively, a dosimetry system used solely for spot-check measurements may be calibrated by direct intercomparison with a system that has been calibrated in accordance with subsection (1) of this section. This alternative calibration method shall have been performed within the previous one (1) year and after each servicing that may have affected system calibration. Dosimetry systems calibrated by this alternative method shall not be used for calibration measurements.]

[Section 5. Minimum Requirements for Qualified Expert for Teletherapy Calibrations. The licensee shall determine if a person is an expert qualified by training and experience to calibrate a teletherapy unit and establish procedures for and review the results of spot-check measurements. The licensee shall determine that the qualified expert:]

[(1) Is certified by the American Board of Radiology in therapeutic radiological physics, radiological physics, roentgen-ray and gamma ray physics, or x-ray and radium physics; or]

[(2) Has the following minimum training and experience:]

[(a) A master's or doctor's degree in physics, biophysics, radiological physics or health physics;]

[(b) One (1) year of full-time training in therapeutic radiological physics; and]

[(c) One (1) year of full-time experience in a radiotherapy facility including personal calibration and spot-check of at least one (1) teletherapy unit.]

[(3) Licensees that have their teletherapy units calibrated by persons who do not meet these criteria for minimum training and experience may request a license amendment excepting them from the requirements of this section. The request shall include the name of the proposed qualified expert, a description of his training and experience including information similar to that specified in subsection (2) of this section, reports of at least one (1) calibration and spot-check program based on measurements personally made by the proposed expert within the last ten (10) years.]

[Section 6. Requirements to Install a Permanent Radiation Monitor in Teletherapy Rooms and to use Portable Survey Instruments or Audible Alarm Dosimeters. (1) Each licensee authorized to use teletherapy units for treating humans shall install a permanent radiation monitor in each teletherapy room for continuous monitoring of beam status.]

[(2) Each radiation monitor must be capable of providing visible notice of a teletherapy unit malfunction that may result in an exposed or partially exposed source. The visible indicator of high radiation levels must be located so as to be observable by a person entering the treatment room.]

[(3) Each radiation monitor must be equipped with an emergency power supply separate from the power supply to the teletherapy unit. This emergency power supply may be a battery system.]

[(4) Each radiation monitor must be tested for proper operation each day before the teletherapy unit is used for treatment of patients.]

[(5) If a radiation monitor is inoperable for any reason, any person entering the teletherapy room shall use a properly operating portable survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may have resulted in an exposed or partially exposed source. Survey instruments or dosimeters must be tested daily before use.]

Section 16. Five (5) Year [7.] Inspection [and Servicing of the Source Exposure Mechanism; Relief Granted by Certain License Conditions]. (1) The licensee shall cause each teletherapy unit used for medical use [to treat humans] to be fully inspected and serviced during source replacement or at intervals not to exceed five (5) years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(2) Inspection and servicing of the teletherapy unit shall be performed by persons specifically licensed to do so by the cabinet, the U.S. Nuclear Regulatory Commission or an Agreement State.

(3) A licensee shall maintain a record of the inspection and servicing for the duration of the license. The record shall contain the inspector's name, the inspector's license number, the date of inspection, the manufacturer's name and model number and serial number for both the teletherapy unit and source, a list of components inspected, a list of components serviced and the type of service, a list of components replaced, and the signature of the inspector. [Amendments to teletherapy licenses in effect as of September 1, 1983, which extended the time interval for the inspection and servicing requirement of subsection (1) of this section shall remain in effect and are not rescinded by this section.]

Section 17. Training for Teletherapy Physicist. The licensee shall require the teletherapy physicist to:

(1) Be certified by the American Board of Radiology in:

(a) Therapeutic radiological physics;

(b) Roentgen-ray and gamma-ray physics;

(c) X-ray and radium physics; or

(d) Radiological physics; or

(2) Hold a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and have completed one (1) year of full-time training in therapeutic radiological physics and also one (1) year of full-time work experience under the supervision

of a teletherapy physicist at a medical institution. To meet this requirement, the individual shall have performed the tasks listed in 902 KAR 100:073, Section 19 and Sections 10, 11 and 12 of this regulation under the supervision of a teletherapy physicist during the year of work experience.

[Section 8. Records. The licensee shall maintain, for inspection by the cabinet, records of the measurements, tests, corrective actions, inspection and servicing of the teletherapy units, instrument calibrations, and records of the licensee's evaluation of the qualified expert's training and experience.]

[(1) Records of full calibration measurements and calibration of the instruments used to make these measurements shall be preserved for five (5) years after completion of the full calibration.]

[(2) Records of spot-check measurements and corrective actions, and calibration of instruments used to make spot-check measurements, shall be preserved for two (2) years after completion of the spot-check measurements and corrective actions.]

[(3) Records of the licensee's evaluation of the qualified expert's training and experience shall be preserved for five (5) years after the qualified expert's last performance of a full calibration on the licensee's teletherapy unit.]

[(4) Records of inspection and servicing of the teletherapy unit under Section 7 of this regulation shall be preserved for five (5) years after the inspection and servicing.]

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: February 14, 1990
FILED WITH LRC: April 6, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the DES Conference Room, Second Floor, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald R. Hughes, Sr.
(1) Type and number of entities affected: 8 teletherapy licensees.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to those affected entities.
1. First year: Does not apply.
2. Continuing costs or savings: Does not apply.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Does not apply.
(b) Reporting and paperwork requirements: No additional requirements as these amendments incorporate existing guidelines.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency.
1. First year: Does not apply.
2. Continuing costs or savings: Does not apply.
3. Additional factors increasing or decreasing costs: Does not apply.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations must be compatible with the U.S. Nuclear Regulatory Commission. No alternative is available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: There is 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: None
TIERING: Was tiering applied? No. The regulations are the same for all teletherapy licensees. No exceptions.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended.
2. State compliance standards. This regulation specifies specific special requirements for teletherapy licensees.
3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are the same.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:020. Standards for protection against radiation.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this regulation is to provide for standards for the protection to the user and general public against radiation exposure.

Section 1. Applicability. This regulation applies to all persons licensed or registered pursuant to the cabinet's radiation regulations.

Section 2. Radiation Dose Standards for Individuals in Restricted Areas. (1) In accordance with the provisions of Section 3 of this regulation, except as provided in

subsection (2) of this section, no licensee or registrant shall possess, use, receive, or transfer sources of radiation in such a manner as to cause any individual in a restricted area to receive in any period of one (1) calendar quarter from all sources of radiation a total occupational dose in excess of the standards specified in the following:

(a) Whole body; head and trunk; active blood-forming organs; lens of eyes; or gonads; one and one-fourth (1 1/4) rems per calendar quarter;

(b) Hands and forearms; feet and ankles; eighteen and three-fourths (18 3/4) rems per calendar quarter;

(c) Skin of whole body; seven and one-half (7 1/2) rems per calendar quarter.

(2) A licensee or registrant may permit an individual eighteen (18) years of age or over to receive a total occupational dose to the whole body greater than that permitted under subsection (1) of this section, provided:

(a) During any calendar quarter the total occupational dose to the whole body shall not exceed three (3) rems; and

(b) The dose to the whole body, when added to the accumulated occupational dose to the whole body, shall not exceed five (5) (N-18) rems where "N" equals the individual's age in years at his last birthday; and

(c) The licensee or registrant has determined the individual's accumulated occupational dose to the whole body on cabinet Form KR-411, or on a clear and legible record containing all information required in that form and has otherwise complied with the requirements of Section 3 of this regulation. As used in subsection (2) of this section, "dose to the whole body" shall be deemed to include any dose to the whole body, gonads, active blood-forming organs, head and trunk, or lens of eye.

(3) For determining the doses specified in this section, a dose from x- or gamma rays up to ten (10) MeV may be assumed to be equivalent to the exposure measured by a properly calibrated, appropriate instrument in air at or near the body surface in the region of the highest dose rate.

Section 3. Determination of Accumulated Dose. (1)(a) Each licensee or registrant shall require any individual, prior to first entry of the individual into the licensee's or registrant's restricted area during each employment or work assignment under such circumstances that the individual will receive or is likely to receive in any period of one (1) calendar quarter an occupational dose in excess of twenty-five (25) percent of the applicable standards specified in Sections 2(1) and 5 of this regulation, to disclose in a written, signed statement, either:

1. That the individual had no prior occupational dose during the current calendar quarter; or

2. The nature and amount of any occupational dose which the individual may have received during the specifically identified current calendar quarter, from sources of radiation possessed or controlled by other persons.

(b) Each licensee or registrant shall maintain records of such statements until the cabinet authorizes disposition.

(2) Before permitting, pursuant to Section 2(2) of this regulation, any individual eighteen (18) years of age or over to receive an occupational radiation dose in excess of the limits specified in Section 2(1) of this regulation, each licensee or registrant shall:

(a) Obtain a certificate on cabinet Form KR-411, or on a clear and legible record containing all the information required on that form, signed by the individual, showing each period of time after the individual attained the age of eighteen (18) in which the individual received an occupational radiation dose; and

(b) Calculate on cabinet Form KR-411, in accordance with the instructions appearing therein, or on a clear and legible record containing all the information required on that form, the previously accumulated occupational dose received by the individual and the additional dose allowed for that individual under Section 2(2) of this regulation.

(3)(a) In the preparation of cabinet Form KR-411, or on a clear and legible record containing all the information required on that form, the licensee or registrant shall make a reasonable effort to obtain reports of the individual's previously accumulated occupational dose. For each period for which the licensee or registrant obtains such reports, he shall use the dose shown in the report in preparing the form. In any case where a licensee or registrant is unable to obtain reports of the individuals occupational dose for a previous complete calendar quarter, it shall be assumed that the individual has received the occupational dose specified in whichever of the following columns apply:

	Column 1	Column 2
	Assumed dose in rems for calendar quarters prior to January 1, 1961	Assumed dose in rems for calendar quarters beginning on or after January 1, 1961
Part of Body		
Whole body, gonads, active blood-forming organs, head and trunk, lens of eye	3 3/4	1 1/4

(b) The licensee or registrant shall retain and preserve records used in preparing cabinet Form KR-411 until the cabinet authorizes their disposition. If calculation of the individual's accumulated occupational dose for all periods prior to January 1, 1961, yields a result higher than the applicable accumulated dose value for the individual as of that date, as specified in Section 2(2) of this regulation, the excess may be disregarded.

Section 4. Exposure of Individuals to Concentrations of Radioactive Material in Air in Restricted Areas. (1) No licensee shall possess, use, or transfer radioactive material in such a manner as to permit any individual in a restricted area to inhale a quantity of radioactive material in any period of one (1) calendar quarter greater than the quantity which would result from inhalation for forty (40) hours per week for thirteen (13) weeks at uniform concentrations of radioactive material in air specified in Table I, Column I of 902 KAR

100:025. If the radioactive material is of such form that intake by absorption through the skin is likely, individual exposures to radioactive material by any organ from either inhalation or absorption or both routes of intake in any calendar quarter does not exceed that which would result from inhaling such radioactive material for forty (40) hours per week for thirteen (13) weeks at uniform concentrations specified in Table I, Column I of 902 KAR 100:025.

(a) Since the concentration specified for tritium oxide vapor assumes equal intakes by skin absorption and inhalation, the total intake permitted is twice that which would result from inhalation alone at the concentration specified for H-3(S) in 902 KAR 100:025, Table I, Column 1 for forty (40) hours per week for thirteen (13) weeks.

(b) For radon-222, the limiting quantity is that inhaled in a period of one (1) calendar year. For radioactive material designated "Sub" in the "Isotope" column of the table, the concentration value specified is based upon exposure to the material as an external radiation source. Individual exposures to these materials may be accounted for as part of the limitation on individual dose in Section 2 of this regulation. These nuclides shall be subject to the precautionary procedures required by subsection (3)(a) of this section.

(c) Multiply the concentration values specified in 902 KAR 100:025, Table I, Column I by 6.3 x E8 milliliters to obtain the quarterly quantity limit. Multiply the concentration value specified in 902 KAR 100:025, Table I, Column 1 by 2.5 x E9 milliliters to obtain the annual quantity limit for Rn-222.

(d) Significant intake by ingestion or injection is presumed to occur only as a result of circumstances such as accident, inadvertence, poor procedure, or similar special conditions. Such intakes must be evaluated and accounted for by techniques and procedures as may be appropriate to the circumstances of the occurrence. Exposures so evaluated shall be included in determining whether the limitation on individual exposures has been exceeded.

(2) No licensee shall possess, use, or transfer mixtures of U-234, U-235, and U-238 in soluble form in such a manner as to permit any individual in a restricted area to inhale a quantity of such material in excess of the intake limits specified in 902 KAR 100:025, Table I, Column 1. If such soluble uranium is of a form such that absorption through the skin is likely, individual exposures to such material shall be controlled so that the uptake of such material by any organ from either inhalation or absorption or both routes of intake does not exceed that which would result from inhaling such material at the limits specified in 902 KAR 100:025, Table I, Column 1 and footnote thereto. Significant intake by ingestion or injection is presumed to occur only as a result of circumstances such as accident, inadvertence, poor procedure, or similar special conditions. Such intakes must be evaluated and accounted for by techniques and procedures as may be appropriate to the circumstances of the occurrence. Exposures so evaluated shall be included in determining whether the limitation on individual exposures in subsection (1) of this section has been exceeded.

(3)(a) The licensee shall, as a precautionary procedure, use process or other engineering controls, to the extent practicable, to limit concentrations of radioactive material in air to levels below those which delimit an airborne radioactivity area as defined in 902 KAR 100:010.

(b) When it is impracticable to apply process or other engineering controls to limit concentrations of radioactive material in air below those defined in 902 KAR 100:010, other precautionary procedures, such as increased surveillance, limitation of working times, or provision of respiratory protective equipment, shall be used to maintain intake of radioactive material by any individual within any period of seven (7) consecutive days as far below that intake of radioactive material which would result from inhalation of such material for forty (40) hours at the uniform concentrations specified in 902 KAR 100:025, Table I, Column 1, as is reasonably achievable. Whenever the intake of radioactive material by any individual exceeds this forty (40) hour control measure, the licensee shall make such evaluations and take such actions as are necessary to assure against recurrence. The licensee shall maintain records of such occurrences, evaluations, and actions taken in a clear and readily identifiable form suitable for summary review and evaluation.

(c) When respiratory protective equipment is used to limit the inhalation of airborne radioactive material pursuant to paragraph (b) of this subsection: [,]

1. The licensee shall use equipment that is certified or had certification extended by the National Institute for Occupational Safety and Health/Mine Safety and Health Administration (NIOSH/MSHA); and

2. The licensee may make allowance for such use in estimating exposures of individuals to such material provided that such equipment is used as approved by the cabinet.

(d) Notwithstanding the provisions of this subsection, the cabinet may impose further restrictions:

1. On the extent to which a licensee may make allowance for use of respirators in lieu of provision of process, containment, ventilation, or other engineering controls, if application of such controls is found to be practicable; and

2. As might be necessary to assure that the respiratory protective program of the licensee is adequate in limiting exposures of personnel to airborne radioactive material.

(e) The licensee shall notify, in writing, the cabinet at least thirty (30) days before the date that respiratory protective equipment is first used under the provisions of this section.

(4) For purposes of determining compliance with the requirements of this section, the licensee shall use suitable measurements of concentrations of radioactive material in air for detecting and evaluating airborne radioactivity in restricted areas and in addition, as appropriate, shall use measurements of radioactivity in the body, measurements of radioactivity excreted from the body, or any combination of such measurements as may be necessary for timely detection and assessment of individual intakes of radioactive material by exposed individuals. It is assumed that an individual inhales radioactive material at the airborne concentration in which he is present unless he uses respiratory protective equipment pursuant to subsection (3)(c) of this section.

When assessment of a particular individual's intake of radioactive material is necessary, intakes less than those which would result from inhalation for two (2) hours in any one (1) day or for ten (10) hours at uniform concentration specified in 902 KAR 100:025, Table I, Column 1 need not be included in such assessment, provided that for any assessment in excess of these amounts the entire amount is included.

Section 5. Exposure of Minors. For determining the doses specified in this section, a dose from x-rays or gamma rays up to ten (10) MeV may be assumed to be equivalent to the exposure measured by a properly calibrated, appropriate instrument in air at or near the body surface in the region of the highest dose rate.

(1) No licensee or registrant shall possess, use, or transfer sources of radiation in such a manner as to cause any individual within a restricted area, who is under eighteen (18) years of age, to receive in any period of one (1) calendar quarter from all sources of radiation in such licensee's or registrant's possession a dose in excess of ten (10) percent of the standards specified in Section 2(1)(a), (b) and (c) of this regulation.

(2) No licensee shall possess, use, or transfer radioactive material in such a manner as to cause any individual within a restricted area, who is under eighteen (18) years of age, to be exposed to airborne radioactive material in an average concentration in excess of the limits specified in Table II of 902 KAR 100:025, relating to concentrations in air and water above natural background. For purposes of this subsection, concentrations may be averaged over periods not greater than a week.

(3) The provisions of Section 4(3) of this regulation shall apply to exposures subject to subsection (2) of this section.

Section 6. Exposure of the Fetus. No licensee or registrant should possess, use, or transfer sources of radiation in such a manner as to knowingly cause a fetus to receive a dose, except for the intentional exposure of patients to radiation for the purpose of medical diagnosis or medical therapy, in excess of five-tenths (0.5) rem for the entire gestation period.

Section 7. Permissible Levels of Radiation from External Sources in Unrestricted Areas. It is the intent of this section to limit radiation levels so that it is unlikely that individuals in unrestricted areas would receive a dose to the whole body in excess of five-tenths (0.5) rem in any one (1) year. If, in specific instances, it is determined by the cabinet that this intent is not met, the cabinet may impose such additional requirements on the licensee or registrant as may be necessary to meet the intent.

(1) Except as authorized by the cabinet pursuant to subsection (2) of this section, no licensee or registrant shall possess, use, or transfer sources of radiation in such a manner as to create in any unrestricted areas from such sources of radiation in his possession:

(a) Radiation levels which, if an individual were continuously present in the area, could result in his receiving a dose in excess of two (2) millirems in any one (1) hour; or

(b) Radiation levels which, if an individual were continuously present in the area, could result in his receiving a dose in excess of 100 millirems in any seven (7) consecutive days.

(2) Any person may apply to the cabinet for proposed limits upon levels of radiation in unrestricted areas in excess of those specified in subsection (1) of this section resulting from the applicant's possession or use of sources of radiation. Such applications should include information as to anticipated average radiation levels and anticipated occupancy times for each unrestricted area involved. The cabinet will approve the proposed limits if the applicant demonstrates to the satisfaction of the cabinet that the proposed limits are not likely to cause any individual to receive a dose to the whole body in any period of one (1) calendar year in excess of five-tenths (0.5) rem.

Section 8. Concentration of Radioactivity in Effluents to Unrestricted Areas. (1) A licensee shall not possess, use, or transfer licensed material so as to release to an unrestricted area radioactive material in concentrations which exceed the limits specified in Table II of 902 KAR 100:025, relating to concentrations in air and water above natural background, except as authorized pursuant to subsection (2) of this section and 902 KAR 100:021. For purposes of this subsection, concentrations may be averaged over periods not greater than one (1) year.

(2) An application for a license or amendment may include proposed limits higher than those specified in subsection (1) of this section. The cabinet will approve the proposed limits if the applicant demonstrates:

(a) That the applicant has made a reasonable effort to minimize the radioactivity contained in effluents to unrestricted areas; and

(b) That it is not likely that radioactive material discharged in the effluent would result in the exposure of an individual to concentrations of radioactive material in air or water exceeding the limits specified in Table II of 902 KAR 100:025, relating to concentrations in air and water above natural background.

(3) An application for higher limits pursuant to subsection (2) of this section shall include information demonstrating that the applicant has made a reasonable effort to minimize the radioactivity discharged in effluents to unrestricted areas, and shall include, as pertinent:

(a) Information as to flow rates, total volume of effluent, peak concentration of each radionuclide in the effluent, and concentration of each radionuclide in the effluent averaged over a period of one (1) year at the point where the effluent leaves a stack, tube, pipe, or similar conduit;

(b) A description of the properties of the effluents, including:

1. Chemical composition;

2. Physical characteristics, including suspended solids content in liquid effluents, and nature of gas or aerosol for air effluents;

3. The hydrogen ion concentrations (pH) of liquid effluents; and

4. The size range of particulates in effluents released into air.

(c) A description of the anticipated human occupancy in the unrestricted area where the highest concentration of radioactive material from the effluent is expected, and, in the case of a river or stream, a description of water

uses downstream from the point of release of the effluent;

(d) Information as to the highest concentration of each radionuclide in an unrestricted area, including anticipated concentrations averaged over a period of one (1) year;

1. In air at any point of human occupancy; or

2. In water at points of use downstream from the point of release of the effluent.

(e) The background concentration of radionuclides in the receiving river or stream prior to the release of liquid effluent;

(f) A description of the environmental monitoring equipment, including sensitivity of the system, and procedures and calculations to determine concentrations of radionuclides in the unrestricted area and possible reconcentrations of radionuclides;

(g) A description of the waste treatment facilities and procedures used to reduce the concentration of radionuclides in effluents prior to their release.

(4) For the purposes of this section, the concentration limits in Table II of 902 KAR 100:025, relating to concentrations in air and water above natural background, shall apply at the boundary of the restricted area. The concentration of radioactive material discharged through a stack, tube, pipe, or similar conduit may be determined with respect to the point where the material leaves the conduit. If the conduit discharges within the restricted area, the concentration at the boundary may be determined by applying appropriate factors for dilution, dispersion, or decay between the point of discharge and the boundary.

(5) In addition to limiting concentrations in effluent streams, the cabinet may limit quantities of radioactive material released in air or water during a specified period of time if it appears that the daily intake of radioactive material from air, water, or food by a suitable sample of an exposed population group, averaged over a period not exceeding one (1) year, would otherwise exceed the daily intake resulting from continuous exposure to air or water containing one-third (1/3) the concentration of radioactive material specified in Table II of 902 KAR 100:025, relating to concentrations in air and water above natural background.

(6) The provisions of this section do not apply to disposal of radioactive material into sanitary sewerage systems, which is governed by 902 KAR 100:021.

Section 9. Orders Requiring Furnishing of Bioassay Services. Where necessary or desirable in order to aid in determining the extent of an individual's exposure to concentrations of radioactive material, the cabinet may incorporate license provisions or issue an order requiring a licensee to make available to the individual appropriate bioassay services and to furnish a copy of the reports of such services to the cabinet.

Section 10. Surveys. Each licensee or registrant shall make or cause to be made such surveys as:

(1) May be necessary for him to establish compliance with these regulations; and

(2) Are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present.

Section 11. Personnel Monitoring. Each licensee or registrant shall supply appropriate personnel monitoring equipment to, and shall require the use of such equipment by:

(1) Each individual who enters a restricted area under such circumstances that he receives, or is likely to receive, a dose in any calendar quarter in excess of twenty-five (25) percent of the applicable value specified in Section 2(1) of this regulation.

(2) Each individual under eighteen (18) years of age who enters a restricted area under such circumstances that he receives, or is likely to receive, a dose in any calendar quarter in excess of five (5) percent of the applicable value specified in Section 2(1) of this regulation.

(3) Each individual who enters a high radiation area.

(4) All personnel dosimeters (except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to hands and forearms, feet and ankles) that require processing to determine the radiation dose and that are utilized by licensees to comply with paragraphs (1), (2) and (3) of this section, with other applicable provisions of these regulations, or with conditions specified in a licensee's license must be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Bureau of Standards; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that must closely approximate the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

Section 12. Caution Signs, Labels and Signals. (1) General.

(a) Except as otherwise authorized by the cabinet, symbols and lettering prescribed by this section shall use the conventional radiation caution colors (magenta or purple on yellow background). The symbol prescribed by this section is the conventional three (3) bladed design as described in U.S. Nuclear Regulatory Commission regulations 10 CFR Part 20.203(a).

(b) In addition to the contents of signs and labels prescribed in this regulation, a licensee or registrant may provide on or near such signs and labels any additional information which may be appropriate in aiding individuals to minimize exposure to radiation.

(2) Radiation areas. Each radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words: CAUTION (or DANGER), RADIATION AREA.

(3) High radiation areas.

(a) Each high radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words: CAUTION (or DANGER), HIGH RADIATION AREA.

(b) Each entrance or access point to a high radiation area shall be:

1. Equipped with a control device which shall cause the level of radiation to be reduced below that at which an individual might receive a dose

of 100 millirems in one (1) hour upon entry into the area; or

2. Equipped with a control device which shall energize a conspicuous visible or audible alarm signal in such a manner that the individual entering the high radiation area and the licensee, registrant, or a supervisor of the activity are made aware of the entry; or

3. Maintained locked except during periods when access to the area is required, with positive control over each individual entry.

(c) The controls required by paragraph (b) of this subsection shall be established in such a way that no individual will be prevented from leaving a high radiation area.

(d) In the case of a high radiation area established for a period of thirty (30) days or less, direct surveillance to prevent unauthorized entry may be substituted for the controls required by paragraph (b) of this subsection.

(e) Any licensee, or registrant, or applicant for a license or registration, may apply to the cabinet for approval of methods not included in paragraphs (b) and (d) of this subsection for controlling access to high radiation areas. The cabinet will approve the proposed alternatives if the licensee, or registrant, or applicant demonstrates that the alternative methods of control will prevent unauthorized entry into a high radiation area, and that the requirement of paragraph (c) of this subsection is met.

(f) Each area in which there may exist radiation levels in excess of 500 rems in one (1) hour at one (1) meter from a sealed radioactive source that is used to irradiate materials shall:

1. Have each entrance or access point equipped with entry control devices which shall function automatically to prevent any individual from inadvertently entering the area when such radiation levels exist; permit deliberate entry into the area only after a control device is actuated that shall cause the radiation level within the area, from the sealed source, to be reduced below that at which it would be possible for an individual to receive a dose in excess of 100 millirems in one (1) hour; and prevent operation of the source if the source would produce radiation levels in the area that could result in a dose to an individual in excess of 100 millirems in one (1) hour. The entry control devices required by this paragraph shall be established in such a way that no individual will be prevented from leaving the area.

2. Be equipped with additional control devices such that upon failure of the entry control devices to function as required by subparagraph 1 of this paragraph the radiation level within the area, from the sealed source shall be reduced below that at which it would be possible for an individual to receive a dose in excess of 100 millirems in one (1) hour; and visible and audible alarm signals shall be generated to make an individual attempting to enter the area aware of the hazard and the licensee or at least one (1) other individual, who is familiar with the activity and prepared to render or summon assistance, aware of such failure of the entry control devices.

3. Be equipped with control devices such that upon failure or removal of physical radiation barriers other than the source's shielded storage container the radiation level from the source shall be reduced below that at which it would be possible for an individual to receive a dose in excess of 100 millirems in one (1) hour; and visible and audible alarm signals shall be generated to make potentially affected individuals aware of the hazard and the licensee or at least one (1) other individual who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier. When the shield for the stored source is a liquid, means shall be provided to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding. Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of this paragraph.

4. Be equipped with devices that will automatically generate visible and audible alarm signals to alert personnel in the area before the source can be put into operation and in sufficient time for any individual in the area to operate a clearly identified control device which shall be installed in the area and which can prevent the source from being put into operation.

5. Be controlled by use of such administrative procedure and such devices as are necessary to assure that the area is cleared of personnel prior to each use of the source preceding which use it might have been possible for an individual to have entered the area.

6. Be checked by a physical radiation measurement to assure that prior to the first individual's entry into the area after any use of the source, the radiation level from the source in the area is below that at which it would be possible for an individual to receive a dose in excess of 100 millirems in one (1) hour.

7. Have entry control devices required in subparagraph 1 of this paragraph which have been tested for proper functioning prior to initial operation with such source of radiation on any day that operations have not been interrupted from the previous day or before resuming operations after any unintended interruption, and for which records are kept of the dates, times, and results of such tests of function. No operations other than those necessary to place the source in safe condition or to effect repairs on controls shall be conducted with such source unless control devices are functioning properly. The licensee shall submit an acceptable schedule for more complete periodic tests of the entry control and warning systems to be established and adhered to as a condition of the license.

8. Have those entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, controlled by such devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by any individual through such portals. Exit portals for processed materials shall be equipped to detect and signal the presence of loose radiation sources that are carried toward such an exit and to automatically prevent such loose sources from being carried out of the area.

(g) The requirements of paragraph (f) of this subsection shall not apply to radioactive sources that are used in teletherapy, industrial radiography, or in completely self-contained

irradiators. In the case of open field irradiators in which certain of the criteria specified in paragraph (f) of this subsection are impracticable, equivalent protection shall be provided by license conditions.

(4) Airborne radioactivity areas. Each airborne radioactivity area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words: CAUTION (or DANGER), AIRBORNE RADIOACTIVITY AREA.

(5) Additional requirements.

(a) Each area or room in which any radioactive material, other than natural uranium or thorium, is used or stored in an amount exceeding ten (10) times the quantity of radioactive material specified in 902 KAR 100:030, relating to quantity bases for posting and disposal, shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words: CAUTION (or DANGER), RADIOACTIVE MATERIAL.

(b) Each area or room in which natural uranium or thorium is used or stored in an amount exceeding 100 times the quantity specified in 902 KAR 100:030, relating to quantity bases for posting and disposal, shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words: CAUTION (or DANGER), RADIOACTIVE MATERIAL.

(6) Containers.

(a) Except as provided in paragraph (c) of this subsection, each container of radioactive material shall bear a durable, clearly visible label identifying the radioactive contents.

(b) A label required pursuant to paragraph (a) of this subsection shall bear the radiation caution symbol and the words: CAUTION (or DANGER), RADIOACTIVE MATERIAL. It shall also provide sufficient information to permit individuals handling or using the containers, or working in the vicinity thereof, to take precautions to avoid or minimize exposures. As appropriate, the information shall include radiation levels, kinds of material, estimate of activity, date for which activity is estimated, and other relevant information.

(c) Notwithstanding the provisions of paragraph (a) of this subsection, labeling is not required:

1. For containers that do not contain radioactive materials in quantities greater than the applicable quantities listed in 902 KAR 100:030, relating to quantity bases for posting and disposal;

2. For containers containing only natural uranium or thorium in quantities no greater than ten (10) times the applicable quantities listed in 902 KAR 100:030, relating to quantity bases for posting and disposal;

3. For containers that do not contain radioactive material in concentrations greater than the applicable concentrations listed in Column 2, Table I of 902 KAR 100:025, relating to concentrations in air and water above natural background;

4. For containers when they are attended by an individual who takes the precautions necessary to prevent the exposure of any individual to radiation or radioactive material in excess of the limits established by the requirements in this regulation;

5. For containers when they are in transport and packaged and labeled in accordance with regulations published by the United States Department of Transportation;

6. For containers which are accessible (for example, containers in locations such as water-filled canals, storage vaults, or hot cells) only to individuals authorized to handle or use them, or to work in the vicinity thereof, provided that the contents are identified to such individuals by a readily available written record; and

7. For manufacturing and process equipment such as piping and tanks.

(d) Each licensee shall, prior to disposal of an empty uncontaminated container to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive material.

(7) All radiation-producing machines shall be labeled in a manner which cautions individuals that radiation is produced when the machine is being operated. This label shall be affixed in a clearly visible location on the face of the control unit.

Section 13. Exceptions from Posting and Labeling Requirements. Notwithstanding the provisions of Section 12 of this regulation:

(1) A room or area is not required to be posted with a caution sign because of the presence of a sealed source, provided the radiation level twelve (12) inches from the surface of the source container or housing does not exceed five (5) millirems per hour.

(2) Rooms or other areas in hospitals are not required to be posted with caution signs and control of entrance or access thereto pursuant to Section 12(3) of this regulation is not required, because of the presence of patients containing radioactive material, provided that there are personnel in attendance who shall take the precautions necessary to prevent the exposure of any individuals to radiation or radioactive material in excess of the limits established in this regulation.

(3) Caution signs are not required to be posted at areas or rooms containing radioactive material for periods of less than eight (8) hours provided that:

(a) The material is constantly attended during such periods by an individual who shall take the precautions necessary to prevent the exposure of any individual to radiation or radioactive material in excess of the limits established in this regulation; and

(b) Such area or room is subject to the licensee's control.

(4) A room or other area is not required to be posted with a caution sign, and control is not required for each entrance or access point to a room or other area which is a high radiation area solely because of the presence of radioactive material prepared for transport and packaged and labeled in accordance with regulations of the United States Department of Transportation.

Section 14. Storage and Control of Sources of Radiation. Sources of radiation shall be secured against unauthorized removal from the place of storage. Sources of radiation in an unrestricted area and not in storage shall be tended under the constant surveillance and immediate control of the licensee.

Section 15. Records of Surveys and Radiation Monitoring. (1) Each licensee or registrant

shall maintain records showing the radiation exposure of all individuals for whom personnel monitoring is required under Section 11 of this regulation. Such records shall be kept on Form KR-401, in accordance with the instructions contained in that form, or on clear and legible records containing all the information required by Form KR-401. The doses entered on the forms or records shall be for periods of time not exceeding one (1) calendar quarter.

(2) Each licensee or registrant shall maintain records in the same units used in this regulation, showing the results of surveys required by Section 10 of this regulation.

(3)(a) Records of individual exposure to radiation and to radioactive material which must be maintained pursuant to the provisions of subsection (1) of this section and records of bioassays, including results of whole body counting examinations, made pursuant to Section 9 of this regulation shall be preserved until the cabinet authorizes their disposal.

(b) Records of the results of surveys and monitoring which must be maintained pursuant to subsection (2) of this section shall be preserved for three (3) years after completion of the survey except that the following records shall be maintained until the cabinet authorizes their disposition:

1. Records of the results of surveys to determine compliance with Section 4(1) of this regulation;

2. In the absence of personnel monitoring data, records of the results of surveys to determine external radiation dose; and

3. Records of the results of surveys used to evaluate the release of radioactive effluents to the environment.

(4) The discontinuance or curtailment of activities does not relieve the licensee or registrant of responsibility for retaining all records required by this section. A licensee or registrant may, however, request the cabinet to accept such records. The acceptance of the records by the cabinet relieves the licensee or registrant of subsequent responsibility only in respect to their preservation as required by this section.

(5) Records which must be maintained pursuant to this section may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by cabinet regulations.

(6) If there is a conflict between the cabinet's regulations in this section, license condition, or other written cabinet approval or authorization pertaining to the retention period for the same type of record, the retention period specified in the regulations in this section for such records shall apply unless the cabinet, pursuant to 902 KAR 100:015, Section 7(1), has granted a specific exemption from the record retention requirements specified in the regulations in this section.

Section 16. Reports of Theft or Loss of Sources of Radiation. (1) Each licensee or registrant shall report by telephone to the cabinet the theft or loss of any source of radiation immediately after such theft or loss becomes known.

(2) Each licensee or registrant who is required to make a report pursuant to subsection (1) of this section shall within thirty (30) days after he learns of the loss or theft, make a report in writing to the cabinet setting forth the following information:

(a) A description of the device, or if radioactive material is involved, the kind, quantity, chemical and physical form:

(b) A description of the circumstances under which the loss or theft occurred;

(c) A statement of disposition or probable disposition of the device or radioactive material involved;

(d) Radiation exposure, circumstances under which the exposures occurred, and the extent of possible hazard to persons in unrestricted areas;

(e) Actions which have been taken, or will be taken, to recover the device or material; and

(f) Procedures or measures which have been or will be adopted to prevent a recurrence of the loss or theft of the device or radioactive material.

(3) Subsequent to filing the written report, any substantive additional information on the loss or theft which becomes available to the licensee or registrant shall be reported to the cabinet within thirty (30) days after he learns of such information.

(4) Any report filed with the cabinet pursuant to this section shall be so prepared that names of individuals who may have received exposure to radiation are stated in a separate part of the report.

Section 17. Notification of Incidents. (1) Immediate notification. Each licensee or registrant shall immediately notify the cabinet by telephone and by telegram, mailgram, or facsimile of any incident involving any source of radiation possessed by him which may have caused or threatens to cause:

(a) A dose to the whole body of any individual <u>of</u> [to] twenty-five (25) rems or more of radiation; a dose to the skin of the whole body of any individual of 150 rems or more of radiation or a dose to the feet, ankles, hands, or forearms of any individual to 375 rems or more of radiation; or

(b) The release of radioactive material in concentrations which, if averaged over a period of twenty-four (24) hours, would exceed 5,000 times the limits specified for such materials in Table II of 902 KAR 100:025, relating to concentrations in air and water above natural background; or

(c) A loss of one (1) working week or more of the operations of any facilities affected; or

(d) Damage to property in excess of $200,000.

(2) Twenty-four (24) hour notification. Each licensee or registrant shall within twenty-four (24) hours notify the cabinet by telephone and by telegram, mailgram or facsimile of any incident involving any source of radiation possessed by him which may have caused or threatens to cause:

(a) A dose to the whole body of any individual to five (5) rems or more of radiation; a dose to the skin of the whole body of any individual to thirty (30) rems or more of radiation; or a dose to the feet, ankles, hands, or forearms to seventy-five (75) rems or more of radiation; or

(b) The release of radioactive material in concentrations which, if averaged over a period of twenty-four (24) hours, would exceed 500 times the limits specified for such materials in

Table II of 902 KAR 100:025, relating to concentrations in air and water above natural background; or

(c) A loss of one (1) day or more of the operations of any facilities affected; or

(d) Damage to property in excess of $2,000.

(3) Reports filed with the cabinet pursuant to this section shall be prepared in such manner that names of individuals who have received exposure to radiation will be stated in a separate part of the report.

Section 18. Report to Former Employees and Others of Exposure to Radiation. Each licensee or registrant shall furnish to any individual reports of his exposure to radiation as required by these regulations.

Section 19. Reports of Overexposures and Excessive Levels and Concentrations. (1) In addition to any notification required by Section 17 of this regulation, each licensee or registrant shall make a report in writing within thirty (30) days to the cabinet of:

(a) Each exposure of an individual to radiation or concentrations of radioactive material in excess of any applicable limit as set forth in this regulation or as otherwise approved by the cabinet; or

(b) Any incident for which notification is required by Section 17 of this regulation; or

(c) Levels of radiation or concentrations of radioactive material (whether or not involving excessive exposure of any individual) in an unrestricted area in excess of ten (10) times any applicable limit as set forth in this regulation or as otherwise approved by the cabinet. Each report required under this subsection shall describe the extent of exposure of individuals to radiation or to radioactive material; levels of radiation and concentrations of radioactive material involved; the cause of the exposure, levels or concentrations; and corrective steps taken or planned to assure against a recurrence.

(2) Any report filed with the cabinet pursuant to this section shall be prepared in such a manner that names of individuals, with social security numbers and dates of birth, who have received exposure to radiation will be stated in a separate part of the report.

Section 20. Notifications and Reports to Individuals. When a licensee or registrant is required pursuant to Section 19 of this regulation to report to the cabinet any exposure of an individual to radiation or radioactive material, the licensee or registrant shall also notify the individual. Such notice shall be transmitted at a time not later than the transmittal to the cabinet, and shall comply with other applicable provisions of these regulations.

Section 21. Vacating Installations. Each specific licensee before vacating or relinquishing possession or control of premises at which licensed material have been used or stored shall, no less than thirty (30) days prior to such vacating, notify the cabinet in writing of intent to vacate. The cabinet may require that the licensee provide for decontamination of the installation to a degree consistent with subsequent use as an uncontrolled area. The details are to be specified in each case by the cabinet.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: February 14, 1990
FILED WITH LRC: April 6, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the DES Conference Room, 2nd Floor, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald R. Hughes, Sr.

(1) Type and number of entities affected: 613 radioactive material licensees.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to those affected entities.

1. First year: Does not apply.

2. Continuing costs or savings: Does not apply.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Does not apply.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: Does not apply.

1. First year: Does not apply.

2. Continuing costs or savings: Does not apply.

3. Additional factors increasing or decreasing costs: Does not apply.

(b) Reporting and paperwork requirements: There are no additional reporting and paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations must be compatible with U.S. Nuclear Regulatory Commission. No alternative is available.

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

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

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended.

2. State compliance standards. This regulation provides standards for the protection to the user and the general public against radiation exposure.

3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are the same.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:021. Disposal of radioactive material.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844, 211.846, 211.852
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this regulation is to provide waste disposal limitations for radioactive material.

Section 1. Applicability. This regulation applies to all persons disposing of radioactive material licensed pursuant to the cabinet's radiation regulations.

Section 2. General Requirement. No licensee shall dispose of any radioactive material except:
(1) By transfer to an authorized recipient as provided in 902 KAR 100:040, Section 13; or
(2) Pursuant to 902 KAR 100:020, Section 8; 902 KAR 100:022; or this regulation.

Section 3. Method of Obtaining Approval of Proposed Disposal Procedures. (1) Any person may apply to the cabinet for approval of proposed procedures to dispose of radioactive material in a manner not otherwise authorized in these regulations. Each application shall include a description of the radioactive material, including the quantities and kinds of radioactive material and levels of radioactivity involved, and the proposed manner and conditions of disposal. The application, where appropriate, should also include an analysis and evaluation of pertinent information as to the nature of the environment, including topographical, geological, meteorological, and hydrological characteristics; usage of ground and surface waters in the general area; the nature and location of other potentially affected facilities; and procedures to be observed to minimize the risk of unexpected or hazardous exposures.
(2) The cabinet shall not approve any application for a license to receive radioactive material from other persons for disposal on land not owned by the Commonwealth of Kentucky or the federal government.

Section 4. Disposal by Release into Sanitary Sewerage Systems. (1) No licensee shall discharge radioactive material into a sanitary sewerage system unless:
(a) It is readily soluble or dispersible in water;
(b) The quantity of any radioactive material released into the system by the licensee in any one (1) day does not exceed the larger of:
1. The quantity which, if diluted by the average daily quantity of sewage released into the sewer by the licensee, will result in an average concentration equal to the limits specified in 902 KAR 100:025, Table I, Column 2; or
2. Ten (10) times the quantity of such material specified in 902 KAR 100:030;
(c) The quantity of any radioactive material released in any one (1) month, if diluted by the average monthly quantity of water released by the licensee, will not result in an average concentration exceeding the limits specified in 902 KAR 100:025, Table I, Column 2; and
(d) The gross quantity of radioactive material, excluding hydrogen-3 and carbon-14, released into the sewerage system by the licensee does not exceed one (1) curie per year. The quantities of hydrogen-3 and carbon-14 released into the sanitary sewerage system may not exceed five (5) curies per year for hydrogen-3 and one (1) curie per year for carbon-14.
(2) No licensee shall discharge radioactive material into an individual sewerage disposal system used for the treatment of waste water serving only a single dwelling, office building, industrial plant, or institution except as specifically approved by the cabinet pursuant to Section 3 of this regulation and 902 KAR 100:020, Section 8.
(3) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material shall be exempt from any limitations contained in this section.

Section 5. Disposal by Incineration. No licensee shall incinerate radioactive material for the purpose of disposal or preparation for disposal except as specifically approved by the cabinet pursuant to Section 3 of this regulation and 902 KAR 100:020, Section 8.

Section 6. Disposal of Specific De Minimus Waste. (1) Any licensee may dispose of the following radioactive material without regard to its radioactivity:
(a) 0.05 microcurie or less of hydrogen-3(tritium), carbon-14, or iodine-125 per gram of medium used for liquid scintillation counting or in vitro clinical or in vivo laboratory testing; and
(b) 0.05 microcurie or less of hydrogen-3, carbon-14, or iodine-125 per gram of animal tissue averaged over the weight of the entire animal; provided, however, tissue may not be disposed of under this subsection in a manner that would permit its use either as food for humans or as animal feed.
(2) Nothing in this section relieves the licensee from maintaining records showing the receipt, transfer and disposal of such radioactive material as specified in 902 KAR 100:015, Section 4 of these regulations [complying with other applicable federal, state, and local regulations governing any other toxic or hazardous property of these materials].
(3) Nothing in this section relieves the licensee from complying with other applicable federal, state, and local regulations governing any other toxic or hazardous property of these materials.

Section 7. Classification of Radioactive Waste for Near-surface Disposal. (1) Considerations. Determination of the classification of waste involves two (2) considerations:

(a) Consideration must be given to the concentration of long-lived radionuclides, and their shorter-lived precursors, whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure; and

(b) Consideration must be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(2) Classes of waste.

(a) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste must meet the minimum requirements set forth in Section 8 of this regulation. If Class A waste also meets the stability requirements set forth in Section 8(2) of this regulation, it is not necessary to segregate the waste for disposal.

(b) Class B waste is waste that must meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste must meet both the minimum and stability requirements set forth in Section 8 of this regulation.

(c) Class C waste is waste that not only must meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste must meet both the minimum and stability requirements set forth in Section 8 of this regulation.

(3) Classification determined by long-lived radionuclides. If the waste contains only radionuclides listed in Table 1 of this section, classification shall be determined as follows:

(a) If the concentration does not exceed one-tenth (0.1) times the value in Table 1, the waste is Class A.

(b) If the concentration exceeds one-tenth (0.1) times the value but does not exceed the value in Table 1, the waste is Class C.

(c) If the concentration exceeds the value in Table 1, the waste is not generally acceptable for near-surface disposal.

(d) For waste containing mixtures of radionuclides listed in Table 1, the total concentration shall be determined by the sum of fractions rule described in subsection (7) of this section.

TABLE 1

Radionuclide	Concentration curies/cubic meter
C-14	8
C-14 in activated metal	80
Ni-59 in activated metal	220
Nb-94 in activated metal	0.2
Tc-99	3
I-129	0.08
Alpha emitting transuranic radionuclides with half-life greater than five (5) years	100*
Pu-241	3500*
Cm-242	20000*
Ra-226	100*

*Units are nanocuries per gram.

(4) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in Table 1 of this section, classification shall be determined based on the concentrations shown in Table 2 of this section. If a nuclide is not listed in Table 2, it does not need to be considered in determining the waste class.

(a) If the concentration does not exceed the value in Column 1, the waste is Class A.

(b) If the concentration exceeds the value in Column 1, but does not exceed the value in Column 2, the waste is Class B.

(c) If the concentration exceeds the value in Column 2, but does not exceed the value in Column 3, the waste is Class C.

(d) If the concentration exceeds the value in Column 3, the waste is not generally acceptable for near-surface disposal.

(e) For waste containing mixtures of the radionuclides listed in Table 2, the total concentration shall be determined by the sum of fractions rule described in subsection (7) of this section.

TABLE 2

Radionuclide	Concentration, curies/cubic meter Column 1	Column 2	Column 3
Total of all radionuclides with less than five (5) year half-life	700	*	*
H-3	40	*	*
Co-60	700	*	*
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7000
Sr-90	0.04	150	7000
Cs-137	1	44	4600

*There are not limits established for these radionuclides in Class B or C waste. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. This waste shall be Class B unless the concentrations of other radionuclides in Table 2 determine the waste to be Class C independent of these radionuclides.

(5) Classification determined by both long- and short-lived radionuclides. If the waste contains a mixture of radionuclides, some of which are listed in Table 1 of this section, and some of which are listed in Table 2 of this section, classification shall be determined as follows:

(a) If the concentration of a radionuclide listed in Table 1 does not exceed one-tenth (0.1) times the value listed in Table 1, the class shall be that determined by the concentration of radionuclides listed in Table 2.

(b) If the concentration of a radionuclide listed in Table 1 exceeds one-tenth (0.1) times the value but does not exceed the value listed in Table 1, the waste shall be Class C, provided the concentration of radionuclides listed in

Table 2 does not exceed the value shown in Column 3 of Table 2.

(6) Classification of waste with radionuclides other than those listed in Tables 1 and 2. If the waste does not contain any radionuclides listed in either Table 1 or 2 of this section, it is Class A.

(7) The sum of fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits must all be taken from the same column of the same table. The sum of the fractions for the column must be less than one[-tenth] (1.0) if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of fifty (50) Ci/cubic meter and Cs-137 in a concentration of twenty-two (22) Ci/cubic meter. Since the concentrations both exceed the values in Column 1, Table 2, they must be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33; for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than one (1.0), the waste is Class B.

(8) Determination of concentrations in waste. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors which relate the inferred concentration of one (1) radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as nanocuries per gram.

Section 8. Radioactive Waste Characteristics. (1) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site:

(a) Waste shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restricted than the provisions of these regulations, the site license conditions shall govern.

(b) Waste shall not be packaged for disposal in cardboard or fiberboard boxes.

(c) Liquid waste shall be solidified or packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(d) Solid waste containing liquid shall contain as little freestanding and noncorrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one (1) percent of the volume.

(e) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(f) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with paragraph (h) of this subsection.

(g) Waste shall not be pyrophoric. Pyrophoric materials contained in waste shall be treated, prepared, and packaged to be nonflammable.

(h) Waste in a gaseous form shall be packaged at a pressure that does not exceed one and five-tenths (1.5) atmospheres at twenty (20) degrees Centigrade. Total activity shall not exceed 100 curies per container.

(i) Waste containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practicable the potential hazard from the nonradiological materials.

(2) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not structurally degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.

(a) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or by placing the waste in a disposal container or structure that provides stability after disposal.

(b) Notwithstanding the provisions in subsection (1)(c) and (d) of this section, liquid waste, or waste containing liquid, shall be converted into a form that contains as little free standing and noncorrosive liquid as is reasonably achievable, but in no case shall the liquid exceed one (1) percent of the volume of the waste when the waste is in a disposal container designed to ensure stability, or five-tenths (0.5) percent of the volume of the waste for waste processed to a stable form.

(c) Void spaces within the waste and between the waste and its package shall be reduced to the extent practicable.

Section 9. Labeling. Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with Section 7 of this regulation.

Section 10. Transfer for Disposal and Manifests. (1) Each shipment of waste to a licensed land disposal facility shall be accompanied by a shipment manifest that contains the name, address, and telephone number of the person generating the waste. The manifest shall also include the name, address, and telephone number or the name and U.S. Environmental Protection Agency hazardous identification number of the person transporting the waste to the land disposal facility. The manifest shall also indicate as completely as practicable: a physical description of the waste; the waste volume; radionuclide identity and quantity; the total radioactivity; and the principal chemical form. The solidification agent shall be specified. Waste containing more than one-tenth (0.1) percent chelating agents by weight shall be identified and the weight percentage of the

chelating agent estimated. Waste classified as Class A, Class B, or Class C in Section 7 of this regulation shall be clearly identified as such in the manifest. The total quantity of the radionuclides H-3, C-14, Tc-99 and I-129 shall be shown.

(2) The manifest required in subsection (1) of this section may be shipping papers used to meet U.S. Department of Transportation or U.S. Environmental Protection Agency regulations or requirements of the receiver, provided all the required information is included. Copies of manifest required by this subsection may be legible carbon copies or legible photocopies.

(3) Each manifest shall include a certification by the waste generator that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the U.S. Department of Transportation and the cabinet. An authorized representative of the waste generator shall sign and date the manifest.

(4) Any licensee who transfers waste to a land disposal facility or a licensed waste collector shall comply with the following requirements. Any licensee who transfers waste to a licensed waste processor who treats or repackages waste shall comply with the requirements of paragraphs (d) through (h) of this subsection.

(a) Prepare all waste so that the waste is classified according to Section 7 of this regulation and meets the waste characteristics requirements in Section 8 of this regulation;

(b) Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with Section 7 of this regulation;

(c) Conduct a quality control program to include management evaluation of audits to assure compliance with Sections 7 and 8 of this regulation;

(d) Prepare shipping manifests to meet the requirements of subsection (1) and (3) of this section;

(e) Forward a copy of the manifest to the intended recipient, at the time of shipment; or, deliver to a collector at the time the waste is collected, obtaining acknowledgment of receipt in the form of a signed copy of the manifest or equivalent documentation from the collector;

(f) Include one (1) copy of the manifest with the shipment;

(g) Retain a copy of the manifest with documentation of acknowledgment of receipt as the record of transfer of licensed material as required by these regulations;

(h) For any shipments or any part of a shipment for which acknowledgment of receipt has not been received within the times set forth in this section conduct an investigation in accordance with subsection (8) of this section.

(5) Any waste collector licensee who handles only prepackaged waste shall:

(a) Acknowledge receipt of the waste from the generator within one (1) week of receipt by returning a signed copy of the manifest or equivalent documentation;

(b) Prepare a new manifest to reflect consolidated shipments. The new manifest shall serve as a listing or index for the detailed generator manifests. Copies of the generator manifests shall be a part of the new manifest. The waste collector may prepare a new manifest without attaching the generator manifests, provided the new manifest contains for each package the information specified in subsection (2) of this section. The collector licensee shall certify that nothing has been done to the waste which would invalidate the generator's certification;

(c) Forward a copy of the new manifest to the land disposal facility operator at the time of shipment;

(d) Include the new manifest with the shipment to the disposal site;

(e) Retain a copy of the manifest with documentation of acknowledgment of receipt as the record of transfer of licensed material as required by these regulations, and retain information from generator manifests until disposition is authorized by the cabinet; and

(f) For any shipments or any part of a shipment for which acknowledgment of receipt is not received within the times set forth in this section, conduct an investigation in accordance with subsection (8) of this section.

(6) Any licensed waste processor who treats or repackages waste shall:

(a) Acknowledge receipt of the waste from the generator within one (1) week of receipt by returning a signed copy of the manifest or equivalent documentation.

(b) Prepare a new manifest that meets the requirements of subsections (1), (2), and (3) of this section. Preparation of the new manifest shall reflect that the processor is responsible for the waste.

(c) Prepare all waste so that the waste is classified according to Section 7 of this regulation and meets the waste characteristics requirement in Section 8 of this regulation.

(d) Label each package of waste to identify whether it is Class A, Class B, or Class C, in accordance with Sections 7 and 9 of this regulation.

(e) A quality control program shall be conducted to assure compliance with Sections 7 and 8 of this regulation. The program shall include management evaluation of audits.

(f) Forward a copy of the new manifest to the disposal site operator or waste collector at the time of shipment, or deliver to a collector at the time the waste is collected, obtaining acknowledgment of receipt in the form of a signed copy of the manifest or equivalent documentation by the collector.

(g) Include the new manifest with the shipment.

(h) Retain copies of original manifests and new manifests with documentation of acknowledgment of receipt as the record of transfer of licensed material required by these regulations.

(i) For any shipment or part of a shipment for which acknowledgment is not received within the times set forth in this section, conduct an investigation in accordance with subsection (8) of this section.

(7) The land disposal facility operator shall:

(a) Acknowledge receipt of the waste within one (1) week of receipt by returning a signed copy of the manifest or equivalent documentation to the shipper. The shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator. The returned copy of the manifest or equivalent documentation shall indicate any discrepancies between materials listed on the manifest and materials received.

(b) Maintain copies of all completed manifests

or equivalent documentation until the cabinet authorizes their disposition; and

(c) Notify the shipper (i.e., the generator, the collector, or processor) and the cabinet when any shipment or part of a shipment has not arrived within sixty (60) days after the advance manifest was received.

(8) Any shipment or part of a shipment for which acknowledgment is not received within the times set forth in this section must:

(a) Be investigated by the shipper if the shipper has not received notification of receipt within twenty (20) days after transfer; and

(b) Be traced and reported. The investigation shall include tracing the shipment and filing a report with the cabinet. Each licensee who conducts a trace investigation shall file a written report with the cabinet within two (2) weeks of completion of the investigation.

Section 11. Records. (1) Each licensee shall maintain records in the same units used in this regulation.

(2) Records of disposal of licensed material made pursuant to this regulation are to be maintained until the cabinet authorizes their disposition or in accordance with 902 KAR 100:073, Section 28.

Section 12. Annual Report of Waste Generated. (1) Each licensee issued a specific license, pursuant to these regulations shall file an annual report with the cabinet containing information regarding low-level radioactive waste associated with activities authorized by the license. This report shall be filed regardless of whether that licensee was or was not a waste generator during the report period.

(2) The report shall contain information regarding such waste for the period of one (1) calendar year and shall be filed no later than January 15 of the following year.

(3) The report shall be filed on a form provided by the cabinet and shall contain, but not be limited to, types and amounts of generated waste and estimates of future wastes to be generated.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: February 14, 1990
FILED WITH LRC: April 6, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the DES Conference Room, 2nd Floor, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald R. Hughes, Sr.

(1) Type and number of entities affected: 613 radioactive material licensees.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to those affected entities.

1. First year: Does not apply.
2. Continuing costs or savings: Does not apply.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Does not apply.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency.

1. First year: Does not apply.
2. Continuing costs or savings: Does not apply.
3. Additional factors increasing or decreasing costs: Does not apply.

(b) Reporting and paperwork requirements: There are no additional reporting and paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations must be compatible to those of the U.S. Nuclear Regulatory Commission. No alternative is available.

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

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

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended.
2. State compliance standards. This regulation provides waste disposal limitations for radioactive material.
3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are the same.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and State standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:040. General provisions for specific licenses.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to provide by regulation for the regulation and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this regulation is to provide general

provisions for the issuance of radioactive material licenses to possess, use, and transfer radioactive material.

Section 1. Applicability. The provisions of this regulation apply to the licensing of all persons who possess, use, or transfer radioactive material within Kentucky.

Section 2. License Requirement. Except for persons exempt as provided in 902 KAR 100:015 and 902 KAR 100:045, no person shall manufacture, produce, receive, possess, use, transfer, own, or acquire radioactive material except as authorized in a specific or general license issued pursuant to these regulations. Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product of any equipment, device, commodity, or other product containing source, by product, or special nuclear material, intended for use by the general public may be obtained only from the U.S. [United States] Nuclear Regulatory Commission, Washington, D. C. 20555.

Section 3. Types of Licenses. (1) Licenses for radioactive material are of two (2) types: general and specific.

(2) Except as otherwise specified in these regulations general licenses are effective without the filing of an application with the cabinet or the issuance of licensing documents to particular persons. The general license is subject to all other applicable requirements of these regulations and any limitations of the general license.

(3) All specific licenses require the submission of an application to the cabinet and the issuance of a licensing document by the cabinet. Such licenses shall be subject to all applicable requirements of these regulations and to such limitations as may be specified in the licensing document.

Section 4. Filing of Application for Specific Licenses. (1) Applications for specific licenses shall be filed on a form prescribed by the cabinet.

(2)(a) The cabinet may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the cabinet to determine whether the application should be granted or denied or whether a license should be modified or revoked. Prelicensing visits may be made to the applicant's facility for the purpose of obtaining additional information furnished in the original application.

(b) If the applicant or licensee fails to respond to a request for additional information within thirty (30) days of the date of the receipt of the request, or within any other specified time, the cabinet may suspend, modify or revoke the license in accordance with 902 KAR 100:170 or may deny the application.

(3) Each application shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(4) An application for a license may include a request for a license authorizing one (1) or more activities provided that the application specified such additional activities and complies with applicable regulations of the cabinet relating to such licenses.

(5) In his application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the cabinet, provided such references are clear and specific.

(6) Applications and documents submitted to the cabinet may be made available for public inspection except that the cabinet may withhold, upon request, any document or part thereof from public inspection if disclosure of its contents is not required in the public interest and would adversely affect the interest of a person concerned.

Section 5. General Requirements for the Issuance of Specific Licenses. A license application shall be approved if the cabinet determines that:

(1) The applicant is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these regulations in such a manner as to minimize danger to public health and safety or property;

(2) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property;

(3) The issuance of the license will not be inimical to the health and safety of the public; and

(4) The applicant satisfies any applicable special requirements in these regulations.

(5) In the case of an application for a license to receive and possess radioactive material which the cabinet determines will significantly affect the quality of the environment, the secretary of the cabinet or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made, has concluded, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to such conclusion shall be grounds for denial of a license to receive and possess radioactive material in such plant or facility. As used in this subsection the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

(6)(a) The licensee shall notify the cabinet in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (bankruptcy) of the United States Code by or against:

1. The licensee;

2. An entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

3. An affiliate (as that term is defined in 11

U.S.C. 101(2)) of the licensee.

(b) This notification must indicate:

1. The bankruptcy court in which the petition for bankruptcy was filed; and

2. The date of the filing of the petition.

(7) Information provided to the cabinet by an applicant for a license or by a licensee or information required by these regulations, orders or license conditions to be maintained by the applicant or licensee shall be complete and accurate in all material aspects.

Section 6. Issuance of Specific Licenses. (1) Upon a determination that an application meets the requirements of the Act and the regulations of the cabinet, the cabinet will issue a specific license authorizing the proposed activity in such form and containing such conditions and limitations as it deems appropriate or necessary.

(2) The cabinet may incorporate in any license at the time of issuance, or thereafter by appropriate rule, regulation, or order, or as otherwise specified by 902 KAR 100:170 and Section 14 of this regulation, such additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to these regulations as it deems appropriate or necessary in order to:

(a) Minimize danger to public health and safety or property;

(b) Require such reports and the keeping of such records, and provide for such inspections of activities under the license as may be appropriate or necessary;

(c) Prevent loss or theft of licensed material.

Section 7. Specific Terms and Conditions of Licenses. (1) Each license issued pursuant to this regulation shall be subject to all the provisions of the Act, now or hereafter in effect, and to all rules, regulations, and orders of the cabinet.

(2) Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of the Act.

(3) Each person licensed by the cabinet pursuant to these regulations shall confine his use and possession of the material(s) licensed to the locations and purposes authorized in the license.

Section 8. Expiration and Termination of Licenses. (1) Except as provided in this section and in Section 9(2) of this regulation, each specific license shall expire at the end of the day, in the month and year stated therein.

(2) Each licensee shall notify the cabinet in writing and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license. The termination of activities shall be in accordance with 902 KAR 100:020, Section 21 and this section.

(3) If a licensee does not submit an application for license renewal under Section 9(2) of this regulation, the licensee, on or before the expiration specified in the license, shall:

(a) Terminate use of radioactive material;

(b) Remove radioactive contamination to the extent practicable;

(c) Properly dispose of radioactive material; and

(d) Submit form RPS-10 "Disposition of Radioactive Material" to the cabinet.

(4) Each license will be valid until the cabinet notifies the licensee in writing that the license is terminated.

Section 9. Renewal of License. (1) Applications for renewal of specific licenses shall be filed in accordance with these regulations.

(2) In any case in which a licensee, not less than thirty (30) days prior to expiration of his existing license, has filed an application in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until the application has been finally determined by the cabinet.

Section 10. Amendment of Licenses [at Request of Licensee]. (1) Applications for amendment of a license at the request of the licensee shall be filed in accordance with these regulations and shall specify the respects in which the licensee desires his license to be amended and the grounds for such amendment.

(2) Every five (5) years and at the request of the cabinet, the licensee shall be required to amend the license in its entirety by submitting a complete application.

Section 11. Cabinet Action on Applications to Renew or Amend. In considering an application by a licensee to renew or amend his license, the cabinet shall apply the applicable criteria set forth in these regulations.

Section 12. Inalienability of Licenses. No license issued or granted under these regulations and no right to possess or utilize radioactive material granted by any license issued pursuant to these regulations shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the cabinet shall, after securing full information, find that the transfer is in accordance with the provisions of these regulations and gives its consent in writing.

Section 13. Transfer of Material. (1) No licensee shall transfer radioactive material except as authorized pursuant to this regulation.

(2) Except as otherwise provided in the license and subject to the provisions of subsections (3) and (4) of this section, any licensee may transfer radioactive material subject to the acceptance of the transferee:

(a) To any person exempt from the requirements for a license as specified in this regulation to the extent permitted under such exemption;

(b) To any person authorized to receive such material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the cabinet, the U.S. [United States] Nuclear Regulatory Commission, or any Agreement State, or to any person otherwise authorized to receive such material by the federal government or any agency thereof, the cabinet, or any Agreement State; or

(c) As otherwise authorized by the cabinet in writing.

(3) Before transferring radioactive material to a specific licensee of the cabinet, U.S.

[United States] Nuclear Regulatory Commission or an Agreement State or to a general licensee who is required to register with the cabinet, U.S. [United States] Nuclear Regulatory Commission or with an Agreement State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by this regulation are acceptable:

(a) The transferor may have in his possession, and read, a current copy of the transferee's specific license or registration certificate;

(b) The transferor may have in his possession a written certificate by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date;

(c) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date; provided, that the oral certification is confirmed in writing within ten (10) days;

(d) The transferor may obtain other sources of information compiled by a reporting service from official records of the cabinet, the U.S. [United States] Nuclear Regulatory Commission, or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registration; or

(e) When none of the methods of verification described in paragraphs (a) through (d) of this subsection are readily available or when a transferor desires to verify that information received by one (1) of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the cabinet, U.S. [United States] Nuclear Regulatory Commission, or the licensing agency of an Agreement State that the transferee is licensed to receive the radioactive material.

(5) Shipment and transport of radioactive material shall be in accordance with the provisions of these regulations.

Section 14. Modification, Revocation, and Suspension of Licenses. (1) The terms and conditions of any license shall be subject to amendment, revisions, or modifications or the license may be suspended or revoked by reason of amendments to or violation of the Act, or by reason, including violation(s), of rules, regulations, and orders issued by the cabinet.

(2) Any license may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required under provisions of the Act, or because of conditions revealed by such application or statement of fact or any report, record, or inspection, or other means which would warrant the cabinet to refuse to grant a license on an original application, or for violation of, or failure to observe any of, the terms and conditions of the Act, or the license, or of any rules, regulations, or orders of the cabinet.

(3) Except in cases of willful violation or those in which the public health, interest, or safety requires otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been accorded an opportunity to demonstrate or achieve compliance with all lawful requirements.

Section 15. Retention of Records. (1) Each person who receives radioactive material in accordance with [pursuant to] a license issued pursuant to these regulations shall keep records showing the receipt, transfer, and disposal of such radioactive material.

(2)(a) Records of receipt of radioactive material which must be maintained pursuant to subsection (1) of this section shall be maintained as long as the licensee retains possession of the radioactive material and for two (2) years following transfer or disposal of the radioactive material.

(b) Records of transfer of radioactive material shall be maintained by the licensee who transferred the material for five (5) years after such transfer.

(c) Records of disposal of radioactive material shall be maintained in accordance with 902 KAR 100:021.

(3) All other records required by these regulations or by a license condition shall be maintained for the period specified by the applicable regulation or license condition. In the event the retention period is not specified by regulation or license condition, such records shall be permanently maintained unless the cabinet authorizes their disposition upon proper application for their destruction.

(4) Records required to be maintained pursuant to these regulations may be the original, a reproduced copy or a microform if duly authenticated by authorized personnel and capable of producing a clear and legible copy after storage for the period specified by cabinet regulations.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: February 14, 1990
FILED WITH LRC: April 6, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the DES Conference Room, Second Floor, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald R. Hughes, Sr.

(1) Type and number of entities affected: 356 radioactive material licensees.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to those affected entities.

1. First year: Does not apply.

2. Continuing costs or savings: Does not apply.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Does not apply.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency.

1. First year: Does not apply.

2. Continuing costs or savings: Does not apply.

3. Additional factors increasing or decreasing costs: Does not apply.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations must be identical to those of the U.S. Nuclear Regulatory Commission. No alternative is available.

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

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

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended.

2. State compliance standards. This regulation provides general provisions for the issuance of radioactive material licenses to possess, use, and transfer radioactive material.

3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are the same.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:050. General licenses.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this regulation is to provide for the general licensing of certain uses of radioactive material and specific devices containing radioactive material.

Section 1. Applicability. The provisions of this regulation apply to persons who manufacture or use radioactive material under a general license as provided under this regulation.

Section 2. General Licenses; Source Material. (1) A general license is hereby issued authorizing commercial and industrial firms, research, educational and medical institutions, and state and local government agencies to use and transfer not more than fifteen (15) pounds of source material at any time for research, development, educational, commercial, or operational purposes. A person authorized to use or transfer source material pursuant to this general license may not receive more than a total of 150 pounds of source material in any one (1) calendar year:

(2) Persons who receive, possess, use or transfer source material pursuant to the general license issued in subsection (1) of this section are exempt from the provisions of these regulations to the extent that such receipt, possession, use, or transfer is within the terms of such general license; provided, however, that this exemption shall not be deemed to apply to any person who is also in possession of source material under a specific license issued pursuant to these regulations.

(3) A general license is hereby issued authorizing the receipt of title of source material without regard to quantity. The general license under this subsection does not authorize any person to receive, possess, use, or transfer source material.

(4) Depleted uranium in industrial products and devices.

(a) A general license is hereby issued to receive, acquire, possess, use, or transfer, in accordance with the provisions of this subsection, depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

(b) The general license applies only to industrial products or devices which have been manufactured either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to 902 KAR 100:058 or in accordance with a specific license issued to the manufacturer by the U.S. Nuclear Regulatory Commission or an Agreement State which authorizes manufacture of the products or devices for distribution to persons generally licensed by the U.S. Nuclear Regulatory Commission or an Agreement State.

(c)1. Persons who receive, acquire, possess, or use depleted uranium pursuant to this general license shall notify the cabinet. The notification shall be submitted within thirty (30) days after the first receipt or acquisition of such depleted uranium. The general licensee shall furnish the following information and such other information as may be required:

a. Name and address of the general licensee;

b. A statement that the general licensee has developed and will maintain procedures designed to establish physical control over the depleted uranium and designed to prevent transfer <u>of</u> [to] such depleted uranium in any form, including

metal scrap, to persons not authorized to receive the depleted uranium; and

c. Name and/or title, address, and telephone number of the individual duly authorized to act for and on behalf of the general licensee in supervising the procedures.

2. The general licensee possessing or using depleted uranium under this general license shall report in writing to the cabinet any changes in information furnished by the notification. The report shall be submitted within thirty (30) days after the effective date of such change.

(d) A person who receives, acquires, possesses, or uses depleted uranium pursuant to the general license established by paragraph (a) of this subsection;

1. Shall not introduce such depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;

2. Shall not abandon such depleted uranium;

3. Shall transfer or dispose of such depleted uranium only by transfer in accordance with the provisions of 902 KAR 100:040. In the case where the transferee receives the depleted uranium pursuant to the general license established by this subsection, the transferor shall furnish the transferee a copy of this regulation. In the case where the transferee receives the depleted uranium pursuant to a general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent, the transferor shall furnish the transferee a copy of this regulation accompanied by an note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in this regulation;

4. Within thirty (30) days of any transfer, shall report in writing to the cabinet the name and address of the person receiving the depleted uranium pursuant to such transfer; and

5. Shall not export such depleted uranium except in accordance with a license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR Part 110.

(e) Any person receiving, acquiring, possessing, using, or transferring depleted uranium pursuant to the general license established by this subsection is exempt from the requirements of 902 KAR 100:020 and 902 KAR 100:165 of these regulations with respect to the depleted uranium covered by that general license.

Section 3. General Licenses; Radioactive Material Other than Source Material. (1) A general license is hereby issued to transfer, receive, acquire, own, possess, and use radioactive material incorporated in the following devices or equipment which have been manufactured, tested and labeled by the manufacturer in accordance with a specific license issued to the manufacturer by the U.S. [United States] Nuclear Regulatory Commission for use pursuant to 10 CFR Part 31.3;

(a) Static elimination device. Devices designed for use as static eliminators which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of polonium-210 per device; and

(b) Ion generating tube. Devices designed for ionization of air which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of polonium-210 per device or a total of not more than fifty (50) millicuries of hydrogen-3 (tritium) per device.

(2) The general license provided in subsection (1) of this section is subject to all applicable provisions of these regulations including provisions relating to the labeling of containers.

(3) Certain measuring, gauging or controlling devices.

(a) A general license is hereby issued to commercial, and industrial firms and to research, educational and medical institutions, individuals in the conduct of their business, and state or local government agencies to own, receive, acquire, possess, use or transfer in accordance with the provisions of this subsection, radioactive material, excluding special nuclear material, contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

(b) The general license in this subsection applies only to radioactive material contained in devices which have been manufactured and labeled in accordance with the specifications contained in a specific license issued by the cabinet pursuant to 902 KAR 100:058 or in accordance with the specifications contained in a specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement State which authorizes distribution of devices to persons generally licensed by the U.S. Nuclear Regulatory Commission or an Agreement State. Regulations under the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in 21 CFR Part 179.21.

(c) Any person who owns, receive, acquires, possesses, uses, or transfers radioactive material in a device pursuant to the general license in this subsection:

1. Shall assure that all labels affixed to the device at the time of receipt, and bearing a statement that removal of the label is prohibited, are maintained thereon and shall comply with all instructions and precautions provided by such labels;

2. Shall assure that the device is tested for leakage of radioactive material and proper operation of the "on-off" mechanism and indicator, if any, at no longer than six (6) month intervals or at such other intervals as are specified in the label; however,

a. Devices containing only krypton need not be tested for leakage of radioactive material, and

b. Devices containing only tritium or not more than 100 microcuries of other beta and/or gamma-emitting material or ten (10) microcuries of alpha-emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose;

3. Shall assure that other testing, installation, servicing, and removal from installation involving the radioactive material, its shielding or containment, are performed:

a. In accordance with the instructions provided by the labels; or

b. By a person holding an applicable specific license from the cabinet, the U.S. Nuclear Regulatory Commission or an Agreement State to perform such activities;

4. Shall maintain records showing compliance with the requirements of this subsection. The records shall show the results of tests. The records also shall show the names of persons and dates of performance of testing, installation, servicing, and removal from installation concerning the radioactive material, its shielding or containment. Records of tests for leakage of radioactive material shall be maintained for one (1) year after the next required leak test is performed or until the sealed source is transferred or disposed [of]. Records of tests of the "on-off" mechanism and indicator shall be maintained for one (1) year after the next required test of the "on-off" mechanism and indicator is performed or until the sealed source is transferred or disposed [of]. Records which are required by subparagraph 3 of this paragraph shall be maintained for a period of two (2) years from the date of the recorded event or until the device is transferred or disposed [of];

5. Upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the "on-off" mechanism or indicator, or upon the detection of 0.005 microcurie or more removable radioactive material, shall immediately suspend operation of the device until it has been repaired by the manufacturer or other person holding an applicable specific license from the cabinet, the U.S. Nuclear Regulatory Commission or an Agreement State to repair such devices, or disposed of by transfer to a person authorized by an applicable specific license to receive the radioactive material contained in the device and, within thirty (30) days, furnish to the cabinet a report containing a brief description of the event and the remedial action taken;

6. Shall not abandon the device containing radioactive material;

7. Except as provided in subparagraph 8 of this paragraph, shall transfer or dispose of the device containing radioactive material only by transfer to a specific licensee of the cabinet, the U.S. Nuclear Regulatory Commission or an Agreement State whose specific license authorizes him to receive the device and within thirty (30) days after transfer of a device to a specific licensee shall furnish to the cabinet a report containing identification of the device by manufacturer's name and model number and the name and address of the person receiving the device. No report is required if the device is transferred to the specific licensee in order to obtain a replacement device;

8. Shall transfer the device to another general licensee only:

a. Where the device remains in use at a particular location. In such case the transferor shall give the transferee a copy of this regulation and any safety documents identified in the label on the device and within thirty (30) days of the transfer, report to the cabinet the manufacturer's name and model number of device transferred, the name and address of the transferee, and the name and/or position of an individual who may constitute a point of contact between the cabinet and the transferee; or

b. Where the device is held in storage in the original shipping container at its intended location of use prior to initial use by a general licensee; and

9. Shall comply with the provisions of 902 KAR 100:020 for reporting radiation incidents, theft, or loss of licensed material, but shall be exempt from the other requirements of 902 KAR 100:020 and 902 KAR 100:165.

(d) The general license in this subsection does not authorize the manufacture of devices containing radioactive material.

(e) The general license provided in this subsection is subject to the provisions of 902 KAR 100:012, 902 KAR 100:015, 902 KAR 100:040, Sections 7, 13 and 14 and 902 KAR 100:070.

(f) A general license is hereby issued to any person who holds a specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement State authorizing the holder to manufacture, install, or service a device described in this subsection to install and service such device provided:

1. The device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to such person by the U.S. Nuclear Regulatory Commission or an Agreement State; and

2. Such person assures that any labels required to be affixed to the device under regulations of U.S. Nuclear Regulatory Commission or an Agreement State which licensed manufacture of the device bear a statement that removal of the label is prohibited.

(4) Luminous safety devices for aircraft.

(a) A general license is hereby issued to own, receive, acquire, possess, and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

1. Each device contains not more than ten (10) curies of tritium or 300 millicuries of promethium-147; and

2. Each device has been manufactured, assembled, or imported in accordance with a specific license issued by the U.S. [United States] Nuclear Regulatory Commission, or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the cabinet or any Agreement State to the manufacturer or assembler of such device pursuant to licensing requirements equivalent to those in Section 32.53 of 10 CFR, Part 32, of the regulations of the U.S. [United States] Nuclear Regulatory Commission.

(b) Persons who own, receive, acquire, possess, or use luminous safety devices pursuant to the general license in paragraph (a) of this subsection are exempt from the requirements of 902 KAR 100:020 and 902 KAR 100:165 except that they shall comply with the provisions relating to reports of theft or loss of sources of radiation and the provisions relating to notification of incidents.

(c) This general license does not authorize the manufacture, assembly, or repair of luminous safety devices containing tritium or promethium-147.

(d) This general license does not authorize the ownership, receipt, acquisition, possession or use of promethium-147 contained in instrument dials.

(e) This general license is subject to the provisions of 902 KAR 100:015, 902 KAR 100:040,

Sections 7, 13, and 14 and 902 KAR 100:070.

(5) Calibration and reference sources.

(a) A general license is hereby issued to those persons listed below to own, receive, acquire, possess, use, and transfer, in accordance with the provisions of paragraphs (d) and (e) of this subsection, americium-241 in the form of calibration or reference sources:

1. Any person who holds a specific license issued by the cabinet which authorizes him to receive, possess, use, and transfer radioactive material; and

2. Any person who holds a specific license issued by the U.S. Nuclear Regulatory Commission which authorizes him to receive, possess, use, and transfer special nuclear material.

(b) A general license is hereby issued to receive, possess, use, and transfer plutonium in the form of calibration or reference sources in accordance with the provisions of paragraphs (d) and (e) of this subsection to any person who holds a specific license issued by the cabinet which authorizes him to receive, possess, use, and transfer radioactive material.

(c) A general license is hereby issued to own, receive, possess, use, and transfer radium-226 in the form of calibration or reference sources in accordance with the provisions of paragraphs (d) and (e) of this subsection to any person who holds a specific license issued by the cabinet which authorizes him to receive, possess, use, and transfer radioactive material.

(d) The general license in paragraphs (a), (b) and (c) of this subsection apply only to calibration or reference sources which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer or importer of the sources by the U.S. [United States] Nuclear Regulatory Commission pursuant to Section 32.57 of 10 CFR, Part 32, or Section 70.39 of 10 CFR, Part 70, or which may have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer by the cabinet or any Agreement State pursuant to licensing requirements equivalent to those contained in 902 KAR 100:058.

(e) Persons who own, receive, acquire, possess, use, and transfer one (1) or more calibration or reference sources pursuant to these general licenses:

1. Shall not possess at any one (1) time, at any one (1) location of storage or use, more than five (5) microcuries of americium 241, five (5) microcuries of plutonium or five (5) microcuries of radium-226 in such sources;

2. Shall not receive, possess, use, or transfer such source unless the source, or the storage container, bears a label which includes the following statement or a substantially similar statement which contains the information called for in the following statement:

"The receipt, possession, use and transfer of this source, Model _____, Serial No. _____, are subject to a general license and the regulations of the U.S. [United States] Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION - RADIOACTIVE MATERIAL - THIS SOURCE CONTAINS (AMERICIUM-241). (PLUTONIUM) (RADIUM-226)*. DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

_____
(Name of Manufacturer or Importer)",

*Showing only the name of the appropriate material.

3. Shall not transfer, abandon, or dispose of such source except by transfer to a person authorized by a license from the cabinet, U.S. [United States] Nuclear Regulatory Commission, or an Agreement State to receive the source;

4. Shall store such source, except when the source is being used, in a closed container adequately designed and constructed to contain americium-241, plutonium or radium-226 which might otherwise escape during storage; and

5. Shall not use such source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(f) The general licenses provided in paragraphs (a), (b) and (c) of this subsection are subject to the provisions of 902 KAR 100:015, 902 KAR 100:020, 902 KAR 100:040, Sections 7, 13, and 14, 902 KAR 100:070, and 902 KAR 100:165.

(g) These general licenses do not authorize the manufacture of calibration or reference sources containing americium-241, plutonium, or radium-226.

(6) A general license is hereby issued to own radioactive material without regard to quantity. The general license under this subsection does not authorize the licensee to manufacture, produce, transfer, receive, possess, or use radioactive material.

(7) Ice detection devices.

(a) A general license is hereby issued to own, receive, acquire, possess, use, and transfer strontium-90 contained in ice detection devices, provided each device contains not more than fifty (50) microcuries of strontium-90 and each device has been manufactured or imported in accordance with a specific license, issued by the U.S. [United States] Nuclear Regulatory Commission or each device has been manufactured in accordance with the specifications contained in a specific license issued by the cabinet or any Agreement State to the manufacturer of such device pursuant to licensing requirements equivalent to those in 902 KAR 100:058.

(b) Persons who own, receive, acquire, possess, use, or transfer strontium-90 contained in ice detection devices pursuant to the general license in paragraph (a) of this subsection:

1. Shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from overheating to the device, discontinue use of the device until it has been inspected, tested for leakage, and repaired by a person holding a specific license from the cabinet, U.S. [United States] Nuclear Regulatory Commission or an Agreement State to manufacture or service such devices; or shall dispose of the device pursuant to the provisions of these regulations;

2. Shall assure that all labels affixed to the device at the time of receipt, and which bear a statement which prohibits removal of the labels, are maintained thereon;

3. Are exempt from the other requirements of these regulations except that such persons shall

comply with 902 KAR 100:015, 902 KAR 100:020, Sections 16 and 17, 902 KAR 100:021, 902 KAR 100:040, Sections 7, 13, and 14 and 902 KAR 100:070.

(c) This general license does not authorize the manufacture, assembly, disassembly or repair of strontium-90 sources in ice detection devices.

Section 4. General License for use of Radioactive Material for Certain In Vitro Clinical or Laboratory Testing. (1) A general license is hereby issued to any physician, veterinarian, clinical laboratory, or hospital to receive, acquire, possess, transfer or use, for any of the following stated tests, in accordance with the provisions of subsections (2), (3), (4), (5), and (6) of this section, the following radioactive materials in prepackaged units for use in In Vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals:

(a) Iodine-125, in units not exceeding ten (10) microcuries each.

(b) Iodine-131, in units not exceeding ten (10) microcuries each.

(c) Carbon-14, in units not exceeding ten (10) microcuries each.

(d) Hydrogen-3 (Tritium), in units not exceeding fifty (50) microcuries each.

(e) Iron-59, in units not exceeding twenty (20) microcuries each.

(f) Cobalt-57, in units not exceeding ten (10) microcuries each.

(g) Mock iodine-125 reference or calibration sources, in units not exceeding 0.05 microcurie of iodine-29 and 0.005 microcurie of americium-241 each.

(h) Selenium-75, in units not exceeding ten (10) microcuries each.

(2) No person shall receive, acquire, possess, use or transfer radioactive material pursuant to the general license established by subsection (1) of this section until he has filed form KR-251, "Registration Certificate - In Vitro Testing" with the cabinet and received from the cabinet a validated copy of form KR-251 with certification number assigned. The physician, veterinarian, clinical laboratory, or hospital shall furnish on form KR-251, the following information and such other information as may be required by that form:

(a) Name and address of the physician, veterinarian, clinical laboratory, or hospital;

(b) The location of use; and

(c) A statement that the physician, veterinarian, clinical laboratory, or hospital has appropriate radiation measuring instruments to carry out in vitro clinical or laboratory tests with radioactive materials as authorized under the general license in subsection (1) of this section and that such tests will be performed only by personnel competent in the use of such instruments and in the handling of the radioactive material.

(3) A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by subsection (1) of this section shall comply with the following:

(a) The general licensee shall not possess at any one (1) time, pursuant to the general license in subsection (1) of this section, at any one (1) location of storage or use, a total amount of iodine-125, iodine-131, selenium-75, cobalt-57 and/or iron-59 in excess of 200 microcuries.

(b) The general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection.

(c) The general licensee shall use the radioactive material only for the uses authorized by subsection (1) of this section.

(d) The general licensee shall not transfer the radioactive material to a person who is not authorized to receive it pursuant to a license issued by the cabinet, the U.S. [United States] Nuclear Regulatory Commission, or any Agreement State, nor transfer the radioactive material in any manner other than in the unopened, labeled shipping container as received from the supplier.

(e) The general licensee shall dispose of the Mock iodine-125 reference or calibration sources as required by 902 KAR 100:021, Section 2.

(4) The general licensee shall not receive, acquire, possess, or use radioactive material pursuant to subsection (1) of this section:

(a) Except as prepackaged units which are labeled in accordance with the provisions of a specific license issued under these regulations or in accordance with the provisions of an applicable specific license issued pursuant to 902 KAR 100:058 or in accordance with the provisions of a specific license issued by the U.S. [United States] Nuclear Regulatory Commission, or any Agreement State which authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3 (tritium), selenium-75, cobalt-57, Mock iodine-125 or iron-59 to persons generally licensed under subsection (1) of this section or its equivalent;

(b) Unless the following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

"This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the U.S. [United States] Nuclear Regulatory Commission or of a state with which the commission has entered into an agreement for the exercise of regulatory authority.

_____."
(Name of Manufacturer)

(5) The physician, veterinarian, clinical laboratory, or hospital possessing or using radioactive material under the general license of subsection (1) of this section shall report in writing to the cabinet, any changes in the information furnished by him in the "Registration Certificate - In Vitro Testing," form KR-251. The report shall be furnished within thirty (30) days after the effective date of such change.

(6) Any person using radioactive material pursuant to the general license of subsection (1) of this section is exempt from the requirements 902 KAR 100:020, 902 KAR 100:021, and 902 KAR 100:165, except that such person using the Mock-iodine 125 shall comply with the

provisions of 902 KAR 100:020, Sections 16 and 17 and 902 KAR 100:021.

(7) Any licensee who is licensed pursuant to 902 KAR 100:073 for medical use of radioactive material also is authorized to use radioactive material under the general license in this section for the specified in vitro uses without filing form KR-251 as required; provided, that the licensee is subject to the other provisions of this section.

Section 5. General License for Medical Diagnostic Uses. (1) A general license is hereby issued to any physician to receive, possess, transfer, or use radioactive material set forth below for the stated diagnostic uses, provided, however, that the use is in accordance with the provisions of subsections (2), (3), and (4) of this section, the radioactive material is in the form of capsules, disposable syringes, or other prepackaged individual doses; and the radioactive material has been manufactured in accordance with a specific license issued by the cabinet pursuant to 902 KAR 100:058, or by the U.S. [United States] Nuclear Regulatory Commission or any Agreement State pursuant to equivalent regulations authorizing distribution to persons generally licensed pursuant to this subsection or its equivalent:

(a) Iodine-131 as sodium iodide [(Na^{131})] for measurement of thyroid uptake;

(b) Iodine-131 as iodinated human serum albumin (IHSA) for determinations of blood and blood plasma volume;

(c) Iodine-125 as iodinated human serum albumin (IHSA) for determinations of blood and blood plasma volume;

(d) Cobalt-57 for the measurement of intestinal absorption of cyanocobalamin;

(e) Cobalt-58 for the measurement of intestinal absorption of cyanocobalamin;

(f) Cobalt-60 for the measurement of intestinal absorption of cyanocobalamin;

(g) Chromium-51 as sodium radiochromate for determination of red blood cell volumes and studies of red blood cell survival time.

(2) Manufacturers of radiopharmaceuticals which are under a general license shall affix a certain identifying label to the container or in the leaflet or brochure which accompanies the radiopharmaceutical as otherwise provided in these regulations.

(3) No physician shall receive, possess, use, or transfer radioactive material pursuant to the general license established by subsection (1) of this section until he has filed form KR-252, "Registration Certificate - Medical Use of Radioactive Material" with the cabinet and received from the cabinet a validated copy of the form KR-252 with certification number assigned. The generally licensed physician shall furnish on form KR-252 the following information and such other information as may be required by that form:

(a) Name and address of the generally licensed physician;

(b) A statement that the generally licensed physician is a duly licensed physician authorized to dispense drugs in the practice of medicine in the state of Kentucky and specifying the license number; and

(c) A statement that the generally licensed physician has appropriate radiation measuring instruments to carry out the diagnostic procedures for which he proposes to use the radioactive material under the general license of this section and that he is competent in the use of such instruments.

(4) A physician who receives, possesses or uses a pharmaceutical containing radioactive material pursuant to the general license established by subsection (1) of this section shall comply with the following:

(a) He shall not possess at any one time pursuant to the general license in subsection (1) of this section more than:

1. 200 microcuries of iodine-131;
2. 200 microcuries of iodine-125;
3. Five (5) microcuries of cobalt-57;
4. Five (5) microcuries of cobalt-60;
5. Five (5) microcuries of cobalt-58; and
6. 200 microcuries of chromium-51.

(b) He shall store the pharmaceutical, until administered, in the original shipping container or a container providing the equivalent radiation protection.

(c) He shall use the pharmaceutical only for the uses authorized by subsection (1) of this section.

(d) He shall not administer the pharmaceutical to a woman with confirmed pregnancy or to a person under eighteen (18) years of age.

(e) He shall not transfer the radioactive material to a person who is not authorized to receive it pursuant to a license issued by the cabinet, the U.S. [United States] Nuclear Regulatory Commission or any Agreement State, or in any manner other than in the unopened, labeled shipping container as received from the supplier, except by administering it to a patient.

(5) The generally licensed physician possessing or using radioactive material under the general license of subsection (1) of this section shall report to the cabinet, any changes in the information furnished by him in the "Registration Certificate - Medical Use of Radioactive Material," form KR-252. The report shall be submitted within thirty (30) days after the effective date of change.

(6) Any person using radioactive material pursuant to the general license of subsection (1) of this section is exempt from the requirements of 902 KAR 100:020, 902 KAR 100:021 and 902 KAR 100:165.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: February 14, 1990
FILED WITH LRC: April 6, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the DES Conference Room, Second Floor, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald R. Hughes, Sr.

(1) Type and number of entities affected: 257 radioactive material licensees.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to those affected entities.

1. First year: Does not apply.
2. Continuing costs or savings: Does not apply.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Does not apply.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency.

1. First year: Does not apply.
2. Continuing costs or savings: Does not apply.
3. Additional factors increasing or decreasing costs: Does not apply.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations must be identical to those of the U.S. Nuclear Regulatory Commission. No alternative is available.

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

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

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended.
2. State compliance standards. This regulation provides for the general licensing of certain uses of radioactive material and specific devices containing radioactive material.
3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are the same.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:100. Industrial radiography.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this regulation is to provide radiation safety requirements for industrial radiographic operations.

Section 1. Applicability. The requirements of this regulation apply to all licensees or registrants who use sources of radiation for industrial radiography. The requirements of this regulation are in addition to, and not in substitution for, other requirements of the Cabinet for Human Resources radiation regulations.

Section 2. Limits on Levels of Radiation for Radiographic Exposure Devices and Storage Containers. Radiographic exposure devices measuring less than four (4) inches (i.e., ten (10) centimeters) from the sealed source storage position to any exterior surface of the device shall have no radiation level in excess of fifty (50) milliroentgens per hour at six (6) inches (i.e., fifteen (15) centimeters) from any exterior surface of the device. Radiographic exposure devices measuring a minimum of four (4) inches from the sealed source storage position to any exterior surface of the device, and all storage containers for sealed sources or outer containers for radiographic exposure devices shall have no radiation level in excess of 200 milliroentgens per hour at any exterior surface and ten (10) mR/hr at 39.4 inches (i.e., one (1) meter) from any exterior surface. The radiation levels specified are with the sealed source in the shielded (i.e., "off") position.

Section 3. Locking of Sources of Radiation. (1) Each source of radiation shall be provided with a lock or outer locked container designed to prevent unauthorized or accidental production of radiation or removal or exposure of a sealed source and shall be kept locked at all times except when under the direct surveillance of a radiographer or radiographer's assistant, or as may be otherwise authorized by these regulations. Each storage container and source changer likewise shall be provided with a lock and shall be kept locked when containing sealed sources except when the container is under the direct surveillance of a radiographer or radiographer's assistant.

(2) Radiographic exposure devices, source changers, and storage containers, prior to being moved from one (1) location to another, and also prior to being secured at a given location, shall be locked and surveyed to assure that the sealed source is in the shielded position.

Section 4. Storage Precautions. Locked radiographic exposure devices, source changers, storage containers and other sources of radiation shall be physically secured to prevent tampering or removal by unauthorized personnel.

Section 5. Radiation Survey Instruments. The licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments to make physical radiation surveys as required by these regulations. Each radiation survey instrument shall be calibrated against appropriate energy and radiation fields at intervals not to exceed three (3) months and after each instrument servicing such that accuracy within plus or minus twenty (20)

percent can be demonstrated at two (2) or more widely separated points, other than zero, on each scale. A record shall be maintained of the date of calibration for two (2) years after the calibration date for inspection by the cabinet. Instrumentation required by this section shall have a range such that two (2) milliroentgens per hour through one (1) roentgen per hour can be measured.

Section 6. Leak Testing, Repair, Tagging, Opening, Modification, and Replacement of Sealed Sources. (1) The replacement of any sealed source fastened to or contained in a radiographic exposure device, and leak testing, repair, tagging, opening, or any other modification of any sealed source shall be performed only by persons specifically authorized to do so by the cabinet, the U.S. [United States] Nuclear Regulatory Commission, or any Agreement State.

(2) Each sealed source shall be tested for leakage and contamination in accordance with 902 KAR 100:060. Records of leak test results shall be maintained for inspection by the cabinet for six (6) months after the next required leak test is performed or until the sealed sources is transferred or disposed. [Records of leakage and contamination shall be maintained for two (2) years.]

(3) A sealed source which is not fastened to or contained in a radiographic exposure device shall have permanently attached to it a durable tag at least one (1) inch square bearing the prescribed radiation caution symbol in conventional colors, magenta or purple on a yellow background, and at least the instructions: "Danger - Radioactive Material - Do Not Handle - Notify Civil Authorities if Found."

Section 7. Quarterly Inventory. Each licensee or registrant shall conduct a quarterly physical inventory to account for all sources of radiation received or possessed by him. The records of the inventories shall be maintained for two (2) years from the date of the inventory for inspection by the cabinet and shall include the quantities and kinds of radioactive material or rate power, manufacturer, and identifying number of radiation machines, the location of all sources of radiation, [and] the date of the inventory, the name of the individual making the inventory, the manufacturer, the model number and the serial number.

Section 8. Utilization Logs. Each licensee or registrant shall maintain current logs, which shall be kept available for inspection by the cabinet for two (2) years from the date of the recorded event, at the address specified in the license or on the registration, showing for each source of radiation the following information:

(1) A description (or make and model number) of each source of radiation or storage container in which a sealed source is located;

(2) The identity of the radiographer to whom assigned;

(3) The site where used and dates of use; [and]

(4) The voltage and current, where applicable, and exposure time for each radiographic exposure employing a source of radiation; and

(5) The date(s) each source of radiation is removed from storage and returned to storage.

Section 9. Inspection and Maintenance of Radiographic Exposure Devices, Storage Containers, and other Sources of Radiation. (1) Each licensee or registrant shall ensure that checks for obvious defects in radiation machines, radiographic exposure devices, storage containers, and source changers are performed prior to each day of use.

(2) Each licensee or registrant shall conduct a program of at least quarterly inspection and maintenance of radiation machines, radiographic exposure devices, storage containers, and source changers to assure proper functioning of components important to safety. All appropriate parts shall be maintained in accordance with manufacturer's specifications.

(3) If any inspection conducted pursuant to this section reveals damage to components critical to radiation safety, the device shall be removed from service and labeled as defective until repairs have been made.

(4) Records of such inspection and maintenance shall be kept for two (2) years for inspection by the cabinet.

Section 10. Training and Testing of Radiographers and Radiographer's Assistants. (1) No licensee or registrant shall permit any individual to act as a radiographer as defined in 902 KAR 100:010 until such individual:

(a) Has been instructed in the subjects outlined in Section 17 of this regulation;

(b) Has received copies of and demonstrated an understanding of the following:

1. The requirements contained in this regulation;

2. Other applicable provisions of these regulations;

3. The conditions of the license or registration certificate issued by the cabinet; and

4. The licensee's or registrant's approved operating an emergency procedures;

(c) Has demonstrated competence to use the sources of radiation, related handling tools, and survey instruments which will be employed at his assignment; and

(d) Has successfully demonstrated an understanding of the instructions in this subsection by successful completion of a written test and a field examination on the subjects covered.

(2) No licensee or registrant shall permit any individual to act as a radiographer's assistant as defined in 902 KAR 100:010 until such individual:

(a) Has received copies of and instructions in the licensee's or registrant's approved operating and emergency procedures;

(b) Has demonstrated competence to use, under the personal supervision of the radiographer, the sources of radiation, radiographic exposure devices, related handling tools, and radiation survey instruments which will be employed in his assignment; and

(c) Has successfully demonstrated an understanding of the instructions in this subsection by written or oral test and field examination on the subjects covered.

(3) Each licensee or registrant shall maintain records of training and testing which demonstrate that the requirements of subsections (1) and (2) of this section are met for inspection by the cabinet for three (3) years following termination of employment.

Section 11. Operating and Emergency Procedures. Each licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:

(1) The handling and use of sources of radiation to be employed such that no individual is likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:020.

(2) Methods and occasions for conducting radiation surveys;

(3) Methods for controlling access to radiographic areas;

(4) Methods and occasions for locking and securing sources of radiation;

(5) Personnel monitoring and the use of personnel monitoring equipment including steps that must be taken immediately by radiography personnel in the event a pocket dosimeter is found to be off scale;

(6) Transportation to field locations, including packing of sources of radiation in vehicles, posting of vehicles, and control of sources of radiation during transportation;

(7) Minimizing exposure of individuals in the event of an accident;

(8) The procedure for notifying proper personnel [persons] in the event of an accident;

(9) Maintenance of records; and

(10) The inspection and maintenance of radiographic exposure devices, source changers, storage containers, and other sources of radiation.

Section 12. Personnel Monitoring Control. (1) No licensee or registrant shall permit any individual to act as a radiographer or as a radiographer's assistant unless, at all times during radiographic operations, each such individual wears a direct reading pocket dosimeter and either a film badge or a thermoluminescent dosimeter. Pocket dosimeters shall have a range from zero to at least 200 milliroentgens and shall be recharged daily or at the start of each shift. Each film badge or thermoluminescent (TLD) dosimeter shall be assigned to and worn by only one (1) individual.

(2) Pocket dosimeters shall be read and exposures recorded at least once daily. A film badge or thermoluminescent dosimeter shall be immediately processed if a pocket dosimeter is discharged beyond its range. The reports received from the film badge or thermoluminescent dosimeter processor shall be kept for inspection until the cabinet authorizes their disposal. Records of daily pocket dosimeter readings shall be kept for two (2) years.

(3) If a film badge or thermoluminescent dosimeter is lost or damaged, the worker shall cease work immediately until a replacement film badge or thermoluminescent dosimeter is provided and the exposure is calculated for the time period from issuance to loss or damage of the film badge or thermoluminescent dosimeter.

(4) [(3)] Pocket dosimeters shall be checked for correct response to radiation at periods not to exceed one (1) year. Acceptable dosimeters shall read within plus or minus thirty (30) percent of the true radiation exposure.

(5) [(4)] The requirements for use of personnel monitoring as specified in subsections (1) and (2) of this section shall not apply in industrial radiography utilizing sources of machine radiation in cabinet x-ray systems which are equipped with interlocks such that the source of radiation will not produce an exposure radiation field unless all openings are securely closed and which is so shielded that every location on the exterior meets conditions for an uncontrolled area.

(6) [(5)] Upon application the cabinet may authorize methods of personnel dosimetry other than film badges or thermoluminescent dosimetry.

Section 13. Documents Required at Temporary Job Sites. Each licensee or registrant conducting industrial radiography at a temporary site shall have the following records available at that site for inspection by the cabinet;

(1) A copy of the operating and emergency procedures;

(2) A current copy of the radioactive material license or registration certificate;

(3) Applicable regulations;

(4) Survey records required pursuant to Section 18 of this regulation for the period of operation at the site;

(5) Daily pocket dosimeter records for the period of operation at the site; and

(6) The latest instrument calibration and leak test record for specific devices in use at the site. Acceptable records include tags or labels which are affixed to the device or survey meter.

Section 14. Security. During each radiographic operation, the radiographer or radiographer's assistant shall maintain a direct surveillance of the operation to protect against unauthorized entry into a high radiation area, except:

(1) Where the high radiation area is equipped with a control device or an alarm system, or

(2) Where the high radiation area is locked to protect against unauthorized or accidental entry.

Section 15. Posting. Notwithstanding any provisions of 902 KAR 100:020, Section 13, areas in which radiography is being performed shall be conspicuously posted as required in 902 KAR 100:020.

Section 16. Special Requirements and Exemptions for Cabinet X-ray Systems. (1) Except as provided by Section 12(4) of this regulation, registrants using cabinet x-ray systems are exempt from the requirements of this regulation.

(2) Cabinet x-ray systems shall meet the requirements of 902 KAR 100:145, relating to cabinet x-ray systems.

Section 17. Minimum Training Requirements for Industrial Radiographers. All industrial radiographers shall receive minimum training in the following areas:

(1) Fundamentals of radiation safety.

(a) Characteristics of radiation;

(b) Units of radiation dose and quantity of radioactivity;

(c) Significance of radiation dose: [;]

1. Radiation protection standards;

2. Biological effects of radiation dose.

(d) Levels of radiation from sources of radiation;

(e) Methods of controlling radiation dose.

1. Working time;

2. Working distances;

3. Shielding.

(2) Radiation detection instrumentation to be used.

(a) Use of radiation survey instruments.

1. Operation;
2. Calibration;
3. Limitations.
(b) Survey techniques.
(c) Use of personnel monitoring equipment.
1. Film badges;
2. Pocket dosimeters;
3. Thermoluminescent dosimeters.
(3) Radiographic equipment to be used.
(a) Remote handling equipment;
(b) Radiographic exposure devices and sealed sources;
(c) Storage containers;
(d) Operation and control of x-ray equipment.
(4) The requirements of pertinent federal and state regulations; and [.]
(5) The licensee's or registrant's written operating and emergency procedures.
[(6) Case histories of radiography accidents.]

Section 18. Radiation Surveys and Survey Records. (1) No radiographic operation shall be conducted unless calibrated and operable radiation survey instrumentation, as described in Section 5 of this regulation, is available and used at each site where radiographic exposures are made.

(2) A physical radiation survey shall be made after each radiographic exposure [utilizing radiographic exposure devices or sealed sources or radioactive material] to determine that the sealed source has been returned to its shielded condition and a survey shall be made of the storage area pursuant to Section 5 of this regulation whenever a radiographic exposure device is being placed in storage. The entire circumference of the radiographic exposure device shall be surveyed. If the radiographic exposure device has a source guide tube, the survey shall also include the guide tube.

(3) A physical radiation survey pursuant to Section 3 of this regulation shall be made to determine that each sealed source is in its shielded position [condition] prior to securing the radiographic exposure device, [or] storage container, or source changer in a storage area.

(4) A physical radiation survey shall be made after each radiographic exposure using radiographic machines to determine that the machine is "off".

(5) Records shall be kept of surveys and maintained for inspection by the cabinet for two (2) years after completion of the survey. If the survey was used to determine an individual's exposure, however, the records of the survey shall be maintained until the cabinet authorizes their disposition [unless the survey was used to determine an individual exposure].

Section 19. Required Administrative Procedures for Industrial Radiography Program. (1) Licensees and registrants shall have an adequate program for training radiographers and radiographer's assistants and submit to the cabinet a schedule or description of such program which specifies the:
(a) Initial training;
(b) Periodic training;
(c) On-the-job training;
(d) Means to be used by the licensee or registrant to determine the radiographer's knowledge and understanding of and ability to comply with cabinet regulations and licensing requirements, and the licensee's or registrant's operating and emergency procedures; and
(e) Means to be used by the licensee or registrant to determine the radiographer's assistant's knowledge and understanding of and ability to comply with the licensee's or registrant's operating and emergency procedures.

(2) The licensee or registrant shall establish and submit to the cabinet satisfactory written operating and emergency procedures.

(3) The licensee or registrant shall have and submit details of an adequate internal audit system, or other management control, to assure that license provisions, regulations, and the licensee's or registrant's operating and emergency procedures are followed by radiographers and radiographers' assistants. Such inspections shall:

(a) Include observation of the performance of each radiographer and radiographer's assistant during an actual radiographic operation at intervals not to exceed three (3) months;

(b) Provide that, if a radiographer or a radiographer's assistant has not participated in a radiographic operation for more than three (3) months since the last inspection, that individual's performance must be observed and recorded the next time the individual participates in a radiographic operation; and

(c) Include the retention of inspection records on the performance of radiographers or radiographer's assistants for two (2) years. [be at intervals not to exceed three (3) months and each radiographer shall be audited annually. Records of internal audits shall be maintained for inspection by the cabinet for two (2) years from the date of the audit.]

(4) The licensee or registrant shall submit to the cabinet a description of his overall organizational structure pertaining to the radiography program, including specified delegations of authority and responsibility for operation of the program.

(5) The licensee who desires to conduct his own leak test shall establish adequate procedures to be followed in leak testing sealed sources for possible leakage and contamination and shall submit to the cabinet a description of such procedures including:
(a) Instrumentation to be used;
(b) Method of performing tests (e.g., points on equipment to be smeared and method of taking smear); and
(c) Pertinent experience of the person who will perform the test.

Section 20. Field X-Ray Radiographic Operations. In addition to the applicable requirements of this regulation, x-ray machines in field operations shall also meet the requirements of 902 KAR 100:105, relating to the use and operation of x-ray machines.

Section 21. Inspection and Maintenance of High Radiation Area Control Devices or Alarm Systems. For any high radiation area equipped with a control device or alarm system as described in 902 KAR 100:020, the control device or alarm system shall be tested for proper operation at the beginning of each period of use. If a control device or alarm system is operating improperly, it shall be immediately labeled as defective and repaired before industrial radiographic operations are resumed. Records of such tests shall be maintained for inspection by the cabinet for two (2) years.

Section 22. Personal Supervision of Radiographer's Assistant. Whenever a radiographer's assistant uses radiographic exposure devices, sealed sources or related source handling tools, or conducts radiation surveys required by Section 18 of this regulation to determine that the sealed source has returned to the shielded position after an exposure, the radiographer shall be physically present at the site where sources of radiation and associated equipment are being used, watching the performance of the radiographer's assistant and in such proximity that immediate assistance can be given if required.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: February 14, 1990
FILED WITH LRC: April 6, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the DES Conference Room, Second Floor, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald R. Hughes, Sr.
(1) Type and number of entities affected: 10 radioactive material licensees.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to those affected entities.
1. First year: Does not apply.
2. Continuing costs or savings: Does not apply.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Does not apply.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency.
1. First year: Does not apply.
2. Continuing costs or savings: Does not apply.
3. Additional factors increasing or decreasing costs: Does not apply.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations must be identical to those of the U.S. Nuclear Regulatory Commission. No alternative is available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: There is 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: None
TIERING: Was tiering applied? No. The requirements relative to leak testing and personnel monitoring apply equally to all industrial radiography radioactive material licensees.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended.
2. State compliance standards. This regulation provides radiation safety requirements for industrial radiographic operations.
3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are the same.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 100:142. Wire line service operations.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this regulation is to provide radiation safety requirements for persons using sources of radiation for wire line service operations including radioactive markers, mineral exploration and subsurface tracer studies.

Section 1. Applicability. The requirements in this regulation apply to all licensees or registrants who use sources of radiation for wire line service operations including radioactive markers, mineral exploration and subsurface tracer studies.

Section 2. Prohibition. No licensee shall perform wire line service operations with a sealed source(s) in any well or well-bore unless, prior to commencement of the operation, the licensee has a written agreement with the well operator, well or land owner, or drilling contractor that:
(1) In the event a sealed source is lodged downhole, a reasonable effort at recovery will be made.
(2) In the event a decision is made to abandon the sealed source downhole, the requirements of this regulation shall be met.

Section 3. Limits on Levels of Radiation. Radioactive materials shall be used, stored, and transported in such a manner that the

requirements of 902 KAR 100:020 and 902 KAR 100:070 as applicable, are met.

Section 4. Storage Precautions. (1) Each source of radiation, except accelerators, shall be provided with a lockable storage and/or transport container. The container shall be provided with a lock (or tamper seal for calibration sources) to prevent unauthorized removal of, or exposure to, the source of radiation.

(2) Sources of radiation shall be stored in a manner which will minimize the danger from explosion or fire.

Section 5. Transport Precautions. Transport containers shall be physically secured to the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal.

Section 6. Radiation Survey Instruments. (1) The licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments at each field station to make physical radiation surveys as required by this regulation and by 902 KAR 100:020. Instrumentation required by this section shall be capable of measuring one-tenth (0.1) milliroentgen per hour through at least fifty (50) milliroentgens per hour.

(2) Each radiation survey instrument shall be calibrated:

(a) At intervals not to exceed six (6) months and after each instrument servicing;

(b) At energies and exposure levels appropriate for use; and

(c) Such that accuracy within plus or minus twenty (20) percent of the true radiation level can be demonstrated on each scale.

(3) Records of calibration shall be maintained for a period of two (2) years for inspection by the cabinet.

Section 7. Leak Testing of Sealed Sources. Sealed sources of radioactive material shall be tested for leakage and contamination in accordance with 902 KAR 100:060.

Section 8. Quarterly Inventory. Each licensee or registrant shall conduct a quarterly physical inventory to account for all sources of radiation received or possessed by him. Records of inventories shall be maintained for two (2) years from the date of the inventory for inspection by the cabinet and shall include the quantities and kinds of sources of radiation, the location where sources of radiation are assigned, the date of the inventory, and the name of the individual conducting the inventory.

Section 9. Utilization Records. Each licensee or registrant shall maintain current records, which shall be kept available for inspection by the cabinet for two (2) years from the date of the recorded event showing the following information for each source of radiation:

(1) A description (or make and model number or serial number) of each source of radiation used;

(2) The identity of the individual or field unit to whom assigned;

(3) Locations where used and dates of use; and

(4) In the case of tracer materials and radioactive markers, the utilization record shall also indicate the radionuclide and activity used at a particular well site.

Section 10. Design and Performance Criteria for Sealed Sources used in Downhole Operations. (1) Each sealed source, except those containing radioactive material in gaseous form, used in downhole operations shall, as a minimum, meet the following criteria:

(a) Be of double encapsulated construction;

(b) Contain radioactive material whose chemical and physical form are as insoluble and nondispersible as practicable; and

(c) Have been individually pressure tested to 25,000 pounds per square inch absolute without failure.

(2) For sealed sources, except those containing radioactive material in gaseous form, in the absence of a certificate from a transferor certifying that an individual sealed source meets the above criteria, the sealed source shall not be put into use until such determinations and testing have been performed.

(3) Each sealed source, except those containing radioactive material in gaseous form, used in downhole operations, shall be certified by the manufacturer, or other testing organization acceptable to the cabinet, as meeting the sealed source performance requirements for oil well-logging as contained in the American National Standard N542, "Sealed Radioactive Sources, Classification."

(4) Certification documents shall be maintained for inspection by the cabinet for a period of two (2) years after source disposal. For sources abandoned downhole, such documents shall be maintained until their disposal is authorized by the cabinet.

Section 11. Labeling. (1) Each source, source holder, or logging tool containing radioactive material shall bear a durable, legible, and clearly visible marking or label which has, as a minimum, the standard radiation symbol without color requirement and the following wording: DANGER (or CAUTION) RADIOACTIVE. This labeling shall be on the smallest component, (i.e., source, source holder, or logging tool), that is transported as a separate piece of equipment.

(2) Each transport container shall have permanently attached to it a durable legible and clearly visible label which has, as a minimum, the standard radiation symbol and the following wording: DANGER (or CAUTION) RADIOACTIVE. Notify civil authorities (or name of company) if found.

Section 12. Inspection and Maintenance. (1) Each licensee or registrant shall conduct, at intervals not to exceed six (6) months, a program of inspection of sealed sources and inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, and injection tools to assure proper labeling, operation, and physical condition. Records of inspection and maintenance shall be maintained for a period of two (2) years for inspection by the cabinet.

(2) If any inspection conducted pursuant to this section reveals damage to labeling or components critical to radiation safety, the device shall be removed from service until repairs have been made.

(3) The repair, opening, or any other modification of any sealed source shall be performed only by persons specifically authorized to do so by the cabinet, the U. S. Nuclear Regulatory Commission, or an Agreement State.

Section 13. Training Requirements. (1) No licensee or registrant shall permit any individual to act as a logging supervisor until such individual:

(a) Has successfully completed a course recognized by the cabinet, an Agreement State, or the U. S. Nuclear Regulatory Commission, covering the subjects outlined in Section 24 of this regulation and shall have demonstrated an understanding thereof;

(b) Has received copies of and demonstrated an understanding of the following:

1. The requirements contained in this regulation;

2. Other applicable provisions of the cabinet's radiation regulations;

3. The conditions of the license or registration certificate issued by the cabinet; and

4. The licensee's or registrant's approved operating and emergency procedures; and

(c) Has demonstrated competence to use sources of radiation, related handling tools and radiation survey instruments which will be employed in his assignment.

(2) No licensee or registrant shall permit any individual to act as a logging assistant [assist in the handling of sources of radiation] until such individual:

(a) Has read and received instruction in the licensee's or registrant's operating and emergency procedures, the requirements contained in this regulation, and other applicable provisions of the cabinet's radiation regulations and shall have demonstrated understanding thereof; and

(b) Has demonstrated competence to use, under the personal supervision of the logging supervisor, the sources of radiation, related handling tools and radiation survey instruments which will be employed in his assignment.

(3) Each licensee or registrant shall maintain employee training records, for inspection by the cabinet for two (2) years following termination of employment.

Section 14. Operating and Emergency Procedures. The licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:

(1) The handling and use of sources of radiation to be employed such that no individual is likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:020;

(2) Methods and occasions for conducting radiation surveys;

(3) Methods and occasions for locking and securing sources of radiation;

(4) Personnel monitoring and the use of personnel monitoring equipment;

(5) Transportation to temporary job sites and field stations, including packaging of sources of radiation in the vehicles, placarding of vehicles and securing of sources of radiation during transportation;

(6) Minimizing exposure of individuals in the event of an accident;

(7) The procedure for notifying proper personnel in the event of an accident;

(8) Maintenance of records;

(9) The inspection of sealed sources and the inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, and injection tools;

(10) The procedures to be followed in the event a sealed source is lodged downhole; and

(11) The procedures to be used for picking up, receiving, and opening packages containing radioactive material.

Section 15. Personnel Monitoring. (1) No licensee or registrant shall permit any individual to act as a logging supervisor or to assist in the handling of sources of radiation unless each such individual wears either a film badge or a thermoluminescent dosimeter (TLD) at all times during well service operations utilizing sources of radiation. Each film badge or thermoluminescent dosimeter (TLD) shall be assigned to and worn by only one (1) individual.

(2) Personnel monitoring records shall be maintained for inspection by the cabinet until it authorizes their disposal.

Section 16. Security. During each logging or tracer application, the logging supervisor or other designated employee shall maintain direct surveillance of the operation to protect against unauthorized or unnecessary entry into a restricted area.

Section 17. Handling Tools. The licensee shall provide and require the use of tools that will assure remote handling of sealed sources other than low activity calibration sources.

Section 18. Tracer Studies. (1) Protective gloves and other appropriate protective clothing shall be used by all personnel handling radioactive tracer material. Care shall be taken to avoid ingestion or inhalation of radioactive material.

(2) No licensee shall permit injection of radioactive material into potable aquifers without prior written authorization from the cabinet.

Section 19. Particle Accelerators. No licensee or registrant shall permit aboveground testing of particle accelerators which results in the production of radiation except in areas or facilities controlled or shielded so that the requirements of 902 KAR 100:020 are met.

Section 20. Radiation Surveys. (1) Radiation surveys or calculations shall be made and recorded of each area where radioactive materials are stored.

(2) Radiation surveys or calculations shall be made and recorded of the radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive materials. Such surveys or calculations shall include each source of radiation and combination of sources of radiation transported in the vehicle.

(3) After removal of the sealed source from the logging tool and before departing the job site, the logging tool detector shall be energized, or a survey meter used, to assure that the logging tool is free of contamination.

(4) Radiation surveys shall be made and recorded at the job site or well head for each tracer operation except for those using hydrogen-3, carbon-14, and sulfur-35. At tracer jobs, a radiation survey instrument shall be used. Such surveys shall include radiation levels prior to and after the operation.

(5) Records required pursuant to this section,

shall include the dates, the identification of individual(s) making the survey, identification of survey instrument(s) used and an exact description of the location of the survey. Records of these surveys shall be maintained for inspection by the cabinet for two (2) years after completion of the survey.

Section 21. Records Required at Field Stations. Each licensee or registrant maintaining field stations from which well service operations are conducted shall have copies of the following records available at each station for inspection by the cabinet:

(1) Appropriate license or certificate of registration;

(2) Operating and emergency procedures;

(3) Applicable regulations;

(4) Survey records required pursuant to Section 20 of this regulation;

(5) Quarterly inventories required pursuant to Section 8 of this regulation;

(6) Utilization records required pursuant to Section 9 of this regulation;

(7) Records of inspection and maintenance required pursuant to Section 12 of this regulation;

(8) Records of the latest survey instrument calibration pursuant to Section 6 of this regulation.

(9) Records of the latest leak test results pursuant to Section 7 of this regulation.

Section 22. Records Required at Temporary Job Sites. (1) Each licensee or registrant conducting well service operations at a temporary job site shall have the following records available at that site for inspection by the cabinet:

(a) Operating and emergency procedures;

(b) Survey records required pursuant to Section 20 of this regulation for the period of operation at the site; and

(c) Evidence of current calibration for the radiation survey instruments in use at the site.

(2) In addition to the record requirements of this section, at each temporary job site where well service operations are being conducted under cabinet authorization granted pursuant to 902 KAR 100:065, the following records shall be available for inspection by the cabinet:

(a) Current leak test records for the sealed sources in use at the site; and

(b) The appropriate license, certification of registration or equivalent document.

Section 23. Notification of Incidents and Lost Sources. (1) Notification of incidents and sources lost in other than downhole logging operations shall be made in accordance with appropriate provisions of 902 KAR 100:020, Section 16.

(2) Whenever a sealed source or device containing radioactive material is lodged downhole, the licensee shall:

(a) Monitor at the surface for the presence of radioactive contamination with a radiation survey instrument or logging tool during logging tool recovery operations; and

(b) Notify the cabinet immediately by telephone if radioactive contamination is detected at the surface or if the source appears to be damaged.

(3) When it becomes apparent that efforts to recover the radioactive source will not be successful, the licensee shall:

(a) Advise the well-operator of the regulations regarding abandonment and an appropriate method of abandonment which shall include:

1. The immobilization and sealing in place of the radioactive source with a cement plug;

2. The setting of a whipstock or other deflection device; and

3. The mounting of a permanent identification plaque, containing information required by this section, at the surface of the well.

(b) Notify the cabinet by telephone, giving the circumstances of the loss, and request approval of the proposed abandonment procedures; and

(c) File a written report with the cabinet within thirty (30) days of the abandonment, setting forth the following information:

1. Date of occurrence and a brief description of attempts to recover the source;

2. Description of the radioactive source involved, including radionuclide, quantity, and chemical and physical form;

3. Surface location and identification of well;

4. Results of efforts to immobilize and set the source in place;

5. Depth of the radioactive source;

6. Depth of the top of the cement plug;

7. Depth of the well; and

8. Information contained on the permanent identification plaque.

(4) Whenever a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque for posting the well or well-bore. This plaque shall:

(a) Be constructed of long-lasting material such as stainless steel or monel. The size of the plaque should be convenient for use on active or inactive wells; e.g., a seven (7) inch square. Letter size of the word "Caution" should be approximately twice the letter size of the rest of the information; e.g., one-half (1/2) inch and one-fourth (1/4) inch letter size, respectively.

(b) Contain the following engraved information on its face:

1. The word "Caution;"

2. The radiation symbol (color not required);

3. The date of abandonment;

4. The name of the well operator or well owner;

5. The well name and well identification number(s) or other designation;

6. The sealed source(s) by radionuclide, and quantity of activity;

7. The source depth, and the depth to the top of the plug;

8. An appropriate warning, depending on the specific circumstances of each abandonment, such as "Do not drill below plug depth;" or "Do not enlarge casing;" and

9. The words "Do not reenter hole before contacting Radiation Control, Kentucky Cabinet for Human Resources."

(c) The licensee shall immediately notify the cabinet by telephone and subsequently by confirming letter if the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable water source. Such notice shall designate the well location and shall describe the magnitude and extent of loss of radioactive material, assess the consequences of such loss, and explain efforts planned or being taken to mitigate consequences.

Section 24. Minimum Training Requirements for Logging Supervisors. All logging supervisors shall receive minimum training in the following areas:

(1) Fundamentals of radiation safety.

(a) Characteristics of gamma, neutron and x-radiation;

(b) Units of radiation dose (mrem) and quantity of radioactivity (curie); and

(c) Significance of radiation dose.

1. Radiation protection standards; and

2. Biological effects of radiation dose.

(d) Levels of radiation from sources of radiation.

(e) Methods of controlling radiation dose.

1. Working time;

2. Working distance; and

3. Shielding.

(2) Radiation detection instrumentation to be used.

(a) Use of radiation survey instruments.

1. Operation;

2. Calibration; and

3. Limitations.

(b) Survey techniques.

(c) Use of personnel monitoring equipment.

(3) Equipment to be used.

(a) Remote handling equipment.

(b) Sources of radiation.

(c) Storage and transport containers.

(d) Operation and control of equipment.

(4) The requirements of pertinent federal and state regulations.

(5) The licensee's or registrant's written operating and emergency procedures.

(6) The licensee's or registrant's recordkeeping procedures.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: February 14, 1990

FILED WITH LRC: April 6, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the DES Conference Room, Second Floor, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald R. Hughes, Sr.

(1) Type and number of entities affected: 13 radioactive material licensees.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to those affected entities.

1. First year: Does not apply.

2. Continuing costs or savings: Does not apply.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Does not apply.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency.

1. First year: Does not apply.

2. Continuing costs or savings: Does not apply.

3. Additional factors increasing or decreasing costs: Does not apply.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations must be identical to those of the U.S. Nuclear Regulatory Commission. No alternative is available.

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

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

TIERING: Was tiering applied? No. This regulation only applies to a specific group of radioactive material licensees. The regulations apply equally to all wireline service operations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended.

2. State compliance standards. This regulation provides radiation safety requirements for persons using sources of radiation for wireline service operations including radioactive markers, mineral exploration and subsurface tracer studies.

3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are the same.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 105:020. General requirements.

RELATES TO: KRS 211.870, 211.890, 211.993

STATUTORY AUTHORITY: KRS 194.050, 211.090, 1988 Acts, Chapter 437, HB 516 Part IIA #42.d [of the 1988 GA]

NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable

schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set such other standards as may be appropriate for the protection of health and safety. The purpose of this regulation is to establish uniform general requirements for the certification of operators of sources of radiation.

Section 1. General Applicability. The Cabinet for Human Resources' regulations relating to radiation operators require the certification of all operators of sources of radiation, other than licensed practitioners of the healing arts, for which a specific regulation has been adopted requiring certification within a particular field of practice or operation. The regulation of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste are not covered by these regulations. Nothing contained in these regulations shall be deemed to require the certification of students enrolled in an approved course of instruction in relation to the healing arts or allied health sciences and employees of the federal government, while engaged in the performance, within this state, of their official duties.

Section 2. Application for Certification. (1) All applications for certification as an operator of sources of radiation shall be filed with the Cabinet for Human Resources, Radiation Control, 275 East Main Street, Frankfort, Kentucky 40621. All applications shall be submitted on forms provided by the cabinet.

(2) All applicants for certification shall, as a condition precedent to certification, be in compliance with the applicable regulations of the cabinet relating to their particular field of practice or operation.

(3) General and limited certificates shall expire on the last day of the month, two (2) years after the date of issuance.

(4) Temporary and provisional certificates shall expire on the last day of the month, one (1) year after the date of issuance and are not renewable.

Section 3. Examinations. (1) A general or limited certificate shall be issued upon successful passage of an appropriate examination, approved by the cabinet, in the field of practice or operation for which certification is sought. All examinations shall be divided into appropriate sections and a minimum grade of seventy-five (75) percent is required for the passage of each respective section. An individual who fails a particular section shall be required to retake that section; provided, however, individuals who fail two (2) or more sections shall be required to retake the entire examination. An individual shall be allowed to retake the limited examination no more than three (3) times within a calendar quarter.

(2) The cabinet may accept, in lieu of an examination conducted by the cabinet, a valid certificate from a national organization acceptable to the cabinet, provided that the holder is otherwise qualified for certification and has earned his certificate by passing an appropriate examination.

(3) The cabinet may accept, in lieu of an examination conducted by the cabinet, a valid certificate from another state or political subdivision acceptable to the cabinet, provided that the holder is otherwise qualified for certification and has earned his certificate by passing an appropriate examination.

(4) Acceptance of an examination from a national organization shall be contingent together with an outline by subject and an item analysis of each examination section relative to individuals graduating from teaching institutions within this state. Acceptance of an examination from a state or political subdivision shall be contingent together with an outline by subject and an item analysis of each examination section. The cabinet shall hold such examination information confidential and only make its contents available to authorized representatives of the cabinet.

(5) The cabinet may accept, in lieu of the examination requirements for a general certificate, an individual's current certificate from a national organization acceptable to the cabinet that was issued prior to the effective date of these regulations.

Section 4. Fee Schedule. The following fees shall be paid in connection with the certification of operators of sources of radiation other than licensed practitioners of the healing arts:

(1) Application for Certification (nonrefundable) - $\underline{20}$ [15].

(2) Issuance of a General or Limited Certificate - $\underline{30}$ [25].

(3) Issuance of a Temporary or Provisional Certificate - $\underline{20}$ [15].

(4) Renewal of a General or Limited Certificate - $\underline{30}$ [25].

(5) Duplicate Certificate - $10.

Section 5. Continuing Education Requirements for Renewal. (1) The continuing education requirements of this section shall be a condition precedent to the renewal of a general or limited certificate.

(2) A general certificate holder shall, during each twenty-four (24) month period that he holds his certificate, obtain a minimum of eighteen (18) clock hours of continuing education approved by the cabinet.

(3) A limited certificate holder shall, during each twenty-four (24) month period that he holds his certificate, obtain a minimum of twelve (12) clock hours of continuing education approved by the cabinet.

(4) Certificate holders attending or participating in continuing education related to their field of practice or operation shall send documented evidence of attendance or participation to the cabinet within a reasonable time frame, not to exceed forty-five (45) days. Such evidence shall include the certificate holder's name, certificate number, subject title, date(s) attended, clock hours of instruction and the instructor's name and title.

(5) Operators of sources of radiation may receive up to six (6) clock hours credit, on an hour-for-hour basis, toward certificate renewal for continuing education lectures if they are the instructor.

(6) Continuing education clock hours may be accrued by attending seminars, lectures, or courses relating to the individual's field of practice or operation.

Section 6. General Requirements. (1) It shall be the responsibility of each employer to insure that all of his employees operating sources of radiation are certified as set forth in these regulations.

(2) The cabinet may impose upon any operator of sources of radiation or institutions teaching individuals to operate or use sources of radiation such requirements, in addition to those established in these regulations, as it deems appropriate or necessary to minimize danger to public health or safety.

(3) Only individuals holding a general certificate shall be employed as an operator of sources of radiation at facilities where contrast studies are performed.

(4) It shall be the responsibility of a certified operator to notify the cabinet within sixty (60) days regarding any change of name or address.

(5) An individual certified as an operator of sources of radiation shall display or have available his certificate or a photocopy at his place of employment.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: April 13, 1990
FILED WITH LRC: April 13, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the DES Conference Room, Second Floor, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald R. Hughes, Sr.

(1) Type and number of entities affected: 3,246 certification radiation operators.

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

1. First year: The certification fees were increased by $5.

2. Continuing costs or savings: The certification fees will remain constant for each renewal period.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No increasing or decreasing cost factors are involved.

(b) Reporting and paperwork requirements: No additional requirements.

(2) Effects on the promulgating administrative body: Minimal effect since this is a fee increase only.

(a) Direct and indirect costs or savings:

1. First year: $650 (cost).

2. Continuing costs or savings: Continuing costs or savings are not a factor.

3. Additional factors increasing or decreasing costs: No additional factors are involved.

(b) Reporting and paperwork requirements: No additional requirements.

(3) Assessment of anticipated effect on state and local revenues: Increase state revenues by $8,115.

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

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or government policy is in conflict.

(a) Necessity of proposed regulation if in conflict: See (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See (5) above.

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

TIERING: Was tiering applied? Yes. The regulations are the same for all teletherapy licensees. No exceptions.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

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

RELATES TO: KRS 205.200(2), 205.210(1), 42 CFR 435.831, 45 CFR 233

STATUTORY AUTHORITY: KRS 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Assistance group" is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The assistance group shall include the dependent child, child's eligible parent(s), and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his eligible parent(s), the minor's parent(s) shall also be included in the assistance group if the minor's parent applied for assistance. The incapacitated natural or adoptive parent of the child(ren) who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent/legal guardian is considered any person under the age of eighteen (18).

(3) "Sanctioned individual" means any person who is required to be included in the assistance group but who is excluded from the assistance group due to failure to fulfill an eligibility requirement.

(4) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(5) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the

entire month.
(6) "Full-time school attendance" means a workload of at least:
(a) The number of hours required by the individual program for participation in a General Educational Development (GED) program; or
(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or
(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time; or
(d) Eight (8) clock hours per month in a literacy program.
(e) Twenty-five (25) clock hours per week in combination programs.
(7) "Part-time school attendance" means a workload of anything less than "full-time school attendance."
(8) "Combination programs" means any educational program which includes as its basis literacy or GED. This program must also include life skills, skills training or job readiness training.
(9) "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 7 of this regulation, and any educational allowance as set forth in Section 8 of this regulation.
(10) "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.
(11) "Recoupment" means recovery of overpayments of assistance payments.
(12) "Retrospective budgeting" means computing amount of assistance based on actual income and circumstances which existed in the second month prior to the payment month.
(13) "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.
(14) "Unavailable" means that the income is not accessible to the AFDC benefit group for use toward basic food, clothing, shelter, and utilities.
(15) "Beyond the control" means:
(a) Loss or theft of the money;
(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible;
(c) Expenditure of the lump sum income to meet extraordiary expenses, that are not included in the AFDC Standard of Need.

Section 2. Resource Limitations. Real and personal property owned in whole or in part by an applicant or recipient including sanctioned individual(s) and his parent(s), even if the parent(s) is not an applicant or recipient, if the applicant/recipient is a dependent child living in the home of said parent, shall be considered. The amount that can be reserved by each assistance group shall not be in excess of $1,000 equity value excluding those items specifically listed in subsection (1) of this section as follows:
(1) Excluded resources. The following resources shall be excluded from consideration:
(a) One (1) owner-occupied home;
(b) Home furnishings, including all appliances;
(c) Clothing;
(d) One (1) motor vehicle, not to exceed $1,500 equity value;
(e) Farm machinery, livestock or other inventory, and tools and equipment other than farm, used in a self-employment enterprise;
(f) Items valued at less than fifty (50) dollars each;
(g) One (1) burial plot/space per family member;
(h) Funeral agreements not to exceed maximum equity of $1,500 per family member;
(i) Real property which the assistance group is making a good faith effort to sell. This exemption shall not exceed a period of nine (9) months and is contingent upon the assistance group agreeing to repay AFDC benefits received beginning with the first month of the exemption. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment. The amount of the repayment shall not exceed the net proceeds of the sale. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;
(j) Other items/benefits mandated by federal regulations.
(2) Disposition of resources. An applicant/recipient shall not have transferred or otherwise divested himself/herself of property without fair compensation in order to qualify for assistance. If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limitation, the household's application shall be denied, or assistance discontinued. The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer. If the amount of excess transferred resources does not exceed $500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

Section 3. Income Limitations. In determining eligibility for AFDC the following will apply:
(1) Gross income test. The total gross non-AFDC income of the assistance group, as well as income of parent(s), sanctioned individuals and amount deemed available from the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group, and amount deemed available from a stepparent(s) living in the home, and amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor, shall not exceed the gross income limitation standard. Disregards specified in Section 4(1) of this regulation shall apply. If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.
(2) Applicant eligibility test. If the gross income is below the gross income limitation standard and the assistance group has not received assistance during the four (4) months prior to the month of application, the applicant eligibility test shall be applied. The total gross income after application of

exclusions/disregards set forth in Section 4(1) and (2) of this regulation shall be compared to the assistance standard set forth in Section 7 of this regulation. If income exceeds this standard, the assistance group is ineligible. For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation. If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4(1), (2), and (3) of this regulation. If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible. Amount of assistance for the initial two (2) months of eligibility shall be determined prospectively in accordance with 45 CFR 233.34 and for subsequent months retrospectively, in accordance with 45 CFR 233.35.

(4) A period of ineligibility shall be established in accordance with 45 CFR 233.20(a)(3)(ii)(F), for applicants/recipients whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income. The ineligibility period shall be recalculated if any of the following circumstances occur:

(a) The standard of need increases and the amount of grant the assistance group would have received also changes.

(b) Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group. [The income received has become unavailable to the assistance group for reasons beyond their control.]

(c) The assistance group incurs and pays necessary medical expenses not reimbursable by a third party in accordance with 42 CFR 435.831(C).

Section 4. Excluded/Disregarded Income. All gross non-AFDC income received or anticipated to be received by the assistance group, natural parent(s) and parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group and stepparent(s) living in the home, shall be considered with the applicable exclusions/disregards as set forth below:

(1) Gross income test. All incomes listed below shall be excluded/disregarded:

(a) Disregards applicable to stepparent income and/or income of the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with the assistance unit, as set forth in Section 5 of this regulation;

(b) Disregards applicable to alien sponsor's income, as set forth in Section 6 of this regulation;

(c) Disregards applicable to self-employment income, as set forth in 45 CFR 233.20(a)(6)(v)(B);

(d) Work Incentive Program (WIN) incentive payments;

(e) Earnings received by a dependent child from participation in the Summer Youth Program, Work Experience Program, Limited Work Experience Program, and Tryout Employment Program under the Job Training Partnership Act (JTPA) for a period not to exceed six (6) months within a given calendar year, effective March 1, 1988;

(f) Unearned income received by a dependent child from participation in a JTPA program;

(g) Reimbursement for training-related expenses made by a manpower agency to applicants or recipients in institutional and work experience training programs under the WIN program;

(h) Value of the monthly allotment of food stamp coupons or value of United States Department of Agriculture (USDA) donated foods;

(i) Nonemergency medical transportation payments;

(j) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program;

(k) Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans to any undergraduate made or insured under any program administered by the United States Commissioner of Education;

(l) Highway relocation assistance;

(m) Urban renewal assistance;

(n) Federal disaster assistance and state disaster grants;

(o) Home produce utilized for household consumption;

(p) Housing subsidies received from federal, state or local governments;

(q) Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of Public Law 94-114 that became effective October 17, 1975;

(r) Funds distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, Public Law 93-134 or Public Law 94-540;

(s) Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

(t) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under Titles II and III, pursuant to Section 418 of Public Law 93-113;

(u) Payments to volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of Public Law 93-113 except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater than the minimum wage under state or federal law, whichever is greater;

(v) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended;

(w) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, adult foster care, or subsidized adoption;

(x) Payments made under the Low Income Home Energy Assistance Act (LIHEAP) and other energy assistance payments which are permitted to be excluded pursuant to 45 CFR 233.53 (c)(5)(i);

(y) The first fifty (50) dollars of child

support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(z) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance;

(aa) Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group; and

(bb) Effective January 3, 1989, loans.

(cc) Effective June 1, 1989, up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II.

(dd) Effective June 1, 1989, the essential person's portion of the SSI check.

(ee) The advance payment or refund of earned income tax credit (EITC).

(ff) Income of an individual receiving mandatory or optional state supplementary payments under Section 1616(a) of the Social Security Act or under Section 212 of P.L. 93-66.

(gg) Other benefits mandated by federal regulations or legislation.

(2) Applicant eligibility test. The exclusions/disregards set forth in subsection (1) of this section and those listed below shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(d) Child care, for a child(ren) or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed $175 per month per individual for full-time employment or $150 per month per individual for part-time employment, or $200 per month per individual for child under age two (2).

(3) Benefit calculation. After eligibility is established, exclude/disregard all incomes listed in subsections (1) and (2) of this section as well as:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. The one-third (1/3) portion of this disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his earned income. The thirty (30) dollar portion of this disregard shall be applied concurrently with the one-third (1/3) disregard, however, it shall be extended for an additional eight (8) months following the four (4) months referenced in the preceding sentence. These disregards shall be applied in accordance with 45 CFR 233.20(a)(11)(i)(D) and 45 CFR 233.20(a)(11)(ii)(B) and shall not be available to the individual until he/she has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Disregards from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in such employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at such job or training would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for such work in the community was not made; or

5. Effective February 1, 1988, the child care arrangement is terminated through no fault of the client; or

6. Effective February 1, 1988, the available child care does not meet the needs of the child(ren), e.g., handicapped or retarded children.

(b) Fails to make a timely report of earnings unless good cause exists as follows:

1. The assistance group moved and reported the move timely, however, the move resulted in a delay in receiving or failure to receive the mandatory monthly report form; or

2. An immediate family member living in the home was institutionalized or died during the filing period; or

3. The specified relative was out of town during the entire filing period; or

4. The assistance group has been directly affected by a natural disaster (i.e., fire, flood, storm, earthquake).

(c) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section.

(5) Sanction exception. The earned income of sanctioned individuals shall be counted without providing the exclusion/disregards in either subsections (2) and (3) of this section.

Section 5. Income and Resources. Income and resources of a stepparent living in the home with a dependent child and parent(s)/legal guardian(s) living in the home with a minor parent/legal guardian but whose needs are not included in the grant are considered as follows:

(1) Income. The gross income is considered available to the assistance group, subject to the following exclusions/disregards:

(a) The first ninety (90) dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for the appropriate family size, for the support of the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian and any other individuals living in the home but whose needs are not taken into consideration in the AFDC eligibility determination and are or may be claimed by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian as dependents for purposes of determining his federal personal income tax liability;

(c) Any amount actually paid by the stepparent

or parent(s)/legal guardian(s) of a minor parent/legal guardian to individuals not living in the home who are or may be claimed by him as dependents for purposes of determining his/her personal income tax liability;

(d) Payments by the stepparent and parent(s)/legal guardian(s) of a minor parent/legal guardian for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent and parent(s)/legal guardian(s) of a minor parent/legal guardian receiving Supplemental Security Income (SSI) under Title XVI.

(2) Sanction exception. The needs of any sanctioned individual are not eligible for the exclusion(s) listed in this section.

(3) Resources. Resources which belong solely to the stepparent and parent(s)/legal guardian(s) of a minor parent/legal guardian are not considered in determining eligibility of the parent or the assistance group.

Section 6. Alien Income and Resources. For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor. The gross non-AFDC income and resources of an alien's sponsor shall be deemed available to the alien(s), subject to disregards as set forth below, for a period of three (3) years following entry into the United States. If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens. A sponsored alien is ineligible for any month in which adequate information on the sponsor/sponsor's spouse is not provided. If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization is no longer in existence or does not have the financial ability to meet the alien's needs. The provisions of this section shall not apply to those aliens identified in 45 CFR 233.51(e).

(1) Income. The gross income of the sponsor is considered available to the assistance group subject to the following disregards:

(a) Twenty (20) percent of the total monthly gross earned income, not to exceed $175;

(b) An amount equal to the AFDC assistance standard for the appropriate family size of the sponsor and other persons living in the household who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability, and whose needs are not considered in making a determination of eligibility for AFDC;

(c) Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

(d) Actual payments of alimony or child support paid to nonhousehold members; and

(e) Income of a sponsor receiving SSI or AFDC.

(2) Resources. Resources deemed available to the alien(s) shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were an AFDC applicant in this state, less $1,500.

Section 7. Payment Maximum. The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities from which countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, is as follows:

Effective July 1, 1989

Number of Eligible Persons	Payment Maximum	Standard of Need
1 child	$162	$394
2 persons	$196	$460
3 persons	$228	$526
4 persons	$285	$592
5 persons	$333	$658
6 persons	$376	$724
7 or more persons	$419	$790

Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size. The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

Section 8. Special Requirement Educational Allowance (SREA). An educational allowance for child care shall be included in the assistance standard each month at the request of the caretaker relative, if the criteria in subsection (1) of this section are met and verified for those month(s) and funds are available. Households receiving the educational allowance shall be subject to time frames, procedures, and penalties established for households required to report monthly. In addition, effective August 1, 1988 a transportation allowance shall be included in the assistance standard if the criteria in subsection (1)(a) and (b) of this section are met. Effective May 1, 1989, SREA recipients may request that the SREA payment be issued directly to the child care provider of their choice unless the caretaker relative has more than one (1) provider in a given month.

(1) Technical requirements. The following requirements shall be met during any month for which an education allowance is paid.

(a) The caretaker relative shall be included in the assistance grant;

(b) The caretaker relative shall be enrolled full time, as defined in Section 1 of this regulation, in a literacy program, high school (including primary and secondary), vocational school, or a General Educational Development (GED) program or combination program for which no wage or child care allowance is received. If attending college, the caretaker relative shall be enrolled either full or part-time, as defined in Section 1 of this regulation;

(c) A cost shall have been incurred for the care of a child(ren) who is/are under the age of thirteen (13) or a child(ren) who is/are under the age of eighteen (18), if a physician determines the child is unable to attend school due to a physical or mental disability, and is/are included in the assistance grant; and

(d) The payment for child care is made to a provider who is not a household member.

(2) Educational allowance payment standards. The amount of the monthly transportation allowance shall be twenty (20) dollars. The amount of monthly educational allowance payment

shall be based on the number of eligible children for whom care is being provided and whether or not enrollment is full or part-time. Effective May 1, 1989 the payment standards are as follows:

	1 Child		2 or More Children	
	Full-Time	Part-Time	Full-Time	Part-Time
Literacy	$ 20	-	$ 36	-
GED	$ 94	-	$169	-
Elementary School/ Junior High	$174	-	$313	-
High School	$174	-	$313	-
Vocational School	$174	-	$313	-
College/University	$174	$143	$313	$257
Combination Programs	$174	$143	$313	$257

The only combination programs recognized in operating JET counties are those authorized by the department.

(3) Limitations. The number of months a child care educational allowance payment or a transportation educational allowance payment is made shall be limited according to the type of program in which the student enrolls and shall not be provided beyond completion of one (1) program at each level.

(a) Literacy:

Type of Program	Maximum
Literacy	24 months

(b) High school level.

1. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
General Educational Development (GED)	16 months
High School (includes primary and secondary)	27 months

2. A student wishing to continue his education past the high school level may be eligible for additional payments not to exceed the maximums for the posthigh school level.

(c) Posthigh school level. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
Vocational School	24 months
College/University	50 months

Effective May 1, 1989, if a student changes enrollment from full time to part time or from part time to full time during the month, payment shall be authorized for the type of enrollment in which the student participated for the majority of the month.

Section 9. Transitional Child Care (TCC). Effective April 1, 1990, child care assistance shall be provided by the state to families whose eligibility for AFDC assistance has ceased due to increased hours of, or earnings from, employment or as a result of the loss of income disregards due to the expiration of the time limits at 45 CFR 233.20(a)(11). TCC shall be administered by the Cabinet for Human Resources, Department for Social Insurance through an interagency agreement with the Department for Social Services. Child care assistance shall be provided for children if the criteria in subsection (1) of this section are met:

(1) Technical eligibility. The following requirements shall be met during any month for which TCC is paid:

(a) The child(ren) is under age thirteen (13); or

1. Physically or mentally incapable of caring for himself, as verified by the state based on a determination of a physician or a licensed or certified psychologist; or

2. A dependent child under court supervision (if needy); or

3. Would be a dependent child except for the receipt of benefits under SSI under Title XVI or foster care under Title IV-E.

(b) Child care must be necessary in order to permit a member of an AFDC family to accept or retain employment;

(c) Payments are not made for care provided by parents, legal guardians or members of the assistance unit (including essential persons);

(d) The family shall have ceased to be eligible for AFDC as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at 45 CFR 233.20(a)(11);

(e) The family shall have received AFDC in at least three (3) of the six (6) months preceding the first month of ineligibility;

(f) The family requests TCC benefits, provides the information necessary for determining eligibility and fees, and meets application requirements;

(g) The family ceased to be eligible for AFDC on or after April 1, 1990.

(2) Time limitations. Eligibility for TCC begins with the first month for which the family is ineligible for AFDC and continues for a period of twelve (12) consecutive months when the family requests assistance for TCC. Families may begin to receive child care in any month during the twelve (12) month eligibility period.

(3) Notification of eligibility. A family shall be notified of their potential eligibility for TCC when their AFDC benefits are terminated.

(4) Sanctions. The family is not eligible for TCC for any remaining portion of the twelve (12) month period if the caretaker relative:

(a) Terminates employment unless good cause exists as follows:

1. The individual is personally providing care for a child under age six (6) and employment will require the individual to work more than twenty (20) hours per week.

2. Child care is necessary for the individual to participate in the program or accept employment and such care is not available or the available child care does not meet the special needs of the child(ren), e.g., handicapped or retarded child(ren).

3. The individual is unable to engage in employment or training for mental or physical reasons including participation in a drug and alcohol rehabilitation program.

4. Unavailability of transportation with no readily accessible alternative means of transportation available.

5. Travel time to the work site exceeds two (2) hours daily.

6. Illness of another household member

requiring the presence of the participant.

7. Temporary incarceration.

8. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs.

9. Work demands or conditions that render continued employment unreasonable, such as consistently not being paid on schedule or work presents a risk of the individual's health or safety.

10. Wage rates are decreased subsequent to acceptance of employment.

11. Acceptance of a better job which, because of circumstances beyond the control of the recipient, does not materialize.

(b) Fails to cooperate with the state IV-A agency in establishing payments and enforcing child support obligations, as defined in 45 CFR 232.12.

(5) Notices and hearings. Notices of adverse action, hearings, and appeals shall comply with the provisions of 904 KAR 2:046 and 904 KAR 2:055.

(6) Fee requirements. Each family receiving TCC shall be required to contribute toward the payment for child care based on the family's income.

(a) A minimum fee of one (1) percent of the family's gross income shall be charged for families who fall below the federal poverty income guidelines. A sliding fee shall be charged for child care when the gross income exceeds the federal poverty guidelines as defined in 905 KAR 3:010 and 905 KAR 3:020.

(b) Individuals who fail to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for TCC for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

(7) Recoupment. The following provisions apply to overpayments in TCC:

(a) Necessary action shall be taken promptly by the state IV-A agency to correct and recoup any overpayments.

(b) Overpayments, including assistance paid pending hearing decisions, shall be recovered from:

1. The responsible party;

2. The family unit which was overpaid;

3. The provider who was responsible for the overpayment;

4. Individuals who were members of the family when overpaid; or

5. Families which include members of a previously overpaid family.

(c) Overpayments shall be recovered through:

1. Repayment by the individual or child care provider to the cabinet; or

2. Reduction in child care payments; or

3. Reduction of AFDC benefits only upon a voluntary request of the recipient family.

(d) Repayment by the individual shall allow the recipient family to retain, for any month, a reasonable amount of funds.

(e) Underpayments and overpayments may be offset against each other in adjusting incorrect payments.

(f) Benefits shall not be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing as specified in 904 KAR 2:055 requested within the timely notice period.

Section 10. [9.] Recoupment. The following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The overpaid assistance unit;

(b) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(c) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 7 of this regulation; or

(c) Civil action in the court of appropriate jurisdiction.

[(4) Overpayments may be waived for inactive nonfraud cases involving less than thirty-five (35) dollars in overpayment.]

(4) [(5)] In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) [(6)] Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in 904 KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned in accordance with Title 904, Chapter 2.

Section 11. [10.] Provisions contained in this regulation shall become effective April 1, 1990 [October 1, 1989].

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: March 20, 1990
FILED WITH LRC: March 22, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by May 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: The shortened ineligibility period applies to only those former AFDC recipients who receive a lump sum. This number is minimal. The expanded definitions of shortening the ineligibility period will only affect a percentage of this small group. The addition of mandatory or optional state supplementary income and resources to excluded income is no change in present policy. Transitional child care will be available to those families whose AFDC has ceased due to increased earnings and loss of timely disregards. This will affect approximately 100 families per month who will be eligible for up to 12 consecutive months. Collection of nonfraud overpayments established at less than $35 will apply only to former AFDC recipients. This will be a large number of claims. Kentucky has carried these claims pending since recoupment policy was implemented in 1982, only attempting collection if the case was reopened.

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

1. First year: For lump sum this cannot be determined as the exact number of recipients who are serving an ineligibility period is unknown. The number is small and the cost would be minimal. For transitional child care in SFY 90, the costs will be $76,300 in state funds and $205,500 in federal funds for a total cost of $281,800. For collection of inactive nonfraud overpayments less than $35, the agency anticipates a cost savings. The experience of the collections branch has been that nonsubstantial claims are easier to collect. An exact dollar figure could not be projected.

2. Continuing costs or savings: In lump sum the new procedure will affect prospective recipients of AFDC who may receive a lump sum income. For transitional child care, in SFY 91, the costs will be $1,379,000 in state funds and $3,721,000 in federal funds for a total cost of $5,100,000. In SFY 92 the costs will be $1,845,500 in state funds and $4,946,900 in federal funds for a total cost of $6,792,400. The continuing savings related to collection of inactive nonfraud overpayments is unknown.

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: In transitional child care, $40,600 is the direct cost and $8,300 is the indirect cost.

2. Continuing costs or savings: In transitional child care, for SFY 91, direct costs are $548,000 and indirect costs are $112,000. For SFY 92 direct costs are $548,000 and indirect costs are $112,000.

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:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Eligibility for the AFDC program must be applied on a consistent and equitable basis throughout the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 233.20(a)(3)(x), 42 U.S.C. §602(17), 45 CFR 233.20(a)(3)(ii)(F), 45 CFR 256, 45 CFR 233.20(a)(13)(E)(vi), and P.L. 101-201.

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. This federal mandate states that the state may at its option recalculate the period of ineligibility due to receipt of lump sum income which has become unavailable to the family for reasons beyond their control. The federal mandate for transitional child care mandates that this program be implemented April 1, 1990. The federal mandate for recoupment permits states the option to collect nonfraud overpayments of less than $35 from former recipients. The federal mandate for excluded income states that state supplementary payments and Agent Orange settlements shall not be counted as income.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None - stricter standards will not be imposed.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:040. Procedures for determining initial and continuing eligibility.

RELATES TO: KRS 205.200(2)

STATUTORY AUTHORITY: KRS 13A.120, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility under the provisions of KRS Chapter 205 to administer public assistance programs under Titles IV-A and XIX of the Social Security Act, namely Aid to Families with Dependent Children (AFDC), and Medical Assistance (MA). In addition, the cabinet is required by Title XVI as amended and by KRS 205.245 to provide supplementation to certain aged, blind and disabled individuals. This regulation sets forth the procedures utilized to determine initial and continuing eligibility for assistance under the above programs.

Section 1. Eligibility Determination Process. (1) Eligibility shall be determined prospectively. In order to receive or continue to receive assistance, a household must meet all of the eligibility criteria for the month

payment is intended to cover.

(2) Each decision regarding eligibility or ineligibility for assistance shall be supported by facts recorded in the applicant's or recipient's case record. The applicant or recipient shall be the primary source of information and shall be required to furnish verification of income, resources, and technical eligibility if he can reasonably be expected to do so, and to give written consent to those contacts necessary to verify or clarify any factor pertinent to the decision of eligibility. Failure of the applicant or recipient to appear for a scheduled interview or present required information at the time requested, when informed in writing of the appointment or necessary information to be provided, shall be considered a failure by the applicant or recipient to present adequate proof of eligibility.

Section 2. Continuing Eligibility. The recipient shall be responsible for reporting within ten (10) days any change in circumstances which may affect eligibility or the amount of payment. In addition, eligibility shall be reconsidered or redetermined:

(1) When a report is received or information is obtained about changes in circumstances;

(2) Beginning July 1, 1982, monthly, for AFDC cases not exempted by the appropriate federal agency; [and]

(3) Effective March 1, 1990, at least every twelve (12) months for AFDC cases with earned income and MA cases; and [At least every six (6) months for AFDC and every twelve (12) months for MA.]

(4) At least every six (6) months for all AFDC cases without earned income.

Section 3. Determination of Incapacity or Permanent and Total Disability. (1) A determination that a parent with whom the needy child lives is incapacitated or that the individual requesting medical assistance due to disability is both permanently and totally disabled shall be made by a medical review team following review of both medical and social reports except as listed in subsection (2) of this section.

(2) A parent shall be considered incapacitated without a determination from the medical review team if the parent declares physical inability to work, the worker observes some physical or mental limitation, and the parent:

(a) Is receiving SSI; or

(b) Is age sixty-five (65) or over; or

(c) Has been determined to meet the definition of blindness as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI by the Social Security Administration; or

(d) Has been determined to meet the definition of permanent and total disability as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI by either the Social Security Administration or the Medical Review Team of the Department for Social Insurance; or

(e) Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition; or

(f) Is receiving RSDI, federal black lung benefits or railroad retirement benefits based on disability as evidenced by an award letter or benefit check; or

(g) Is currently hospitalized and a statement from the attending physician indicated that incapacity will continue for at least thirty (30) days. If application was made prior to admission, the physician is also requested to indicate if incapacity existed as of application date.

(3) The determination that a parent is not incapacitated will not be made by the local office field staff.

(4) An individual shall be considered permanently and totally disabled if the individual:

(a) Receives RSDI, railroad retirement, or federal black lung benefits based on disability;

(b) Previously received SSI based on disability and discontinuance was due to income or resources, not to improvement in physical condition.

Section 4. Reviews of Supplementation Cases. Aged, blind or disabled supplementation cases shall be periodically reviewed to determine that the special need for which supplementation is granted continues to exist.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: April 4, 1990
FILED WITH LRC: April 10, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 17, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: 7,000 AFDC recipients with earned income.

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

1. First year: Recipients will be saved transportation costs, child care costs and lost time from work by having a yearly interview requirement.

2. Continuing costs or savings: As the savings will vary from recipient to recipient, an exact dollar figure could not be projected.

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 agency will reduce staff activity by having 7,000 fewer interviews to schedule yearly.
2. Continuing costs or savings: Any savings would be related to a decreased need for overtime. Again, an exact figure could not be projected.
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:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This regulation is being revised for quadrennial review.
TIERING: Was tiering applied? No. Eligibility for the AFDC program must be applied on a consistent and equitable basis throughout the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 206.10
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires redeterminations of eligibility to occur at least every twelve months for categories of recipients who must report monthly.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

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

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(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

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

(1) "Spouse" means a person legally married to another under state law.
(2) "Institutionalized spouse" means an individual who is in a medical institution or nursing facility, or participates in a home and community based services (HCBS) waiver program, with a spouse who is not in a medical institution or nursing facility or HCBS waiver program so long as such individual is likely to be in the medical institution or nursing facility or waiver program for at least thirty (30) consecutive days while the community spouse remains out of a medical institution or nursing facility or HCBS waiver program.
(3) "Community spouse" means the spouse of an institutionalized spouse, who remains at home in the community and is not living in a medical institution or nursing facility or participating in an HCBS waiver program.
(4) "Medical institution or nursing facility" means a hospital, skilled nursing facility, or intermediate care facility (including intermediate care facility for the mentally retarded).
(5) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home (or both) and may include thirty (30) consecutive days of receipt of home and community based waiver services (or a combination of both). A continuous period of institutionalization terminates when an individual has been out of a medical institution or nursing facility, or HCBS waiver program, for thirty (30) consecutive days.
(6) "Likely to remain" in an institution means a determination by the cabinet based on a physician's written statement that an individual in a medical institution, nursing facility, or HCBS waiver program is expected to remain in that setting or program for thirty (30) consecutive days.
(7) "Countable resources" are resources not subject to exclusion in the Medicaid Program.
(8) "State spousal resource standard" means the amount of couples' combined countable resources determined necessary by the cabinet for community spouses to maintain themselves in the community.
(9) "Spousal protected resource amounts" are resources deducted from couples' combined resources for community spouses in eligibility determinations for institutionalized spouses; amounts above spousal protected resource amounts are used to determine eligibility for institutionalized spouses.
(10) "Spousal resource allowances" means the differences in the dollar value of resources protected for community spouses and the value of the resources actually held in the name of community spouses.
(11) "Resource assessment" means the assessment, upon request by either spouse, of the joint resources of a couple when a member of the couple enters a medical institution or nursing facility or becomes a participant in an HCBS waiver program.
(12) "Support right" means the right of institutionalized spouses to receive support from community spouses under state law.
(13) "Assigned support right" means the assignment of the support right of an institutionalized individual to the state or Medicaid program.
(14) "Undue hardship" means that Medicaid

eligibility of the institutionalized spouse cannot be established on the basis of assigned support rights and the spouse is subject to discharge from the medical institution, nursing facility, or HCBS waiver program due to inability to pay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, is excluded from consideration. Effective with regard to determinations of eligibility made on or after May 1, 1990, the value of property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is essential for self-support for the individual or spouse, or family group in the instance of families with children, and which is used in a trade or business or by the individual or member of the family group as an employee is excluded from consideration as a resource. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or nonincome producing) may be excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

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

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

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

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

section. If resources exceed the upper limits, the individual or family group is ineligible.

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

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

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

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

(d) Disaster relief assistance is excluded from consideration.

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

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

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

1. Such property is jointly owned and its sale would cause undue hardship due to loss of housing for the other owner or owners; or
2. Its sale is barred by a legal impediment; or
3. The owner's reasonable efforts to sell have been unsuccessful.

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

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

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

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

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

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

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

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

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

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

(2) The following special factors are applicable for pregnant women, infants and children eligible pursuant to Section 6401 [9401] of the Omnibus Budget Reconciliation Act

of 1989 (OBRA 89) [1986 (OBRA 86)]:

(a) Such pregnant women and children may have family income up to, but not to exceed, 133 [100] percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of March 1 of the particular state fiscal year;

(b) Pregnant women, infants and children who would be eligible under the provisions of OBRA 89 [86] except for income in excess of the allowable standard may not become eligible by spending down to the official poverty guidelines;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7. Spend-down Provisions. No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in

Section 4 of this regulation may qualify for medical assistance in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period; effective October 1, 1988, medical expenses incurred in periods prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income so long as such medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses. Effective for determinations of eligibility for periods beginning on or after February 1, 1989, the incurred costs may be reimbursed under another public program of the state or political subdivision of the state and still be considered incurred costs of the applicant or recipient.

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

Section 9. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medical Assistance Program. Examples of such special services or items include television and telephone service, private room or bath, private duty nursing services, etc.

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

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

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

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

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

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

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

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

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

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

(4) In cases of aged, blind, or disabled couples, living apart for any reason other than institutionalization, both of whom are concurrently applying for or receiving MA only, income and resources are considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart; however, if mutual consideration of income and resources causes the individuals to lose eligibility as a couple, eligibility for the individuals is determined in accordance with subsection (5) of this section.

If the separation is due to the institutionalization of a spouse, mutual consideration of income for the institutionalized spouse ceases in the month of separation and for the community spouse in the month after the month of separation but resources are considered mutually available to each other the month of separation, and for the six (6) months following that month unless such would act to preclude eligibility of the individual in long-term care (except when the resource rule shown in Section 21 of this regulation is applicable due to a continuous period of institutionalization beginning on or after September 30, 1989).

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

(6) For an individual whose case is being worked as if he were a single individual due to living apart from his spouse, as shown in Section 11(4) and (5) of this regulation, who has jointly held resources with his spouse, one-half (1/2) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

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

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

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

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

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

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

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

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

purposes of determining his federal personal income tax liability.

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

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

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

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

(2) Determining eligibility of the grandchild(ren) and stepchild(ren). When a stepparent or grandparent has available income remaining after disregards/exclusions are applied, the income may be deemed to the spouse (of the stepparent) or minor parent (child of the grandparent) but not to the stepchild(ren) or grandchild(ren). Eligibility of the stepchild(ren) or grandchild(ren) is determined in the following manner in order to take this requirement into consideration: consider only the income of the grandchild(ren) and minor parent, or stepchild(ren) and parent (spouse of the stepparent) as appropriate. The budget size would include the child(ren) and parent. If there is no excess, the child(ren) is eligible; if there is an excess, the excess amount may be spent down in the usual manner.

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

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

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

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

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

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

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

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

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

(3) of this regulation would be divided by the appropriate standard for the eligible group and prorated over the resultant number of months.

Section 15. Transferred Resources. (1) Effective for determinations of eligibility made on or after October 1, 1989, an individual who transferred property on or before June 30, 1988 for less than fair market value must have a period of ineligibility for medical assistance computed beginning with the month in which the resources were transferred. The period of ineligibility shall be equal to the lesser of twenty-four (24) months or the number of months derived by deducting from the uncompensated excess value the actual cost of care on a monthly basis if the individual is institutionalized or $500 for each month from the month of transfer if not institutionalized.

(2) Effective for determinations of eligibility on or after October 1, 1989, when an institutionalized individual (defined as an individual in a skilled nursing facility, general intermediate care facility, or a participant in the home and community based services waiver program) applies for medical assistance a period of ineligibility for payments for such service must be computed if at any time during the thirty (30) month period immediately preceding the application (but on or after July 1, 1988) the individual (or his spouse with regard to transfers occurring after December 19, 1989) disposed of property for less than fair market value. The period of ineligibility for such service (beginning with the month in which the resources were transferred) shall be equal to the lesser of thirty (30) months or the number of months derived by dividing the total uncompensated value of the resources so transferred by the average cost, to a private patient at the time of the application, of nursing facility services in the state (either intermediate care or skilled nursing care as appropriate for the level of care).

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

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

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

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

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

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

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

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

(1) Usual institutional deeming rules shall be applicable.

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

(3) If an AIS/MR services program participant

has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of AIS/MR services projected if eligibility is determined on a monthly basis.

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

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

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

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

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

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

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

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

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

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

(3) If an HCB services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of HCB services projected if eligibility is determined on a monthly basis.

(4) Usual institutional deeming rules shall be applicable.

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

Section 20. Resource Assessment. Pursuant to Section 1924(c)(1)(B) of the Social Security Act as amended, an assessment of the joint resources of an institutionalized spouse and the community spouse shall be made upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon receipt of relevant documentation of resources. The cabinet shall complete the assessment within forty-five (45) days when the necessary documentation or verification is provided in a timely manner. When the resource assessment is complete, each spouse shall receive a copy of the assessment and notification that the right of appeal of such assessment shall exist at such time as the

institutionalized spouse applies for medical assistance.

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

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

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

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

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

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

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

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

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

1. The state spousal resource standard; and, if applicable

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

3. An additional amount designated by a hearing officer.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Establishment of the community spouse maintenance standard. The community spouse maintenance standard is set at $1,500 per month, to be increased for each calendar year after 1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved; the maintenance standard may be increased for an individual, as appropriate, by a hearing officer.

(c) Court ordered support. If a court has entered an order against an institutionalized spouse for monthly income for the support of the

community spouse, the community spouse monthly income allowance for the spouse shall not be less than the amount of the monthly income so ordered.

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

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

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

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

(7) Prohibited transfers. Except for transfers of resources to the community spouse as specified in subsection (6) of this section, the transfer of resource policies defined in Section 15 of this regulation apply.

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

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

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

a. The community spouse monthly income allowance;

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

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

d. The determination of the community spouse resource allowance.

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

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

Section 22. Effective Dates. Except as specified in Section 2(3) [11(3)(c)] of this regulation, the provisions of this regulation, as amended, shall be effective with regard to determinations of eligibility made on or after April 1, 1990 for medical assistance provided after that date [October 1, 1989].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: March 28, 1990
FILED WITH LRC: April 2, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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: Up to 16,313 eligible individuals within three years.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $9,648,000 (cost).
2. Continuing costs or savings: $23,941,000 (cost).
3. Additional factors increasing or decreasing costs: Increased utilization by eligible individuals.
(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:
TIERING: Was tiering applied? No. This is an eligibility regulation and tiering is not appropriate.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:011. Technical eligibility requirements.

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, referred to as MA, to Kentucky's indigent citizenry. This regulation sets forth the technical eligibility requirements of the MA Program.

Section 1. The Categorically Needy. All individuals receiving Aid to Families with Dependent Children, Title IV-E benefits, Supplemental Security Income or Optional or Mandatory State Supplementation are eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons are included in the program as categorically needy and thus eligible for MA participation.
(1) Children in foster family care or private nonprofit child caring institutions dependent in whole or in part on a governmental or private agency;
(2) Children in psychiatric hospitals or medical institutions for the mentally retarded;
(3) Pregnant women;
(4) Children of unemployed parents;
(5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;
(6) Families terminated from the Aid to Families with Dependent Children (AFDC) program because of increased earnings or hours of employment;
(7) Children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children program, who were born after September 30, 1983 and who are under the age of five (5); and effective July 1, 1987, children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children Program, who are under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));
(8) A child(ren) born to a woman eligible for and receiving medical assistance, so long as the child(ren) has not reached his first birthday, resides in the household of the woman, and the woman remains eligible for such assistance. In this situation, an application is deemed to have been made and the child found eligible for MA as of the date of birth;
(9) Effective June 1, 1987, individuals in institutions meeting appropriate patient status criteria who (if not institutionalized) would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income, may be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income. Eligibility for similar hospice participants and similar participants in the waiver projects of home and community based services for the mentally retarded and the aged, blind or disabled may also be determined under this provision. Eligibility of an individual whose gross income exceeds 300 percent of the previously specified SSI benefit amount may not be determined in accordance with this provision;
(10) Effective July 1, 1987, qualified severely impaired individuals as specified in Section 9404 of P.L. 99-509 and Sections 2, 3 and 4 of P.L. 99-643 (to the extent such coverage is mandatory in this state);
(11) Effective July 1, 1987, individuals who lose SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in child's insurance benefits based on disability as specified in Section 6 of P.L. 99-643;
(12) Effective February 1, 1989, individuals specified in Section 9116 of P.L. 100-203 who lose SSI or state supplementation payments as a result of receipt of benefits under Section 202(e) or (f) of the Social Security Act, would be eligible for SSI or SSP except for such benefits, and are not entitled to hospital insurance benefits under Part A of Title XVIII; and
(13) Effective <u>April 1, 1990</u> [October 1, 1987], women during pregnancy (and as though pregnant through the end of the month containing the 60th day of a period beginning on the last

day of pregnancy), and infants and children under six (6) [two (2)] years of age, as required [permitted] by Section 6401 [9401] of the Omnibus Budget Reconciliation Act of 1989 [1986, and effective with regard to determinations of eligibility made for periods beginning on or after October 1, 1988, pregnant women and children under the age of one (1) as permitted by Section 4101 of the Omnibus Budget Reconciliation Act of 1987], subject to the following:

(a) Pregnant women, infants and children are required to meet the income [and resource] requirement for this [these] eligibility group as specified in 907 KAR 1:004, Resource and income standard of medically needy; and

(b) When an infant or child eligible under this provision is receiving covered inpatient services on a birthday which will make him ineligible due to age, the infant or child will remain eligible until the end of the stay for which the covered inpatient services are furnished so long as the infant or child remains otherwise eligible except for age.

Section 2. The Medically Needy. Other individuals (including children as shown in Section 1(7) of this regulation), and pregnant women meeting income and resource standards of the medically needy program), meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the Cabinet for Human Resources. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy; a woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated). [For individuals covered on January 1, 1985 pursuant to this section, the usual three (3) month rule on retroactivity (as shown in Section 3(15)) will apply.]

Section 3. Qualified Medicare Beneficiaries. Effective January 1, 1989, coverage is extended to qualified Medicare beneficiaries as specified in Section 301 of the Medicare Catastrophic Coverage Act of 1988, subject to the income and resource limitations shown in 907 KAR 1:004, and for the scope of benefits specified in 907 KAR 1:006. A qualified Medicare beneficiary must be eligible for and receiving Medicare Part A benefits, and may be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made but not retroactively and not for the month in which the determination is made.

Section 4. Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under Section 1(1) through (6) of this regulation, or as medically needy under Section 2 of this regulation are:

(1) Children in foster care, private institutions, psychiatric hospitals or mental retardation institutions must be under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(2) Pregnant women are eligible only upon medical proof of pregnancy, except as otherwise specified in Section 2 of this regulation;

(3) Unemployment relating to eligibility of both parents and children is defined as:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty (50) dollars during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent must not have refused suitable employment without good cause as determined in accordance with 45 CFR Section 233.100(a)(3)(ii);

(f) The unemployed parent must meet the requirements for independent employment search as specified herein. That is:

1. The unemployed parent must make not less than twenty-four (24) contacts with prospective employers in each three (3) month period following an approval, reinvestigation or reapproval.

2. The unemployed parent may not contact the same prospective employer more than once in each calendar month.

3. If the unemployed parent does not meet the requirement for the minimum number of employment contacts during the three (3) month period, the parent may, prior to or upon receipt of the advance notice of proposed discontinuance, meet the requirement for the number of contacts for the prior three (3) month period. These contacts shall not offset the requirement for employer contacts during the three (3) month period following the next approval, reinvestigation or reapproval.

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work when it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute when such involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual must be at least sixty-five (65) years of age.

(6) A blind individual must meet the definition of blindness as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(7) A disabled individual must meet the definition of permanent and total disability as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(8) For families losing AFDC eligibility solely because of increased earnings or hours of employment, medical assistance shall continue for four (4) months to all such family members as were included in the family grant (and children born during the four (4) month period) if the family was eligible for and received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The four (4) month period begins on the date AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated.

(9) Families losing AFDC eligibility solely due to loss of the thirty (30) dollars disregard or the one-third (1/3) disregard from earnings shall be deemed AFDC eligible for nine (9) months after the termination of the disregard, and shall as a result be eligible for continued medical assistance for the nine (9) month period. The nine (9) month period begins on the date the AFDC should have been terminated. Coverage for medical assistance is extended to all family members who were included in the grant (and children born during the nine (9) month period).

(10) Families losing AFDC eligibility as a result (wholly or partly) of the collection or increased collection of child or spousal support, and who were eligible for and received AFDC in at least three (3) of the six (6) months immediately preceding the month in which such ineligibility begins, shall be deemed AFDC eligible for Title XIX purposes for four (4) months beginning with the month in which ineligibility begins. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated. Coverage for medical assistance is extended to all family members losing eligibility as a result of the receipt of the child or spousal support. The extended eligibility provision contained herein is applicable only with respect to families discontinued on or after July 18, 1984 and before October 1, 1988.

(11) Parents may be included for assistance in the cases of families with children including natural and adoptive parents. Other relatives who may be included in the case (one (1) only) are caretaker relatives to the same extent they may be eligible in the Aid to Families with Dependent Children Program.

(12) An applicant who is deceased may have eligibility determined in the same manner as if he was alive, in order to pay medical bills during the terminal illness.

(13) Effective for determinations of eligibility made on or after January 1, 1989, including the usual determinations of retroactive eligibility for pending cases for periods prior to January 1, 1989, children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member(s) is pregnant, the unborn child(ren) will be considered as a family member(s) for budgeting purposes.

(14) The following citizenship and residency requirements will be applicable:

(a) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law (except as specified in paragraph (b) of this subsection). An alien must have been admitted for permanent residence except as shown in paragraphs (b), (c) and (d) of this subsection. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403.

(b) Effective January 1, 1987, an alien not legally admitted to this country or residing in this country under color of law may be eligible for medical assistance under the following circumstances and conditions:

1. The alien must meet all other requirements for receipt of medical assistance, however, an alien qualifying as a categorically needy recipient need not actually receive an AFDC or federal supplemental security income (SSI) cash payment so long as the alien meets the income resource and categorical requirements of the applicable cash assistance program;

2. The alien must have (or have had within the usual period for retroactive eligibility) an emergency medical condition, defined as a medical condition (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

3. Approval of eligibility shall be for a time limited period, with such period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period may be extended for an appropriate period of time upon presentation to the cabinet of acceptable documentation that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

4. The medical assistance to which the alien shall be entitled is limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien.

(c) Effective May 5, 1987, select groups of

aliens who are illegally residing in this country may qualify for legalization of residence status under Section 201 of P.L. 99-603. Such aliens are prohibited from Medicaid eligibility for a period of five (5) years (beginning on the date temporary resident status is granted) except as follows:

1. The aged, blind or disabled may be eligible;
2. Children under age eighteen (18) may be eligible;
3. Pregnant women may be eligible for pregnancy related services only; and
4. All such aliens may qualify for emergency services to the extent specified in paragraph (b) of this subsection and with the limitations shown.

(d) Effective June 1, 1987, aliens qualifying for legalization of status as seasonal agricultural workers under Section 302 of P.L. 99-603 are subject to the same coverage limitations as shown in paragraph (c) of this subsection.

(15) An individual may be determined eligible for medical assistance for up to three (3) months prior to the month of application if all conditions of eligibility are met. The effective date of medical assistance is generally the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility may not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion must have existed for thirty (30) days, and the effective date of eligibility may not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility is the day the spend-down liability is met.

(16) "Child" means a needy dependent child under the age of eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before the age nineteen (19)), who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, and who is a recipient of or applicant for public assistance. Included within this definition is an individual(s) meeting the age requirement specified above, previously emancipated, who has returned to the home of his parents, or to the home of another relative, so long as such individual is not thereby residing with his spouse.

(17) Benefits shall be denied to any family for any month in which any legally liable caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and no individual's needs shall be considered in determining eligibility for medical assistance for the family if, on the last day of the month, such individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(18) [Effective January 1, 1989,] A responsible relative (but not a child) sanctioned (removed) from an AFDC or AFDC related medical assistance only case due to failure to meet a[n AFDC] technical eligibility requirement may not be eligible for medical assistance as a medically needy individual unless such individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which such individual has been sanctioned.

Section 5. Institutional Status. No individual shall be eligible for MA if a resident or inmate of a nonmedical public institution. No individual shall be eligible for MA while a patient in a state tuberculosis hospital unless he has reached age sixty-five (65). No individual shall be eligible for MA while a patient in a mental hospital or psychiatric facility unless he is under age twenty-one (21) or age twenty-two (22) if receiving such inpatient services on his 21st birthday or is sixty-five (65) years of age or over. No individual shall be eligible for MA while a patient in a skilled nursing facility or intermediate care facility classified by the Medicaid program as an institution for mental diseases unless such individual has reached age sixty-five (65).

Section 6. Emergency Shelters. Effective July 1, 1985, an individual (or family group) who is in an emergency shelter for a temporary period of time may be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions are as follows:

(1) The individual (or family group) must be a resident of an emergency shelter no more than six (6) months in any nine (9) month period, effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988.

(2) The individual (or family group) must not be in the facility serving a sentence imposed by the court, or awaiting trial.

(3) The individual (or family group) must be otherwise eligible when outside the emergency shelter; that is, eligibility must have existed immediately prior to admittance to the shelter, or it must exist immediately after leaving the shelter.

Section 7. Application for other Benefits. As a condition of eligibility for medical assistance, applicants and recipients must apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause is considered to exist when such benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the federal law providing for such benefits shows the benefit to

be optional and that the potential applicant or recipient for such benefit need not apply for such benefit when to do so would, in his opinion, act to his disadvantage.

Section 8. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 9. Third Party Liability as a Condition of Eligibility. Any individual applying for or receiving medical assistance shall be required as a condition of eligibility to cooperate with the Cabinet for Human Resources in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless such individual has good cause for refusing to cooperate as determined by the cabinet taking into consideration the best interests of the individuals involved. A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

Section 10. Provision of Social Security Numbers. Beginning May 1, 1985, each applicant for or recipient of medical assistance shall be required to provide a social security number as a condition of eligibility. However, no one shall be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration when appropriate application for such number has been made. For recipients, the requirement shall be effective with the first full reinvestigation occurring on or after May 1, 1985.

ROY BUTLER, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: March 28, 1990
FILED WITH LRC: March 30, 1990 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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: Up to 16,313 eligible individuals within three years.
(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: The cost is shown in the companion regulation, 907 KAR 1:004.
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: The cost is shown in the companion regulation, 907 KAR 1:004.
TIERING: Was tiering applied? No. This is an eligibility regulation and tiering is not appropriate.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The state agency will pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and

federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised January 1, 1990 [July 1, 1989], which is incorporated by reference in this regulation. For any reimbursement issue or area not specified in the manual, the cabinet will apply the Medicare standards and principles described in 20 CFR Sections 405.402 through 405.488 (excluding the Medicare inpatient routine nursing salary differential). The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

Section 3. Compliance with Federal Medicaid Requirements. The cabinet will comply with the requirements shown in 42 CFR 447.250 through 447.280.

Section 4. General Description of the Payment System. (1) Use of prospective rates. Each hospital will be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate will be all inclusive in that both routine and ancillary cost will be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate will not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate will not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data will have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments will be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year will be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for mental hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the mental hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, will be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used will be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor is applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) will be peer grouped according to bed size. The peer groupings for the payment system will be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up (except that the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless such facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in such a manner as to recognize the presence of the major pediatric teaching component existing outside the state university hospitals). No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up. Mental hospitals will not be peer grouped but will have a separate array of mental hospitals only. Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature will not be peer grouped or arrayed.

(6) Use of a minimum occupancy factor. A minimum occupancy factor will be applied to capital costs attributable to the Medicaid program. A sixty (60) percent occupancy factor will apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor will apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

(7) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to mental hospitals.

(8) Use of upper limits. For acute care hospitals, an upper limit will be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit will be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data; however the arrays or upper limits may be changed as a result of changes of agency policy. The upper limit is established at 120 percent for those acute care hospitals serving a disproportionate number of poor patients as defined in subsection

(9) of this section, except as specified in this subsection and the upper limit is established at 115 percent for those mental hospitals serving a disproportionate number of poor patients as defined in subsection (9) of this section. For the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville, and major pediatric teaching hospitals affiliated thereto, their upper limit shall recognize their status as teaching hospitals traditionally serving a disproportionate number of poor patients, and shall be set at 126 percent of the median of the array for all other hospitals of comparable size (401 beds and up). Such major pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy, but, effective January 1, 1989, such amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility.

(9) Disproportionate share hospitals.

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

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

2. Hospitals which are designated state teaching hospitals;

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

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

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

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

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

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

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

(11) Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(12) Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 5. Payments to Participating Out-of-state Hospitals. (1) Participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges except as specified in subsection (2) of this section.

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

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

ROY BUTLER, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: January 15, 1990
FILED WITH LRC: April 6, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing

by May 17, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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 hospital providers 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:
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 1:024. Intermediate care facility services.

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

Section 1. Definitions. The following definitions shall be applicable:
(1) "Patient status," means that the individual has care needs meeting the criteria set forth in this regulation for treatment in the institutional setting.
(2) "Intermittent skilled services," means the individual requires skilled nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.
(3) "Stable medical condition," means one which is capable of being maintained in accordance with a planned treatment regiment requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen.

Section 2. Participation Requirements. Each intermediate care facility shall be required to comply with the preadmission screening and annual resident review requirement specified in Section 1919 of the Social Security Act, effective with regard to admissions and resident stays occurring on or after January 1, 1989. Facilities failing to comply with this requirement will be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:220, Terms and conditions of provider participation; provider appeals, and federal regulations at 42 CFR 431.153 and 431.154.

Section 3. Provision of Services. Payment for services shall be limited to those services provided to eligible individuals meeting the criteria of patient status.

Section 4. Classification of Facilities. There shall be two (2) classifications of intermediate care facilities, i.e.:
(1) General intermediate care facilities; and
(2) Intermediate care facilities for the mentally retarded and persons with related conditions.

Section 5. Determining Patient Status. Professional staff of the cabinet or a peer review organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet, shall review and evaluate the health status and care needs of the recipient in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet the needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services.
(1) A patient shall not qualify for Medicaid patient status unless the person is qualified for admission and continued stay, as appropriate, under the preadmission screening and annual resident review criteria specified in Section 1919 of the Social Security Act with regard to admissions and resident stays occurring on or after January 1, 1989.

(2) An individual shall be determined to meet patient status for a general intermediate care facility when the individual requires intermittent skilled nursing care, continuous personal care or supervision in an institutional setting. In making the decision as to patient status, the following criteria shall be applicable:

(a) An individual with a stable medical condition requiring intermittent skilled services not provided in a personal care home is considered to meet patient status.

(b) An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution is considered to meet patient status. For example, ambulatory cardiac and hypertensive patients may be reasonably stable on appropriate medication, but have intellectual deficiencies preventing safe use of self-medication, or other problems requiring frequent nursing appraisal, and thus be considered to meet patient status.

(c) An individual with a stable medical condition manifesting a significant combination of the following care needs shall be determined to meet patient status for a general intermediate care facility when the professional staff determines that such combination of needs can be met satisfactorily only by provision of intermittent skilled nursing care, continuous personal care or supervision in an institutional setting:

1. Assistance with wheelchair;
2. Physical or environmental management for confusion and mild agitation;
3. Must be fed;
4. Assistance with going to bathroom or using bedpan for elimination;
5. Old colostomy care;
6. Indwelling catheter for dry care;
7. Changes in bed position;
8. Administration of stabilized dosages of medication;
9. Restorative and supportive nursing care to maintain the patient and prevent deterioration of his condition;
10. Administration of injections during time licensed personnel is available.
11. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of such self-care.
12. Routine administration of medical gases after a regimen of therapy has been established.

(d) An individual shall not generally be considered to meet patient status criteria when care needs are limited to the following:

1. Minimal assistance with activities of daily living;
2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch(es) or cane;
3. Limited diets such as low salt, low residue, reducing and other minor restrictive diets;
4. Medications that can be self-administered or the individual requires minimal supervision.

(e) An individual with a psychiatric [primary] diagnosis or needs, or who is mentally retarded, is considered to meet general intermediate care patient status criteria only when the individual also has medical care needs as shown in subsection (2)(a) through (c) of this section, the mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility), and the individual does not require active psychiatric or mental retardation inpatient treatment.

(3) An individual shall be determined to meet patient status for an intermediate care facility for the mentally retarded and persons with related conditions when the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to patient status the following criteria shall be applicable:

(a) An individual with significant developmental disabilities and significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning, but does not necessarily require skilled or general intermediate care facility services, is considered to meet patient status.

(b) An individual requiring a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning is considered to meet patient status while:

1. Learning fundamental living skills;
2. Learning to live happily and safely within his own limitations;
3. Obtaining educational experiences that will be useful in self-supporting activities;
4. Increasing his awareness of his environment.

(c) An individual with a psychiatric primary diagnosis or needs is considered to meet patient status criteria only when the individual also has care needs as shown in paragraph (a) or (b) of this subsection, the mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility), and the individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning is not considered to meet patient status.

(e) It is the policy of the cabinet that no individual is to be denied patient status solely due to advanced age, or length of stay in an institution, or history of previous institutionalization, so long as the individual qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation), the illness or ailment must have manifested itself prior to the individual's 22nd birthday.

Section 6. Reserved Bed Days. The cabinet will cover reserved bed days (effective December 1, 1984 for general intermediate facilities and March 1, 1982, for intermediate care facilities for the mentally retarded and persons with related conditions) in accordance with the following specified upper limits and criteria.

(1) For general intermediate care facilities, reserved bed days will be covered for a maximum of fourteen (14) days per absence for a hospital stay, with an overall maximum of forty-five (45) days per provider during a calendar year. Reserved bed days will be covered for a maximum of fifteen (15) days per provider during a calendar year for leaves of absence other than for hospitalization.

(2) For intermediate facilities for the

mentally retarded and persons with related conditions, reserved bed days will be covered for a maximum of forty-five (45) days per provider within a calendar quarter. Reserved bed days for hospital stays may not exceed fifteen (15) days per stay. No more than thirty (30) consecutive reserved bed days (for hospital stay(s) plus leave(s) of absence, or leave of absence only) may be approved for coverage.

(3) Coverage during a recipient's absence for hospitalization or leave of absence is contingent on the following conditions being met.

(a) The person is in Title XIX payment status in the level of care he is authorized to receive and has been a resident of the facility at least overnight;

(b) The person can be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

(d) The hospitalization is for treatment of an acute condition, and not for testing, brace-fitting, etc.; and

(e) In the case of leaves of absence other than for hospitalization, the patient's physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

Section 7. Reevaluation of Need for Service. Intermediate care shall be provided for as long as the health status and care needs are within the scope of program benefits as described in Sections 3 and 5 of this regulation. Patient status shall be reevaluated at least every six (6) months. If the reevaluation reveals that the patient's condition indicates the need for a different level of care, payment shall continue for a maximum of ten (10) days to provide for orderly transfer to the appropriate level of care.

Section 8. Hearing Rights. Any applicant/recipient determined not to meet patient status may appeal that decision in accordance with 907 KAR 1:075 or 904 KAR 2:055, as applicable.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: February 2, 1990
FILED WITH LRC: April 6, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 17, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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 intermediate care facilities 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: *A technical change with no cost impact has been made.

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for skilled nursing care facility services and intermediate care facility services.

Section 1. Definitions. For purpose of Sections 2 through 6 of this regulation, the following definitions shall prevail unless the specific context dictates otherwise:

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the cabinet in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the cabinet, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which except for ventilator therapy services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Legend and nonlegend drugs, including indwelling urethral catheters and syringes, and irrigation supplies and solutions utilized with those catheters regardless of how those supplies and solutions are utilized. Coverage and allowable cost payment limitations are specified in the cabinet's regulation on payment for drugs. Hyperalimentation, when used as the total source of nutrition for a resident, is included as a drug cost.

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies.

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

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

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

(i) Disposable and reusable incontinent briefs, reusable briefs with disposable liners, and disposable or reusable underpads when ordered by a physician.

(3) "Hospital based skilled nursing facilities" means those skilled nursing facilities so classified by Title XVIII-A.

(4) The "basic per diem cost" is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs. The inflation factor shall be included for rates computed on August 3, 1985, and thereafter.

(6) "Incentive factor" means the comparison of the basic per diem cost with the incentive return schedule to arrive at the actual dollar amount of cost containment incentive return to be added to the basic per diem cost.

(7) "Investment factor" means the comparison of the basic per diem cost with the investment return schedule to arrive at the actual dollar amount of investment return to be added to the basic per diem cost.

(8) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(9) "Maximum payment" means the maximum amount the cabinet will reimburse, on a facility by facility basis, for routine services.

(10) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(11) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

(12) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(13) For disposable briefs, reusable briefs, reusable briefs with disposable liners, and disposable or reusable underpads provided upon a physician's orders, the per unit product cost in excess of twenty (20) cents, but not in excess of forty (40) cents, shall be considered ancillary cost, with other cost for such products (including all laundry cost) to be considered routine cost. The first six (6) dollars and fifty (50) cents of cost per catheter for indwelling urethral catheters (excluding specialty purpose catheters) shall be considered as allowable ancillary cost with any balance of cost to be considered as allowable routine cost. Indwelling urethral special purpose catheters will be reimbursable as an ancillary at full allowable cost when ordered by a physician.

(14) Effective October 1, 1988, "skilled nursing facility with a mental retardation specialty (SNF/MRS)" means a skilled nursing facility in which at least seventy-five (75)

percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

Section 2. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing facilities (SNFs) or intermediate care facilities (ICFs) participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, revised April 1, 1990 [December 20, 1988] which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles. The Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

Section 4. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Title XVIII-A Principles of Reimbursement, with the system utilizing such principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section, including the provisions contained in subsections (14) and (15) of this section. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1 - June 30) by taking the latest cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. (Unaudited, partial year, or budgeted cost data may be used if a full year's audited data is unavailable. Unaudited reports are subject to adjustment to the audited amount. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities beginning program participation on or after July 1, 1984 whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) After allowable costs are indexed for inflation for the rate year, freestanding (nonhospital based) facilities will be arrayed and the maximum set at 102 percent of the median for the class (SNF or ICF). Publicly operated skilled nursing and intermediate care facilities classified as institutions for mental diseases will not be subject to the administratively set upper limit and component limitations, although such facilities will be included in the arrays for purposes of establishing the applicable upper limits. In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 125 percent of the upper limit of all other SNFs for covered services provided on or after January 1, 1989 (with costs to include, through June 30, 1991, the adjustments for nurse aide training and universal precautions). For a skilled nursing facility with mental retardation specialty, effective with regard to services provided on or after October 1, 1988, the upper limit shall be set at 120 percent of the maximum payment for freestanding skilled nursing facilities. For skilled nursing facility Medicaid certified units providing preauthorized specialized rehabilitation services for persons with brain injuries, the all inclusive payment rate shall be usual and customary actual billed charges up to a maximum of $360 per diem. For skilled nursing facilities or intermediate care facilities caring for patients with care needs associated with highly infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphlococcus aureus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immuno-deficiency virus (HIV), the payment rates shall be usual and customary actual billed charges up to a maximum of ninety-five (95) dollars and seventy-five (75) dollars per diem for SNFs and ICFs, respectively, for the qualifying patient with these care needs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1985, so that the

maximum payment amount for the prospective uniform rate year will be at 102 percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data except as specified in this subsection. For ICF-MRs, there is no administratively established upper limit. To accomplish federally mandated program improvements, effective July 1, 1989, and continuing through June 30, 1991, the allowable per diem cost for each SNF or ICF shall include one (1) dollar and twenty (20) cents for nurse aide training and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control, and ICFs shall be paid an additional four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement. Arrays and upper limits shall be altered to allow for the effect of passing through to the facilities, without cost offsets, costs which result from increases in the federal or state minimum wage rate effective on the date the federal or state minimum wage rate increase takes place.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy services which shall be paid on a prospective rate basis. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent. A refund will be requested from a facility if the amount paid to the facility for legend drugs, covered legend devices and nonlegend drugs, if applicable, exceeds the program's computed maximum allowable cost. The amount of refund will be determined by conducting a statistically accurate sample of the Medicaid patients for the facility's fiscal year. The percentage that a facility is over the computed maximum allowable cost will be multiplied by the amount paid by the program for drugs for the fiscal year under review.

(4) Interest expense used in setting the prospective rate is an allowable cost if permitted under Title XVIII-A principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates will be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relates to providing patient care. The form of such indebtedness may include, but is not limited to, notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets will not be considered an allowable cost.

(5) Compensation to owner/administrators will be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation includes the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis will not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation will be based on total licensed beds (all levels). Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Intermediate Care/Skilled Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship will be considered to exist when an individual or individuals possess five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship shall be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for general intermediate care facilities entering into lease/rent arrangements prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and skilled nursing facilities entering into lease/rent arrangements prior to December 1, 1979, the cabinet will determine the allowable costs of such arrangements based on the general reasonableness of such costs.

(8) The following provisions are applicable with regard to median per diem cost center upper

limits:

(a) For facilities (except ICF-MRs) beginning participation in the Medicaid program on or after April 1, 1981, (and classified as newly participating facilities for purposes of this subsection), the following upper limits (within the class) shall be applicable with regard to otherwise allowable per diem costs, by cost center: for nursing services, 125 percent of the median; for dietary services, 125 percent of the median; for capital costs, 105 percent of the median; and for all other costs, 105 percent of the median.

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities (solely for purposes of this subsection) when either of the following occurs on or after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant or, second, when a multilevel facility (one providing more than one (1) type of care) converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of additional or converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981; however, as an exception to the conditions specified in this subsection a facility will not be considered as newly participating if it increases its certified bed capacity by no more than a cumulative total of thirty-five (35) beds (on or after April 1, 1981) so long as its new total certified bed capacity does not exceed sixty-five (65) beds. Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.

(c) For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the class) which are attributable to the specific cost center, which are otherwise allowable costs for the facilities' prior fiscal year, and which are adjusted by trending, indexing and the occupancy factor. The median for each cost center for each class shall be determined annually using the same cost data for the class which was used in setting the maximum payment amount. The Department for Medicaid Services shall notify all participating facilities of the median per diem cost center upper limits currently in effect.

(d) A facility may request that the Reimbursement Review Panel grant a waiver of its status as a newly participating facility based upon a presentation of facts showing that the provider had already incurred a substantial material financial obligation or binding commitment toward building or expanding a facility prior to April 1, 1981. The obtaining of a certificate of need shall not be construed, in itself, to be sufficient to justify approval of a waiver request, and a waiver, if granted, shall be applicable only with regard to that building or expansion for which the waiver was requested and approved.

(e) Intermediate care facilities for the mentally retarded (ICF-MRs) are not subject to the median per diem cost center upper limits shown in this subsection.

(f) Effective with regard to services provided on or after October 1, 1988, skilled nursing facilities with a mental retardation specialty (SNF/MRS) are not subject to the median per diem cost center upper limits shown in this subsection.

(9) Certain costs not directly associated with patient care will not be considered allowable costs. Costs which are not allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs unless such costs are incurred by administrators or owners.

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain is defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale is any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which is usually fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner are not considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis will be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(11) Notwithstanding the provisions contained in subsection (10) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (10)(e) of this section) shall be determined in accordance with the methodology set forth herein for the reevaluation of assets of skilled nursing and intermediate care facilities.

(a) No increase will be allowed in capital costs.

(b) The allowable historical base for depreciation for the purchaser will be the lesser of the allowable historical cost of the

seller less any depreciation allowed to the seller in prior periods, or the actual purchase price.

(c) The amount of interest expense allowable to the purchaser is limited to the amount that was allowable to the seller at the time of the sale.

(12) Each facility shall maintain and make available any records (in a form acceptable to the cabinet) which the cabinet may require to justify and document all costs to and services performed by the facility. The cabinet shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(13) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and will be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program are to be so indicated with a description and rationale as a supplement to the cost report.

(c) Cabinet approval or rejection of projections or expansions will be made on a prospective basis in the context that if expansions and related costs are approved they will be considered when actually incurred as an allowable cost. Rejection of items or costs will represent notice that such costs will not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval will relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of projections or expansions is made, absence of a response by the cabinet shall not be construed as approval of the item or expansion.

(14) The cabinet shall review each year-end cost report to determine the necessity for and scope of an audit in relation to routine and ancillary service cost. If an audit is not performed, the report will be settled without audit. If an audit is indicated, it will be either a limited-scope audit or a full field audit. An audit may be conducted for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost will be conducted as needed.

(15) Year-end adjustments of the prospective rate and a retroactive cost settlement will be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

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

(16) Reimbursement paid shall not exceed the facility's customary charges to the general public for such services, except in the case of public facilities rendering inpatient services at a nominal charge (which may be reimbursed at the prospective rate established by the cabinet).

(17) The cabinet may develop and utilize methodology to assure an adequate level of care. Facilities determined by the cabinet to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(18) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

(19) Effective September 26, 1985 (for services provided on or after September 1, 1985), a participating skilled nursing facility may be paid for care provided to Medicaid eligible patients who meet intermediate care patient status criteria subject to the following criteria or conditions:

(a) The payment shall be made at the upper limit for payments to intermediate care facilities, or the skilled nursing rate for the facility if lower;

(b) The patient is required to be in the skilled nursing facility bed awaiting placement to an intermediate care bed; and

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

Section 5. Prospective Rate Computation. The prospective rate for each facility will be set in accordance with the following:

(1) Determine allowable prior year cost for routine services.

(2) The allowable prior year cost, not including fixed or capital costs, will then be trended to the beginning of the uniform rate year and increased by a percentage so as to reasonably take into account economic conditions and trends. Such percentage increase shall be known as an inflation factor.

(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be determined by comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days

(or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(4) Cost center median related per diem upper limits will then be applied as appropriate to the unadjusted basic per diem cost. The resultant adjusted amounts (and unadjusted amounts, as applicable) will be combined (or recombined) to arrive at the basic per diem cost (defined as the adjusted allowable cost per patient per day for routine services).

(5) To the basic per diem cost shall be added a specified dollar amount for investment risk and an incentive for cost containment in lieu of a return on equity capital, except that no return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the investment or incentive return.

(a) Cost incentive and investment schedule for general intermediate care facilities:

(Effective 4-1-90 [7-1-89])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$36.99 & below	$.92	$.58
37.00 - 37.99	$.86	$.50
38.00 - 38.99	$.78	$.41
39.00 - 39.99	$.70	$.32
40.00 - 40.99	$.61	$.21
41.00 - 41.99	$.51	$.09
42.00 - Maximum Payment* [43.78]	$.35	-

*The maximum payment is set at 102 percent of the median of the array of allowable costs of intermediate care facilities.

[Maximum Payment $43.78]

(b) Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 4-1-90 [7-1-87])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$86.99 & below	$1.38	$.87
87.00 - 92.99	$1.29	$.75
93.00 - 98.99	$1.18	$.62
99.00 - 104.99	$1.06	$.47
105.00 - 110.99	$ .92	$.31
111.00 - 116.99	$ .76	$.13
117.00 - Maximum Payment* [123.49]	$ .53	-

*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(c) Cost incentive and investment schedule for skilled nursing facilities:

(Effective 4-1-90 [7-1-89])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$49.99 & below	$.92	$.58
50.00 - 51.99	.86	.50
52.00 - 53.99	.78	.41
54.00 - 55.99	.70	.32
56.00 - 57.99	.61	.21
58.00 - 59.99	.51	.09
60.00 - Maximum Payment for Freestanding Facilities* [62.32]	.35	-

*The maximum payment for freestanding skilled nursing facilities is set at 102 percent of the median of the array of allowable costs for the freestanding facilities. The maximum payment for hospital based skilled nursing facilities is set at 125 percent of the upper limit for freestanding skilled nursing facilities.

[Maximum Payment $62.32*

*The maximum payment for hospital based skilled nursing facilities is set at $77.90 effective July 1, 1989.]

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

(Effective 4-1-90 [7-1-89])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$56.99 & below	$1.38	$.87
57.00 - 59.99	1.29	.75
60.00 - 62.99	1.18	.62
63.00 - 65.99	1.06	.47
66.00 - 68.99	.92	.31
69.00 - 71.99	.76	.13
72.00 - Maximum Payment* [74.78]	.53	-

*The maximum payment for skilled nursing facilities with a mental retardation speciality is set at 120 percent of the maximum payment for freestanding skilled nursing facilities.

[Maximum Payment $74.78*]

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 102 percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities and, effective October 1, 1988, skilled nursing facilities with a mental retardation specialty have special requirements that are required to be considered. The cabinet has determined that the maximum payment rates

shall be reviewed annually against the criteria of 102 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1985 and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 102 percent of the median is a lower dollar amount than has been currently set.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division of Reimbursement and Contracts, a reevaluation of the point at issue. This request is required to be received within forty-five (45) days following notification of the prospective rate or forwarding of the audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Medicaid Services, a review by a standing review panel to be established by the commissioner. This request is required to be postmarked within twenty (20) days following notification of the decision of the Director, Division of Reimbursement and Contracts. Such panel shall consist of three (3) members: one (1) member from the Division of Reimbursement and Contracts, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Department for Medicaid Services (but not within the Division of Reimbursement and Contracts) as designated by the Commissioner, Department for Medicaid Services, with such designated member to act as chairperson of the review panel. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of the written request. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which are required to be considered in order to provide for equitable treatment and reimbursement of the provider. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

Section 7. Implementation Date. The amendments to this regulation shall be effective with regard to payments for services provided on or after April 1, 1990 [July 1, 1989].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: March 28, 1990
FILED WITH LRC: March 30, 1990 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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 and intermediate care facilities.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $4.5 million (cost)
2. Continuing costs or savings: $8.0 million (this includes future wage increases)
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:
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 1:054. Primary care center and federally-qualified health center 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. Primary care centers [as defined by the Health Certificate of Need and Licensure Board] and federally-qualified health centers represent an opportunity for the provision of comprehensive medical services to the indigent citizenry of Kentucky. This regulation, therefore, sets forth the provisions relating to primary care center and federally-qualified health center services for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and medically needy.

Section 1. Definitions. As used in this regulation, the following definitions apply:
(1) Basic services. Those services which shall be provided by the primary care center [facility] for it to be considered a primary care center by the cabinet;
(2) Supplemental services. Those specified services which are in addition to the basic or required range of services, and for which the cabinet shall make payment when appropriately provided by the primary care center;
(3) Element. A specific subprogram within the Medical Assistance Program; for example, dental [primary care center] services is a subprogram or element of the Medical Assistance Program;
(4) Requirements for program participation. Those requirements of law or regulation generally applicable throughout the Medical Assistance Program and with which all medical services providers shall comply in order to participate and receive reimbursement as a provider of services to eligible medical assistance recipients.

Section 2. Requirement for Participation. Each primary care center shall be required to meet the standards set for certification by the Commission on Health Economics Control in Kentucky, and shall not receive reimbursement for services as a primary care center provider until the cabinet determines that the standards are met and that the provider complies with all requirements for program participation. Each federally-required health center shall be required to meet appropriate licensure standards (whether as a primary care center or other health facility) and shall in addition be receiving a grant under section 329, 330, or 340 of the United States Public Health Service Act or be determined by the Secretary, United States Department of Health and Human Services to meet the requirements for receiving a grant under section 329, 330, or 340 of the United States Public Health Service Act.

Section 3. Covered Services. Each primary care center shall provide directly to eligible program recipients on a regular, full-time basis the basic services as specified in subsection (1) of this section, and may provide one or more of the supplemental services. Each federally-qualified health center shall be entitled to provide the services described in the Social Security Act at Section 1861(aa)(1) and any other ambulatory services offered on an outpatient basis which are included in the Medicaid state plan.
(1) Basic services which shall be provided by primary care centers.
(a) Medical diagnostic and treatment services for all age groups, as provided by a physician(s), nurse practitioner(s), or physician assistant(s) if licensed under state authority.
(b) Treatment of injuries and minor trauma;
(c) Prenatal and postnatal care;
(d) A program of preventive health services which shall include well-baby care, well-child care, and immunization, and which may include other types of preventive care;
(e) Referral services designed to ensure the referral to and acceptance by an appropriate medical resource when services necessary to the health of the patient are not provided directly by the center;
(f) Health education services. These services shall provide as a minimum appropriate personnel to present, on request, information on general health care to local school systems, civic organizations and other concerned local groups. Services are to include distribution of written material on pertinent health subjects.
(g) The primary care center shall provide directly at least two (2) of the following additional professional services:
1. Dentist;
2. Optometrist;
3. Family planning services. These services shall be provided as a package which shall include those services required under the family planning element of the Medical Assistance Program;
4. Home health services. These services shall include the same services as provided under the home health element of the Medical Assistance Program;
5. Social services counseling. This shall include, as a minimum, information and referral services. Intensive counseling is to be limited to crisis situations and health related problems. Individuals with other identified counseling needs are to be referred to appropriate social service agencies. These services shall be performed by a licensed, graduate, or certified social worker;
6. Pharmacy services. These services shall meet the standards of the pharmacy component of the Medical Assistance Program;
7. Nutritional services. These services shall include as a minimum individual counseling relating to nutritional problems or nutritional education. Group nutritional services may also be provided. These services shall be performed by a professional nutritionist; and
8. Nurse midwifery services. These services shall be provided as a program which is to include prenatal services to expectant mothers, as well as delivery and postnatal services. These services shall be performed by a certified nurse midwife.

(2) Supplemental services which may be provided by primary care centers.
(a) Other services (excluding institutional care) within the scope of the Medical Assistance Program;
(b) Holding/observation accommodations;
(c) Any of the types of service in subsection (1)(g) of this section, which are not provided as basic services;
(d) Outreach services. These services shall be provided as a package structured to identify health care needs in the service area; and
(e) Clinical pharmacist. A clinical pharmacist is a licensed pharmacist whose services include taking medication histories, monitoring drug use, contributing to drug therapy, drug selection, patient counseling, administering drug programs, and surveillance for adverse reactions and drug interactions.

Section 4. Drugs for Specified Immunizations. Effective with regard to services provided on or after October 1, 1988, primary care centers and, effective April 1, 1990, federally-qualified health centers, will be allowed to secure drugs for specified immunizations from the Department for Health Services free to provide immunizations for Medicaid recipients. The specified immunizations are:
(1) Diptheria and tetanus toxoids and pertussis vaccine (DPT);
(2) Measles, mumps, and rubella virus vaccine, live (MMR);
(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and
(4) Hemophilus B conjugate vaccine (HBCV).

Section 5. Limitations on Services. The following limitations are applicable to specified services:
(1) Pharmacy services are limited to those drugs covered through the pharmacy services element of the Medical Assistance Program;
(2) Other drugs and biologicals not covered under pharmacy services are limited to those necessary for the treatment of emergency cases;
(3) Laboratory services are limited to those procedures provided directly by the center, or if purchased, these services are limited to those covered under the independent laboratory element of the Medical Assistance Program;
(4) Dental services are limited to those procedures covered through the dental services element of the Medical Assistance Program[, except for orthodontia services which are not covered in a primary care center];
(5) Vision care services are limited to those services covered through the vision care services element of the Medical Assistance Program;
(6) Audiology services are limited to those services covered through the hearing services element of the Medical Assistance Program;
(7) Abortion and sterilization services shall be performed in accordance with guidelines specified by the cabinet;
(8) Durable medical goods and prosthetics are limited to those covered under the durable medical equipment or home health element of the Medical Assistance Program;
(9) Mental health services are limited to emergency services and appropriate referral;
(10) Holding/observation accommodations are covered for not more than twenty-four (24) hours when provided in accordance with the following:
(a) The patient's record shall document the appropriateness of such utilization;
(b) The physician shall make the decision that such utilization is necessary;
(c) A licensed nurse shall be on duty at the center during the time a patient is held in center accommodations beyond regular scheduled hours;
(d) A licensed physician shall be on call at all times when a patient is held beyond the regular scheduled hours of the center;
(e) A statement of conditions observed and treatment rendered during the holding time shall be entered in the patient's medical record;
(11) Radiology procedures shall be performed by either a licensed practitioner of the healing arts or an individual holding a valid certificate to operate sources of radiation.

Section 6. Noncovered Services. The following services are specifically excluded from coverage as primary care center or federally-qualified health center services:
(1) All institutional services;
(2) Housekeeping, babysitting, and other homemaker services of like nature;
(3) Services which are not provided in accordance with restrictions imposed by law or regulation.

Section 7. The provisions of this regulation as amended shall be effective with regard to services provided on or after April 1, 1990 [July 1, 1989].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: March 28, 1990
FILED WITH LRC: March 30, 1990 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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: 16 facilities 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:
1. First year: $100,000 (cost).
2. Continuing costs or savings: $150,000 (cost).
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues:
(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:
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 1:055. Payments for primary care center and federally-qualified health center 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 primary care center and federally-qualified health center services.

Section 1. Primary Care Centers and Federally-qualified Health Centers. In accordance with 42 CFR 447.325, the cabinet shall make payment to providers who are appropriately licensed and have met the conditions for participation set by the cabinet, on the following basis:
(1) Payment shall be made on the basis of reasonable allowable cost.
(2) Payment amounts shall be determined by application of the "Primary Care Center and Federally-qualified Helath Center [General Policies and Guidelines and Principles of] Reimbursement Manual" (revised April 1, 1990 [July 1, 1989], and hereby incorporated by reference) developed and issued by the cabinet, supplemented by the use of title XVIII-A reimbursement principles. The Kentucky Medical Assistance Program Primary Care Center and Federally-qualified Health Center [General Policies and Principle of] 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.
(3) Allowable costs shall not exceed customary charges which are reasonable.
[(4) For services provided prior to July 1, 1985, reimbursement for medical and nursing cost center costs shall be subject to adjustment for a growth allowance. The growth allowance shall be computed for the year beginning each July, and shall be based on a projection of the change in the medical component of the Consumer Price Index over the previous year as applied to the median service cost of medical and nursing services, on a per visit basis, for all participating providers. Increases in medical and nursing center costs in excess of the growth allowance shall be disallowed. For those facilities with medical and nursing cost increases which are less than the growth allowance, the difference between the two (2) shall be reimbursable as a cost containment incentive payment at the time of the usual cost settlement.]
[(5) For services provided on or after July 1, 1985, the average allowable cost per visit for the medical and nursing services cost center shall not exceed the lesser of actual allowable costs, or charges, or the actual allowable average cost per visit for medical and nursing center services for the facility fiscal year ending prior to July 1, 1985 (not adjusted to the lower of cost or charges) plus an additional growth allowance of twenty (20) cents per visit per month (if such cost is incurred) for each month after the facility's fiscal year end but prior to July 1985; effective with regard to services provided on or after July 1, 1989, facilities whose established rates on July 1, 1985 were below the median cost and which currently have an actual cost for medical and nursing services equal to or exceeding the median cost established on July 1, 1985 will receive the median cost as their rate, and facilities with an actual cost per service which is less than the median will be limited to actual costs. Primary care centers beginning participation on or after July 1, 1985, or which have less than two (2) full years of program participation on that date, shall be reimbursed on the basis of the lower of reasonable allowable costs or charges (as shown in subsections (1) through (3) of this section) for the first two (2) years of participation in the program. For the third and subsequent years, the average allowable cost per visit may not exceed the lower of the facility's actual allowable costs, or charges, or the facility's actual allowable costs (not adjusted to the lower of cost or charges) for the second year of participation.]
[(6) During the first six (6) months after the implementation of the policy contained in subsection (4) of this section, centers with fiscal year endings occurring in the six (6) month period shall not have medical and nursing center costs disallowed as a result of imposition of the growth allowance upper limit, but shall be entitled to receive any applicable incentive payment.]
[(7) The amount of any allowable incentive payment determined pursuant to the policy specified in subsection (4) of this section may

not exceed the growth allowance, and must be added to allowable costs for application of the lower of costs or charges principle.]

(4) [(8)](a) Effective January 1, 1989 all primary care centers and, effective April 1, 1990, all federally-qualified health centers, will be placed on a universal rate year for purposes of payments. [upper limits. Except as specified in subsection (9) of this section, the following upper limits shall be applied on a prospective basis: medical and nursing services, 105 percent of the weighted median per visit cost with the upper limit for centers with a teaching component through affiliation with a medical school (University of Kentucky or University of Louisville) set at 135 percent of the weighted median per visit cost effective January 1, 1989, 120 percent effective January 1, 1990, and 105 percent effective January 1, 1991 and thereafter; pharmacy service cost shall be limited to the average amount paid by the Department for Medicaid Services to providers through the pharmacy element of the Medicaid program as determined from the most recent state fiscal year data, trended and indexed; and dental service cost shall be limited to the average amount paid per utilizer by the Department for Medicaid Services to providers through the dental element of the Medicaid program as determined from the most recent state fiscal year data, trended and indexed.]

[(b) A newly participating center shall not be included in the cost array and shall not be subject to upper limits until the center has one (1) full year of audited data resulting from Medicaid program participation.]

(b) [(c)] For the purpose of calculating interim rates [and establishing prospective upper limits], costs from the most recent audited cost report will be used with costs trended to the beginning of the [upper limit] year (e.g., to January 1, 1989 for the first universal rate year) and indexed for inflation to the end of that year.

(5) [(9)] As an incentive for cost efficiency, providers which at the beginning of the universal rate year have medical and nursing costs in the lowest one-fourth (1/4) of the array will receive an incentive payment which is set at twenty (20) percent of the average composite interim rate of the incentive eligible group, with the incentive to be paid only on visits which are not in excess of 10,000. The entire interim payment will be considered prospective in nature for the incentive eligible group in that there will be no settlement after audit requiring a payback unless charges are less than payments; to the extent that cost exceeds the interim payments, an upward adjustment will be made to compensate for the additional costs[, subject to the upper limits or July 1, 1985 medical and nursing services cost limit]. At the time of settlement, the center shall receive the greater of the interim payment, or actual cost [up to the upper limits], not to exceed charges.

(6) [(10)] Effective with regard to services provided on or after October 1, 1988, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 which are provided free from the Department for Health Services to primary care centers and federally-qualified health centers shall be paid by the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the [primary care] centers that the drugs were used to provide immunizations to Medicaid recipients.

(7) [(11)] Effective with regard to services provided on or after January 1, 1989, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 shall not be considered an allowable cost even though the drugs are purchased on the open market so long as the drugs could have been obtained free from the Department for Health Services.

Section 2. Implementation of the Payment System. (1) The reimbursement system developed by the cabinet for primary care centers and federally-qualified health centers is supported by the Title XVIII-A reimbursement principles which will serve as guidelines for determining reasonable allowable cost in areas not addressed specifically by the cabinet.

(2) The system shall utilize a method whereby [primary care] providers are paid an interim rate based on a reasonable estimation of current year costs followed by a year end adjustment to actual reasonable allowable costs. When the need can be demonstrated, adjustment to an interim rate will be made.

(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each [primary care center] provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(5) Interim payments due the provider [primary care center] shall be made at reasonable intervals but not less often than monthly.

Section 3. Prohibition against Joint Participation. Dual or joint participation in the medical assistance program by a primary care center or federally-qualified health center is not permitted. When a primary care center or federally-qualified health center elects to participate as such in the medical assistance program it may not participate concurrently under other regular ongoing elements of the medical assistance program, including the rural health clinic services element. In addition, when a center elects to participate as such in the medical assistance program, it is considered to elect participation for all eligible service elements, components, or subunits of the center.

Section 4. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:054, primary care center and federally-qualified health center services, nor for that portion of a [primary care] center's costs found unreasonable or nonallowable in accordance with the cabinet's "Primary Care Center and Federally-qualified Health Center [General Policies and Guidelines and Principles of] Reimbursement Manual." In addition, when the utilization review processes of the cabinet find that costs have been incurred through provision of unnecessary

medical treatment services, such costs shall be disallowed.

Section 5. The amendments to Sections 1 through 4 of this regulation shall be effective with regard to payments for services provided on or after April 1, 1990.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: March 28, 1990
FILED WITH LRC: March 30, 1990 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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: 16 facilities 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:
1. First year: $1.1 million (cost).
2. Continuing costs or savings: $2.0 million (cost).
3. Additional factors increasing or decreasing costs: Usual utilization and cost increases.
(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:
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 1:061. Payments for medical transportation.

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 medical transportation services.

Section 1. Definitions. For purposes of this regulation, the following definitions apply:
(1) "Commercial transportation vendors" means those commercial carriers licensed in accordance with the laws of Kentucky, other states, or of the United States to transport members of the general public.
(2) "Private automobile vendor" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional medical transportation of eligible recipients. Included within this definition are ambulance type vendors who are noncertified or who have not chosen or been approved to participate in the Title XIX program, if willing to accept private automobile vendor rates.
(3) "Waiting time" means that period of time following provision of transportation to a medical vendor during which the private automobile vendor is waiting for the recipient to receive medical treatment, in order to provide the return trip required by the recipient. In the instance of an eligible recipient being admitted to a medical institution for inpatient care, waiting time is considered to have occurred when the private automobile vendor waits a sufficient period of time to ensure the recipient's admittance to the facility.
(4) "Noncommercial group carriers" means those vendors who provide bus or bus-type medical transportation to an identifiable segment of the eligible recipient group, but not including vendors whose transportation costs are allowable costs under their reimbursement system (e.g., mental health centers). Such segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, primary care center, etc.), or other similar grouping method. Included within this definition are:
(a) Community action agencies (or successor agencies) providing bus or bus-type service for a poverty or near-poverty area target population; and
(b) Other similar providers as identified by the cabinet.
(5) "Specialty individual carrier" means a vendor who provides, through specially equipped

vehicles, medical transportation for nonambulatory recipients (those who are required to travel by wheelchair) or for ambulatory but disoriented recipients (those who are sufficiently disoriented as to time, place, person or objects so as to be unable to travel to or from medical services unaccompanied or unsupervised), and who provides services not normally available from other transportation vendors. The equipment ordinarily required would be a van or similar type vehicle with a lift for wheelchairs; and the service would be the accompaniment of the recipient from point of origin to point of destination where the recipient is placed in the charge of the receiving individual, including physical assistance or guidance to the recipient when necessary. To be considered a specialty individual carrier for purposes of reimbursement from the cabinet, the carrier must be recognized by the cabinet as a specialty individual carrier with approval given by the cabinet for reimbursement at specialty individual carrier rates. The cabinet may require the submission of documentation designed to show that the vendor is capable of providing specialty individual carrier service in an adequate and safe manner.

Section 2. Ambulance Services. (1) The cabinet shall reimburse licensed participating ambulance services at the lesser of their usual and customary charges or the maximum rate established by the cabinet.

(2) The maximum rate is the amount arrived at by combining the following component costs, as applicable:

(a) The base rate, which is set at fifty (50) dollars per one (1) way trip and includes all mileage costs for the first ten (10) miles;

(b) A mileage allowance of one (1) dollar per mile for mileage above the first ten (10) miles;

(c) An oxygen rate, which is set at eight (8) dollars per one (1) way trip; and

(d) The cost (as determined by the cabinet) of other itemized supplies.

Section 3. Commercial Transportation Vendors. The cabinet shall reimburse commercial transportation vendors at the normal passenger rate charged to the general public, except that the following maximum rates shall be applicable for franchised (licensed) taxi services in those areas of the state where taxi rates are not regulated by the appropriate local rate setting authority, and for franchised (licensed) taxi services in regulated areas when they go outside the medical service area.

(1) The upper limit shall be the usual and customary charge up to a maximum of three (3) dollars for trips of five (5) miles or less, one (1) way, loaded miles.

(2) The upper limit shall be the usual and customary charge up to a maximum of six (6) dollars for trips of six (6) to ten (10) miles, one (1) way, loaded miles.

(3) The upper limit shall be the usual and customary charge up to a maximum of ten (10) dollars for trips of eleven (11) to twenty-five (25) miles, one (1) way, loaded miles.

(4) The upper limit shall be the usual and customary charge up to a maximum of fifteen (15) dollars for trips of twenty-six (26) miles or over, one (1) way, loaded miles.

Section 4. Private Automobile Vendors. (1) The cabinet shall reimburse private automobile vendors at the basic rate of twelve (12) cents per mile plus a flat fee of two (2) dollars per eligible passenger if waiting time is required. For round trips of less than five (5) miles the rate shall be computed on the basis of a maximum allowable fee of three (3) dollars for the first passenger plus two (2) dollars each for waiting time for additional eligible passengers.

(2) For round trips of five (5) to twenty-five (25) miles the rate for private automobile vendors shall be computed on the basis of a maximum allowable fee of five (5) dollars for the first passenger plus two (2) dollars each for waiting time for additional eligible passengers. The maximum allowable fee rates shall not be utilized in situations where mileage is paid.

(3) Even though the maximum allowable fee rate when computed on the basis of twelve (12) cents per mile plus two (2) dollars for waiting time would not equal the three (3) dollars or five (5) dollars allowable amounts, that amount may be paid to encourage private automobile vendors to provide necessary medical transportation. Additionally, nothing in this section requires the cabinet to pay the amounts specified in the event the private automobile vendor expresses a preference for reimbursement in a lesser amount; in that event, the lesser amount will be paid. Toll charges are reimbursable when incurred.

(4) Waiting time is a reimbursable component of the private automobile vendor transportation fee only when waiting time occurs. When waiting time occurs due to admittance of the recipient into the medical institution, the private automobile vendor may be reimbursed for the return trip to the point of recipient pickup as though the client were in the vehicle; that is, the total reimbursable amount is computed on the basis of the maximum allowable fee or mileage rate plus waiting time as shown in this section.

Section 5. Noncommercial Group Carriers. [(1)] The cabinet shall reimburse noncommercial group carriers based on actual reasonable, allowable cost to the provider based on cost data submitted to the cabinet by the provider; however, the minimum rate shall be twenty (20) cents per recipient per mile transported and the rate upper limit shall be fifty (50) cents per recipient per mile transported.

[(2) For services provided on or after June 1, 1989, noncommercial group carriers may subcontract for taxicab services with reimbursement for such services to be provided at the usual rates paid to the noncommercial group carriers as shown in subsection (1) of this section.]

Section 6. Specialty Individual Carriers. (1) Specialty individual carriers shall be reimbursed at the lesser of the following rates:

(a) The actual charge for the service; or

(b) The usual and customary charge for that service by the carrier, as shown in the schedule of usual and customary charges submitted by the carrier to the cabinet; or

(c) The program maximum established for the service.

(2) Program maximums are:

(a) Nonambulatory, wheelchair patients; for transportation within a distance of ten (10) miles or less, the upper limit is fifteen (15)

dollars for the first patient plus seven (7) dollars and fifty (50) cents for each additional nonambulatory patient transported on the same trip, for each time a patient is transported to or transported from the medical service site. To this base rate may be added seventy-five (75) cents per mile per patient for miles the patient(s) is transported above ten (10) (one (1) way), and toll charges actually incurred.

(b) Ambulatory, disoriented patients; for transportation within a distance of ten (10) miles or less, the upper limit is six (6) dollars per patient for each time a patient(s) is transported to or transported from the medical service site. To this base rate may be added seventy-five (75) cents per mile per patient for miles the patient is transported above ten (10) (one (1) way), and toll charges actually incurred.

(c) For both paragraphs (a) and (b) of this subsection, mileage must be computed by the most direct accessible route from point of pickup to point of delivery, and reimbursement for mileage is allowed only for those miles the recipient is actually transported in excess of ten (10). Empty vehicle miles are not included when computing allowable reimbursement for mileage.

(3) Reimbursement is made at specialty individual carrier rates for the following types of recipients only:

(a) Nonambulatory recipients who need to be transported by wheelchair, but not including recipients who need to be transported as a stretcher patient; and

(b) Ambulatory but disoriented recipients, defined as persons confused, especially with respect to time, place and identity of persons or objects. The extent of disorientation must be such as to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation.

(4) The specialty carrier must obtain a statement from the recipient's physician (or, if the recipient is in a skilled nursing or intermediate care facility, from the director of nursing, charge nurse, or medical director in lieu of physician) to verify that transportation by the specialty carrier is medically necessary due to the recipient's nonambulatory or disoriented condition. Claims for payment which are submitted without the required statement of verification will not be paid.

Section 7. Specially authorized transportation services provided by ambulance services may be paid for at a rate of forty (40) dollars per one (1) way trip, which includes all mileage costs for the first ten (10) miles, and a mileage allowance of seventy-five (75) cents per mile above the first ten (10) miles, unless otherwise authorized; specially authorized transportation services provided by specialty carriers, or as otherwise authorized in unforeseen circumstances, may be paid for at a rate adequate to secure the necessary service; in no event, however, shall the amount allowed exceed the usual and customary charge of the provider.

Section 8. Use of Flat Rates. When a recipient chooses to use a medical provider outside the medical service area (i.e., the medical service is available within the medical service area and the recipient has not been appropriately referred to a medical provider outside the medical service area), transportation payment shall not exceed the lesser of six (6) dollars per trip, one (1) way (or twelve (12) dollars for a round trip), or the usual fee for the transportation provider computed in the usual manner.

Section 9. Limitations. Any reimbursement for medical transportation is contingent upon the recipient receiving the appropriate pre- or postauthorization for medical transportation as required by the cabinet.

Section 10. The amendments to Section 5 of this regulation shall be effective with regard to services provided on or after January 1, 1990.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: January 5, 1990
FILED WITH LRC: April 6, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 17, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: There are 15 noncommercial group carriers participating in the Medicaid transportation program.

(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: Due to lack of data as to use of subcontracted taxi service, we are unable to estimate whether there will be cost impact.

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:
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 1:170. Payments for home and community based 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 methods of payment for home and community based services provided as an alternative to skilled nursing facility and intermediate care facility care.

Section 1. Coverage. The Cabinet for Human Resources shall reimburse participating providers (including coordinating agencies) of home and community based (HCB) services for services rendered to eligible medical assistance recipients who meet patient status criteria for skilled nursing or intermediate care facility care, and who are prior authorized for the HCB service. Coverage provisions are contained in 907 KAR 1:160.

Section 2. Payments. Payment amounts for HCB services shall be determined in accordance with the provisions and principles contained <u>in this regulation</u> [herein].
(1) Assessment, case management, homemaker services, personal care services, respiratory therapy shall be paid using an interim payment method with a year-end settlement to the lower of actual reasonable costs or reasonable charges utilizing Medicare principles of reimbursement. In addition, these services, except for case management and respiratory therapy, shall be subject to a prospectively set upper limit with <u>the</u> [such] upper limit set at 130 percent of the weighted median of the array of services using the most recent cost report available as of May 31 with upper limits updated each July 1; this limit shall not apply until [such time as] a provider has participated in the program for two (2) full facility fiscal years. The interim rate is derived by applying a reduction factor to current charges based on the difference between prior year allowable cost and charges. When prior year costs and charges are not available, the interim rate will be set at the cabinet's best estimate of current costs (not to exceed charges) based on payments made for similar services.
(2) Respite care shall be paid on the basis of billed charges, with reimbursement for an individual (beginning with the first billed HCB service) not to exceed $2,000 per calendar year or $1,000 in any six (6) month period within that calendar year. The billed charge should include only the actual cost of the respite care services plus actual overhead costs incurred by the provider. There will be a year-end settlement to actual cost, or charges if lower, not to exceed the upper limits.
(3) Minor home adaptations shall be paid on the basis of actual billed charges, with reimbursement for an individual for a calendar year limited to a maximum of $500 for all modifications. The service <u>shall</u> [must] have been appropriately prior authorized and have been provided. The billed charge <u>shall</u> [should] include only the actual cost of the minor home adaptations plus actual overhead costs incurred by the provider. There will be a year-end settlement to actual costs, or charges if lower, not to exceed the upper limit.
(4) Payments for adult day health care services shall be made directly to licensed participation adult day health care centers on the basis of an interim rate with a year-end cost settlement to the lower of actual reasonable allowable costs or charges. The basic rate shall not exceed eighty (80) percent of the maximum intermediate care reimbursement rate for routine services. Reimbursement for ancillary services shall not exceed eighty (80) percent of the approved maximum reimbursement rate for therapy services under the home health program element.

Section 3. Audits shall be performed as necessary to ensure that final payments are in accordance with the payment provisions contained in this regulation.

Section 4. <u>Home health agencies providing home and community based services to eligible medical assistance recipients shall also comply with the provisions contained in 907 KAR 1:030 and 907 KAR 1:031.</u> [Implementation. The amendments to this regulation shall be effective with regard to services provided on or after July 1, 1988.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, Secretary
APPROVED BY AGENCY: January 11, 1990
FILED WITH LRC: April 6, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 17, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed

administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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: Home health agencies providing home and community based waiver services.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: 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: *This is a technical clarification which is budget neutral.
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 1:340. Payments for hospice 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 policies of the cabinet with regard to payments for hospice services.

Section 1. Conditions for Participation. A hospice program must meet the Medicare conditions for participation and any [such] other standards [as may be] set by the cabinet in order to participate in the Medicaid program.

Section 2. Provision of Service. Payment for services shall be limited to those hospice program services as defined in 907 KAR 1:330, provided to eligible individuals meeting the criteria for receipt of hospice care as set forth in 907 KAR 1:330.

Section 3. Payment Rates. The payment rates shall be the same as those used in the Medicare program. If for some reason a Medicare payment rate is unavailable, the payment rate [that will be] used by Medicaid shall [will] be determined in the same manner as Medicare rates. In addition, for hospice patients in skilled nursing, intermediate care, dual licensed, and swing beds participating in the Medicaid program, the hospice shall be paid an amount for room and board furnished by the facility which is equal to ninety-five (95) percent of the upper limit for that type of care.

Section 4. Copayments. (1) The Medicaid program shall [will] pay the Medicare copayments if the Medicaid recipient qualifies for and has elected Medicaid hospice benefits as specified in 907 KAR 1:330.
(2) No copayments shall [will] be applied to Medicaid payment rates for hospice services.

Section 5. Coverage of Drugs. When the hospice provides to a participating recipient a medically necessary drug which is for a condition not relating to the terminal illness, the Medicaid program shall [will] reimburse the hospice separately for the [such] drug taking into consideration usual program constraints on drug coverage and payments. (Drugs relating to the terminal illness are reimbursed as a part of the usual hospice payment rate.)

Section 6. Effective Date. The amendments to this regulation [Payments for hospice services] shall be effective for hospice services provided on or after April 1, 1990 [October 1, 1986].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: March 28, 1990
FILED WITH LRC: March 30, 1990 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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: Approximately 18 hospice facilities and 200 patients.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $225,000 (cost).
2. Continuing costs or savings: $225,000 (cost).
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:
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 1:374. Incorporation by reference of the Skilled Nursing Facility 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 skilled nursing facility 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 Skilled Nursing Facility Services Manual, revised April 1, 1990 [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, M.D., Secretary
APPROVED BY AGENCY: April 4, 1990
FILED WITH LRC: April 10, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 17, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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 skilled nursing facility 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 1:378. Incorporation by reference of the Intermediate Care Facility 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 intermediate care facilities 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 Intermediate Care Facility Services Manual, revised April 1, 1990 [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, M.D., Secretary
APPROVED BY AGENCY: April 5, 1990
FILED WITH LRC: April 10, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 17, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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 intermediate care facility 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 1:428. Incorporation by reference of the Adult Day Health Care 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 adult day health care 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 Adult Day Health Care Services Manual, revised April 1, 1990 [September 9, 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, M.D., Secretary
APPROVED BY AGENCY: April 5, 1990
FILED WITH LRC: April 10, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 17, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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 intermediate care facility 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 1:430. Incorporation by reference of the Home Health 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 home health 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 Home Health Services Manual, revised February 1, 1990 [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, M.D., Secretary
APPROVED BY AGENCY: February 1, 1990
FILED WITH LRC: April 10, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 17, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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 home health services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
Division of Institutional Care
(Proposed Amendment)

908 KAR 3:100. Policies and procedures of Eastern State Hospital.

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 202A.196, 202B.060, 210.010, 210.040, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010 directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters. These polices and procedures describe the treatment and care of patients at Eastern State Hospital.

Section 1. The function of this regulation is to incorporate by reference the polices and procedures of Eastern State Hospital as found in the April 15, 1990 [1989], edition of the policy and procedure manual.

Section 2. The Eastern State Hospital policy and procedure manual consists of twelve (12) volumes relating to the operation of Eastern State Hospital. They are available for inspection and copy at the office of the Commissioner for Mental Health/Mental Retardation Services, 275 East Main Street,

Frankfort, Kentucky 40621, and at the Facility Director's Office, Eastern State Hospital, 627 West Fourth Street, Lexington, Kentucky 40508.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: April 10, 1990
FILED WITH LRC: April 12, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the DES Conference Room, Second Floor, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd
(1) Type and number of entities affected: There are 2000 persons each year admitted to Eastern State Hospital. These along with their families, would be affected.
(a) Direct and indirect costs or savings to those affected: This regulation incorporates the policies and procedures of Eastern State Hospital by reference and does not relate to costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional facts to be considered.
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: There is very little effect on the 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: These were not alternative methods.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This is an administory to incorporate manuals by reference.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.
2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

908 KAR 3:180. Policies and procedures of Oakwood ICF/MR.

RELATES TO: KRS Chapters 202A, 202B, 210
STATUTORY AUTHORITY: KRS 202A.196, 202B.060, 210.010, 210.040, 210.045, 210.055, 210.285, 42 CFR 440 through 489
NECESSITY AND FUNCTION: KRS 210.010, directs that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters.

Section 1. Polices and procedures of Oakwood ICF-MR (intermediate care facility-mental retardation) as set forth in the April 15, 1990 [1989], edition of the Oakwood ICF-MR consisting of five (5) volumes relating to the operation of Oakwood ICF-MR are incorporated by reference.

Section 2. These policies and procedures are contained in five (5) volumes with a total of twenty-two (22) pages. They are available for inspection and copy at the office of the Commissioner of the Department of Mental Health/Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, and in the office of the Director at Oakwood ICF/MR, U.S. 27 South, P.O. Box 1106, Somerset, Kentucky 42501.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: April 10, 1990
FILED WITH LRC: April 12, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the DES Conference Room, Second Floor, Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dennis D. Boyd

(1) Type and number of entities affected: Persons affected are 420 residents from counties throughout the state along with their families.

(a) Direct and indirect costs or savings to those affected: These policies and procedures affect the treatment and residential care of residents and do not directly relate to costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: There is no financial effect on the 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: This has no effect on revenue.

(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: There is no statute in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: This is a regulation to incorporate manuals by reference.

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and is federally mandated.

2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and contains state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There are standards cited in 42 CFR 440 through 42 CFR 489. These federal regulations mandate requirements implemented by this regulation. The requirements contained in this regulation are neither stricter, in addition to, or different from those in the federal requirement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff. Stricter requirements or responsibilities are not imposed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

REVENUE CABINET
Department of Administrative Services

103 KAR 7:025. Life expectancy table.

RELATES TO: KRS 140.100
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: KRS 140.100(2) requires the application of the appropriate United States life mortality tables when ascertaining the value of a future, contingent or limited estate, income or interest which includes life estates and annuities. The purpose of this regulation is to establish the appropriate United States life mortality table as required by KRS 140.100(2).

Section 1. The United States Decennial Life Tables for the period 1979-81 published by the United States Department of Health and Human Services, National Center for Health Statistics, shall be utilized when computing the value of a beneficiary's life estate, annuity, remainder interest or any other interest in the estate which is based on the life expectancy of the beneficiary or some other person.

Section 2. Table 1, Life Table for the Total Population: United States, 1979-81, as published in Volume 1, Number 1, United States Decennial Life Tables for 1979-81, shall be the appropriate table from within the various tables printed and published in the decennial life tables when computed an interest as specified in Section 1 of this regulation for inheritance tax purposes.

Section 3. Pursuant to Section 2 of this regulation, the following table represents the average number of years remaining at the beginning of the age listed:

Age	Average Remaining Lifetime
0	73.88
1	73.82
2	72.89
3	71.93
4	70.97
5	70.00
6	69.02
7	68.05
8	67.07
9	66.08
10	65.10
11	64.11
12	63.12
13	62.14
14	61.16
15	60.19
16	59.24
17	58.28
18	57.34
19	56.40
20	55.46
21	54.53
22	53.60
23	52.67
24	51.74
25	50.81
26	49.87
27	48.94
28	48.00
29	47.06
30	46.12
31	45.18
32	44.24
33	43.30
34	42.36
35	41.43
36	40.49
37	39.56
38	38.63
39	37.71
40	36.79
41	35.87
42	34.96
43	34.06
44	33.16
45	32.27
46	31.39
47	30.51
48	29.65
49	28.79
50	27.94
51	27.10
52	26.28
53	25.46
54	24.65
55	23.85
56	23.06
57	22.29
58	21.52
59	20.76
60	20.02
61	19.29
62	18.58
63	17.88
64	17.19
65	16.51
66	15.85
67	15.20
68	14.56
69	13.93
70	13.32
71	12.72
72	12.14
73	11.58
74	11.02
75	10.48
76	9.95
77	9.44
78	8.93
79	8.45
80	7.98
81	7.53
82	7.11
83	6.70
84	6.32
85	5.96
86	5.61
87	5.29
88	4.99
89	4.70
90	4.43
91	4.17
92	3.93
93	3.71
94	3.51
95	3.34
96	3.19
97	3.05
98	2.93
99	2.82

100	2.73
101	2.64
102	2.57
103	2.50
104	2.44
105	2.38
106	2.33
107	2.29
108	2.24
102	2.20

C. EMMETT CALVERT, Secretary
APPROVED BY AGENCY: March 26, 1990
FILED WITH LRC: April 12, 1990 at 2 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on May 21, 1990, at 10 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. If no written notice of intent to attend the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending shall notify in writing: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers
(1) Type and number of entities affected: Those affected are beneficiaries of estates whose beneficial share of the estate includes the value of a life estate, annuity, remainder interest or other interest which must be based on the life expectancy of the beneficiary or some other person. The number of beneficiaries affected is undeterminable, however, it probably will be in the hundreds for any given year.
(a) Direct and indirect costs or savings to those affected: The effect of this regulation on beneficiaries as a whole will be negligible. Whether the regulation will cost or save tax dollars for a given estate will depend entirely on the relationship of the life tenants and remaindermen to the deceased and the amounts or values inherited. This regulation could create a tax savings to an estate just as easy as a tax cost. For example, if a surviving spouse received a life estate in the deceased spouse's estate, the life expectancy table listed in the proposed regulation provides a greater life expectancy than the 1959-61 decennial life tables currently used for inheritance tax purposes. Consequently, the larger share passing to the surviving spouse is exempt leaving a smaller share to the remaindermen for tax purposes and an overall reduced tax burden.
1. First year: The effect of this regulation on the first year is nil since estates are given by statute 18 months to file an inheritance tax return.
2. Continuing costs or savings: Commencing with the second year, there will be a small savings to remaindermen of estates since the largest segment of life tenants consist of surviving spouses who are totally exempt from inheritance tax.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: This regulation does not increase any reporting or paperwork requirements of the decedents' estates.
(2) Effects on the promulgating administrative body: The only effect which this regulation will have on the Revenue Cabinet is the revision of its inheritance and estate tax return instructions to include the revised life expectancies. It will also reduce the complaints currently received due to use of the outdated life tables for the 1959-61 decennial period.
(a) Direct and indirect costs or savings:
1. First year: None known.
2. Continuing costs or savings: None known.
3. Additional factors increasing or decreasing costs: None known.
(b) Reporting and paperwork requirements: None except the revision of the inheritance tax packet as explained in (2) above.
(3) Assessment of anticipated effect on state and local revenues: This regulation could create a minimal tax decrease of $50,000 to the General Fund. It will not affect local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative considered was to utilize the 1986 United States life tables. The 1986 tables created a severe problem for the Cabinet in that the tables do not extend beyond the age of 85. To utilize the 1987 tables would require interpolating the 1979-81 decennial life tables for the purpose of estimating the life expectancy values for the ages of 86 through 109. The Cabinet did not have the expertise or the statistical data to arrive at defensible life expectancy values. Since the variance between the 1986 tables and the 1979-81 tables is only minimal, the Cabinet chose to use the 1979-81 tables because they provide life expectancies for all years. The cabinet could continue to use the unofficial 1959-61 decennial life tables as published in the table section of the Kentucky Revised Statutes published by Banks-Baldwin. The Cabinet originally suggested to the Legislative Research Commission that the life expectancy tables be updated by both publishers of the Kentucky Revised Statutes. Mr. Vic Hellard, Jr., Director, Legislative Research Commission, advised the Cabinet that it was his opinion that it would be inappropriate for the Reviser of Statutes to transmit for publication with the Kentucky Revised Statutes a life expectancy table that had not been duly promulgated by administrative regulation. Mr. Hellard advised the Cabinet to proceed with the promulgation of this regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(a) Necessity of proposed regulation if in conflict: 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: The table contained in Section 3 of the proposed regulation applies to a single life and does not contain any life expectancies for the purpose of computing a successive or a joint life expectancy. While the table could be used as a base, the calculation of joint or successive life expectancy tables would require separate algebraic equations which is not addressed herein.
TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Board of Physical Therapy

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapists' assistants.

RELATES TO: KRS 327.040, 327.070
STATUTORY AUTHORITY: KRS 327.040(11), (12)
NECESSITY AND FUNCTION: KRS 327.040(11) and (12) authorize the Board of Physical Therapy to establish by regulation a code of ethical standards and standards of practice for physical therapists and physical therapist's assistants. This regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS 327.070(9).

Section 1. As used in this administrative regulation, unless the context requires otherwise:
(1) "Board" means the Kentucky State Board of Physical Therapy.
(2) "Full time" means employment for forty (40) hours a week.
(3) "On-site supervision" means immediate physical accessibility within the same building.
(4) "Supportive personnel" means a person assisting in direct patient care who is not licensed or certified by the board to provide physical therapy.

Section 2. Code of Ethical Standards for the Physical Therapist and Physical Therapist's Assistant. Physical therapists and physical therapist's assistants shall:
(1) Respect the rights and dignity of all individuals;
(2) Maintain the confidentiality of patient information unless the patient or his appointed representative consents to its release;
(3) Provide accurate information to the consumer; and
(4) Report unethical, incompetent or illegal acts to the board.

Section 3. Standards of Practice for the Physical Therapist. When engaged in the practice of physical therapy, a physical therapist shall:
(1) Evaluate each patient. The patient shall be evaluated:
(a) Prior to initiation of any treatment;
(b) Upon receipt of a patient from another physical therapy service, facility or agency; and
(c) When requested by a referring professional.
(2) Refer the patient to other professionals or services when the treatment or service is beyond his scope of practice;
(3) Be responsible for the physical therapy record of each patient;
(4) Provide services that meet or exceed the generally accepted practice of the profession;
(5) Explain the plan of care to the patient, to others designated by the patient, and to appropriate professionals;
(6) Make it clear to the patient that the patient has the right to choose any qualified professional or equipment supply companies if the physical therapist makes recommendations for such;
(7) Disclose in writing to each patient any financial interest or compensation or other value to be received by the referral source:
(a) For services provided by the physical therapist;
(b) For equipment rental or purchase; and
(c) For other services the physical therapist might recommend for the patient.
(8) Unless prohibited by law, as members of a business entity be allowed to pool or apportion fees received in accordance with any business agreement.

Section 4. Standards of Practice for the Physical Therapist's Assistant. When engaged in the practice of physical therapy the physical therapist's assistant shall:
(1) Provide services only under the supervision and direction of a physical therapist;
(2) Refuse to carry out procedures that he believes are not in the best interest of the patient or that he is not competent to provide by training or skill level;
(3) Initiate treatment only after evaluation by the physical therapist;
(4) Upon direction from the physical therapist, gather data relating to the patient's disability, but not determine the significance of the data as it pertains to the development of the plan of care;
(5) Refer to the physical therapist inquiries that require an interpretation of patient information related to rehabilitation potential;
(6) Comply with the plan of supervision established by the physical therapist; and
(7) Communicate with the physical therapist any change or lack of change which occurs in the patient's condition which may indicate the need for reevaluation.

Section 5. Standards for Supervision. When supervising the physical therapist's assistant and supportive personnel, the physical therapist shall:
(1) Prepare a written plan for the training and supervision of supportive personnel. The plan shall be reviewed annually and revised as necessary. The plan shall be readily available for review by all physical therapists and physical therapist's assistants who work with the supportive personnel and shall include:
(a) A list of clinical competencies of each supportive personnel;
(b) The method for monitoring and supervising care provided by supportive personnel; and
(c) The date and signature of the supervisor and supportive personnel governed by the plan.
(2) At all times, including all work locations, be limited to:
(a) Supervising no more than four (4) full-time physical therapist's assistants or supportive personnel; or
(b) The number of those persons providing part-time patient care for a period equivalent to that provided by four (4) full-time providers of patient care.
(3) Be solely responsible for:
(a) Interpreting any referral;
(b) Conducting the initial physical therapy evaluation;
(c) Establishing reporting procedures to be followed by the physical therapist's assistant and supportive personnel;
(d) Evaluating the competency of physical therapist's assistants and supportive personnel;
(e) Supervising the physical therapist's assistant and supportive personnel;
(f) Reevaluating a patient after the earlier of every:

1. Twenty (20) physical therapy visits; or
2. Thirty (30) days following the initial evaluation or subsequent reevaluation.

(g) Reevaluating every ninety (90) days, with the physical therapist's assistant present, patients in:

1. A facility defined in 902 KAR 20:086 as an intermediate care facility (ICF) for the mentally retarded (MR) and developmentally disabled (DD); or
2. A school system.

(h) Reevaluating a patient whose medical condition has changed;

(i) Establishing discharge planning for patients who require continued physical therapy;

(j) Altering, extending, refusing or discontinuing treatment by the physical therapy service; and

(k) Insuring that when supportive personnel provide direct patient care that there is on-site supervision by a physical therapist or physical therapist's assistant.

Section 6. Standards for Documentation. The physical therapist is responsible for the physical therapy record of a patient. The physical therapy record shall consist of:

(1) The initial evaluation, a written report signed and dated by the physical therapist performing the evaluation which shall include:

(a) The patient's name, age and sex;
(b) Referral source, if appropriate;
(c) Pertinent medical and social history;
(d) Symptoms and date of onset;
(e) Medical diagnosis, if available;
(f) Subjective information;
(g) Appropriate objective testing;
(h) Precautions and contraindications;
(i) Problems, interpretation, assessment;
(j) Plan of care, including:

1. Treatment to be rendered;
2. Frequency and duration of treatment;
3. Referral to other professionals, if indicated;
4. Patient education and instruction; and
5. Measurable goals.

(2) Progress notes, which are written, signed and dated by the person rendering treatment, and countersigned and dated by the physical therapist when written by supportive personnel, physical therapist students, physical therapist's assistant students, or examination candidates. The progress notes shall include:

(a) A current record of treatment;
(b) Patient's response to treatment;
(c) Any factors affecting treatment; and
(d) Data obtained by all objective tests performed.

(3) Reevaluation, which is written, signed and dated by a physical therapist. If the physical therapist is treating the patient, these reports may be incorporated into the progress notes. If a physical therapist's assistant or supportive personnel are treating the patient, the report shall be a separate entry into the record. A reevaluation shall include directly observed objective, subjective, and medical data necessary for the revision or reaffirmation of the plan of care and measurable goals.

(4) Discharge summary, which is the written, signed, and dated statement of the patient's physical therapy status upon discharge, including reference to previously established goals and program plan. A physical therapist's assistant may write the discharge summary which shall be countersigned by the responsible physical therapist. The discharge summary shall include:

(a) Data and reason for discharge;
(b) Objective data related to the initial evaluation and subsequent review;
(c) A complete and accurate summary of the patient's status at the time of discharge. Status includes functional ability, increase or limitation of range of motion, decrease or increase of pain, muscle power, general physical and mental condition including tolerance; and
(d) Discharge plan, which means any recommendations the physical therapist has regarding the need for continuing physical therapy.

(5) The correct designation following the signature of the person who has entered a statement(s) into the patient record shall be as follows:

(a) If written by a physical therapist or a physical therapist candidate granted a temporary permit by the board: "P.T.";
(b) If written by a physical therapist's assistant or a physical therapist's assistant examination candidate granted a temporary permit by the board: "P.T.A.";
(c) If written by supportive personnel: "P.T. Aide", or "Physical Therapy Aide"; and
(d) If written by students: "Physical Therapist Student" or "P.T. Student"; "Physical Therapist's Assistant Student" or "P.T.A. Student".

WALTER KIM CLEARY, Chairman
APPROVED BY AGENCY: April 6, 1990
FILED WITH LRC: April 12, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1990 at 10 a.m. at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in attending this hearing shall notify this agency in writing by May 16, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mrs. Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, The Mall Office Center, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207-4215.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly

(1) Type and number of entities affected: All physical therapists licensed (1014) and physical therapist's assistants certified (323) to practice in Kentucky.

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

1. First year: Unknown. If costs are involved, should be minimal.
2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Physical therapist supervisors must document and then revise competencies of supportive personnel at least each year. Any licensee who is involved in a referral for profit situation must disclose this in writing to each patient or client involved.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None perceived.
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: No change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Standards of practice have, since 1975, been adopted by reference in 201 KAR 22:070. To be in compliance with 327.040(11), the code of ethical standards and standards of practice are to be established by regulation. This revision of the December 6, 1986 document was drafted in this form after a first draft was sent to all licensees in November 1989, written comments were invited and received, and four regional open forums were held by the board to receive additional comments. Each comment was considered and many were incorporated into this document.
TIERING: Was tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:250. Seasons and limits for upland game birds, furbearers and small game.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.180, 150.300, 150.305, 150.340, 150.360, 150.365, 150.370, 150.390, 150.399, 150.400, 150.410, 150.415, 150.416, 150.417, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation pertains to the hunting season, bag and possession limits for upland game birds, furbearers and small game and trapping season for furbearers. This regulation is necessary for the continued protection of the species listed and to insure a permanent and continued supply of wildlife resources for present and future residents of the state. The function of this regulation is to provide for the prudent taking of upland game birds, furbearers and small game within reasonable limits based upon an adequate supply.

Section 1. Definitions. (1) "Trap" means deadfall, wire cage or box trap, foot-hold trap, padded foot-hold trap, Conibear-type trap or nonlocking snare.
(2) "Foot-hold trap" means a spring-loaded trap with smooth, metallic jaws designed to capture an animal by closing upon one of its feet.
(3) "Padded foot-hold trap" means a spring-loaded trap with offset jaws designed to capture an animal by closing upon one of its feet and which is commercially constructed so the edges designed to touch the animal are composed of a nonmetallic substance.
(4) "Conibear-type trap" means a spring-loaded trap with opposing jaws designed to capture an animal around the neck or body and quickly render that animal unconscious or dead.
(5) "Nonlocking snare" means a wire, cable or string which forms a loop to capture an animal around the foot, neck or body and which is constructed without a device designed to prevent the loop from loosening.
(6) "Furbearer" means mink, muskrat, beaver, opossum, gray fox, red fox, raccoon, weasel, striped skunk and bobcat.

Section 2. Hunting and Trapping Seasons. (1) Squirrel (gray and fox): Eastern zone - first Saturday in September through the Friday before the second Saturday in November and the day following the ten (10) day deer gun season through December 31. The Eastern zone includes the following counties: Bell, Breathitt, Clay, Clinton, Elliott, Estill, Floyd, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, McCreary, Magoffin, Martin, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Russell, Wayne, and Whitley. Western zone - third Saturday in August through October 31, and the day following the ten (10) day deer gun season through December 31. The Western zone includes all counties not in the Eastern zone.
(2) Rabbits and quail: Zone A - November 1 through the Friday before the second Saturday in November and the day following the ten (10) day deer gun season through January 31. Zone A includes the following counties: Bell, Boyd, Breathitt, Carter, Clay, Elliott, Estill, Floyd, Greenup, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, McCreary, Magoffin, Martin, Menifee, Morgan, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Rowan, Russell, Wayne, Whitley and Wolfe.
Zone B - the day following the ten (10) day deer gun season through the third Sunday in February. Zone B includes all counties not listed in Zone A above.
(3) Grouse: the day following the ten (10) day deer gun season through the last day in February. Grouse hunting permitted only east of the line delineated by Interstate 75 from the Kentucky/Ohio state line to US 60, south of US 60 to the Bluegrass Parkway, south of the Bluegrass Parkway to Interstate 65, and east of Interstate 65 to the Kentucky/Tennessee state line.
(4) Furbearers: the day following the ten (10) day deer gun season through January 31. Bobcats shall be taken only according to provisions of 301 KAR 2:240.
(5) Extended beaver season: the entire month of February.
(6) Falconry hunting: squirrels, rabbits,

quail, ruffed grouse, and furbearers may be taken by falconry from September 1 through February 15.

Section 3. Legal Trapping Devices and Hunting Restrictions. (1) Traps. All traps set on dry land are limited to deadfalls, wire cage or box traps, No. 2 or smaller foot-hold traps, padded foot-hold traps having a jaw spread of six (6) inches or less, No. 220 or smaller Conibear-type traps and snares without self-locking devices. Traps shall not be set closer than ten (10) feet apart and shall not be set in trails or paths commonly used by humans or domestic animals. All traps are legal for water sets except during the extended beaver season as stipulated in subsection (2) of this section.

(2) Extended beaver season: trap restrictions. Traps of size No. 3 and larger, padded foot-hold traps having a jaw spread of five and one-half (5 1/2) inches or larger, Conibear-type traps, with jaw spread eight (8) inches or larger and nonlocking snares. Only water sets are permitted.

(3) The wildlife listed in this section may be taken by the use of hand or mouth operated calling or attracting devices.

(4) Taking raccoon and opossum. Raccoon and opossum shall not be taken from a vehicle or boat with the aid of artificial light at any time or any place except by trapping.

(5) Prohibited ammunition. No person hunting any species listed in this regulation shall have in his or her possession any buckshot or shotgun slugs.

(6) Shooting hours. Shooting hours for the species below are daylight hours only, except for raccoon and opossum which may be taken any time during day or night.

Section 4. Bag and Possession Limits.

Game	Bag Limits	Possession Limits
Squirrel (gray and fox)	6	12
Rabbit	4	8
Quail	8	16
Grouse	4	8
Furbearers (except raccoon by means other than trapping)	No limits	No limits
Raccoon (by means other than trapping)	1	No limits*
Falconry	During portions of this season which occur outside of seasons specified in Section 1(1), (2), (3) and (4) of this regulation, the daily falconry bag limit shall not exceed two (2) of any of these species, singly or in the aggregate, per falconer.	

*No possession limit on raccoons, except that no hunter shall take more than the daily bag limit within a twenty-four (24) hour period from noon to noon.

Section 5. Trapping Licenses. The following trapping licenses are required:

(1) Resident landowner or tenant trapping license. This license authorizes the licensee to take wild animals by trapping upon owned farmlands. The landowner's or tenant's dependent children or spouses may also purchase such a license. Either the tenant or his dependent children residing upon the owner's lands have the same privilege.

(2) Resident statewide trapping license. This license authorizes the holder to take wild animals by trapping upon his lands or lands of another person with written consent of the landowner.

(3) Nonresident statewide trapping license. This license authorizes the holder to take wild animals by trapping upon his lands or lands or another person with written consent of the landowner.

Section 6. 301 KAR 2:045 is hereby repealed.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman

APPROVED BY AGENCY: March 5, 1990
FILED WITH LRC: April 12, 1990 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 24, 1990 at 9 a.m. at the Commission Room, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 19, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lauren E. Schaaf, Director of Wildlife, 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: 340,000 small game hunters and 7,000 trappers are expected to participate in the hunting and trapping seasons proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and/or state trapping license. Indirect costs are determined by the individual, depending on his level of participation.

1. First year: Persons participating in the hunting or trapping seasons proposed by this regulation would be required to possess a valid hunting license ($8.50 for residents) or a valid trapping license ($11.50 resident, $6.00 resident landowner/tenant), respectively.

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

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Requires time and effort in developing,

publishing, reporting on, and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $900,000.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: 340,000 small game hunters may be expected to expend money for equipment, transportation, food and lodging. The average annual expenditure for these items by Kentucky small game hunters in $96.98 according to the 1980 National Hunting and Fishing Survey. The average season expenditure for Kentucky trappers during the 1981-82 trapping season was $209.32. State and local revenues can be expected to be positively affected due to necessary expenditures by small game hunters and trappers for the required licenses and due to taxes levied upon items purchased.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based on the wise use of renewable resources and the fact that small game and furbearer populations are at levels which can sustain a regulated harvest by sportsmen.

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

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

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Only parts of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerk's office serves as a distribution system for the hunting licenses required by this regulation. The County Circuit Courts are where violators of these regulations are prosecuted.

4. How does this administrative regulation affect the local government or any service it provides? The County Clerk's office personnel are involved in the sale of hunting licenses. This office receives a $.75/license fee for selling the licenses. The County Circuit Courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Education

705 KAR 4:220. Tuition and fees.

RELATES TO: KRS 163.087

STATUTORY AUTHORITY: KRS 156.070, 163.087

NECESSITY AND FUNCTION: KRS 163.087 gives the State Board for Adult, Vocational Education and Vocational Rehabilitation authority to set tuition and fees for postsecondary and adult students in the state-operated vocational-technical schools. This regulation implements that duty.

Section 1. Tuition for long-term adult (postsecondary) programs shall be paid at the beginning of each ten (10) to eleven (11) week term (quarter). Tuition is due the first day of each term. A ten (10) dollar late payment fee shall be assessed after the tenth school day. The following tuition schedule shall apply for FY 91 and FY 92:

Per Week Contact Hours	Per Term Credit Hours	Tuition Per Term (Quarter) In-State Cost	
		FY 91	FY 92
24 and over	12 and over	$75	$125
18-23	9-11	$65	$100
12-17	6-8	$45	$ 75
Under 12	1-5	$30	$ 50

Per Week Contact Hours	Per Term Credit Hours	Tuition Per Term (Quarter) Out-of-State Cost	
		FY 91	FY 92
24 and over	12 and over	$150	$250
18-23	9-11	$130	$200
12-17	6-8	$ 90	$150
Under 12	1-5	$ 60	$100

A nonrefundable application fee of fifteen (15) dollars for full-time and part-time students shall be paid with the completed application submitted prior to enrollment in a diploma or certificate program. Upon enrolling as a part-time or full-time student in a diploma or certificate program, a thirty-five (35) dollar registration fee for in-state and seventy (70) dollars for out-of-state is payable with tuition for the first term. The registration fee is a one (1) time charge per program. Full-time students are defined as those students enrolled for at least twenty-four (24) instructional hours or twelve (12) credit hours per term. Half-time students are enrolled for at least twelve (12) instructional hours or six (6) credit hours.

Section 2. Short-term continuing education classes for adults shall be designed to meet the needs of the labor market and for persons preparing or supplementing knowledge and skills for employment or job advancement. For FY 91 and FY 92, the cost to the general public for these classes shall include a minimum per course charge of fifteen (15) dollars for the first fifteen (15) hours and one (1) dollar and twenty-five (25) cents per instructional hour for all hours over fifteen (15). The equivalent cost per credit hour shall be eighteen (18) dollars for those schools with courses equated to credit hours.

Section 3. Costs for classes to meet specialized industry training needs in a region may be negotiated by the region on a shared-cost basis documented by a written agreement on file in the regional and state offices. Specialized training programs contracted at the state level to meet statewide training needs for industry shall be based on a minimum charge of two (2) dollars per instructional hour.

Section 4. Charges for avocational classes shall be based on cost-recovery of instructor cost and necessary supplies and materials.

Section 5. Effective July 15, 1990, a refund policy shall apply to tuition and registration charges for vocational-technical programs and classes in state-operated vocational schools. Students in certificate or diploma programs may receive a partial refund of tuition and twenty (20) dollars of the registration fee if requested within the first three (3) weeks of the program through official withdrawal and request for refund. The refund policy applies only to program withdrawal and does not apply to a reduced course load. The application fee is nonrefundable.

Section 6. Within the first five (5) school days of the program, students may receive a full tuition refund plus twenty (20) dollars of the registration fee. From six (6) to ten (1) school days, seventy-five (75) percent of the tuition and twenty (20) dollars of the registration fee is refundable. From eleven (11) to fifteen (15) school days, fifty (50) percent of the tuition and twenty (20) dollars of the registration fee may be refunded. There shall be no refund after the 15th school day.

Section 7. Students enrolled in continuing education courses may be granted a full tuition refund if official withdrawal and request for refund are completed prior to the third class session. No refunds shall be made after the third session, and tuition of fifteen (15) dollars or less shall not be refunded.

Section 8. Each school shall establish a tuition scholarship program to assist students with financial need. No student shall be deprived of an educational opportunity because of inability to pay. Financial assistance shall be available for students who lack financial resources to pay for their education but who, for special reasons, do not qualify for other financial aid.

GEORGE R. SIEMENS, JR., Chairman
APPROVED BY AGENCY: March 20, 1990
FILED WITH LRC: April 5, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing has been scheduled on May 24, 1990 at 10 a.m. EST, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its March 20 meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Frankfort, Kentucky 40601, on or before May 19, 1990. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joyce Logan
(1) Type and number of entities affected: 17 state vocational-technical schools, 5 postsecondary health occupations schools, 1 KATC, and 54 area vocational centers (postsecondary students).
(a) Direct and indirect costs or savings to those affected:
1. First year: No additional cost.
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Similar to present requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: No additional cost.
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: Similar to present requirements.
(3) Assessment of anticipated effect on state and local revenues: Will increase agency receipts from state-operated vocational schools.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Changes were made based upon study of present regulation and requirements by staff and a representative committee of school and regional personnel.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: No conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: This is a new regulation for tuition and fees for postsecondary students in state-operated vocational schools. An increase in tuition and fees results for FY 91 and FY 92.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal programs for financial aid, veterans' administration regulations, and JTPA do not specify what charges for tuition and fees should be, but do relate to these charges in calculations of aid for students. Financial Aid (CFR 668.14); Veterans (CFR 21.4253; Section 1775, Chapter 36, Title 38, U.S.C.); JTPA (P.L. 97-300).
2. State compliance standards. KRS 163.087 gives the State Board authority to set tuition and fees for postsecondary and adult students in state-operated vocational schools. Present tuition and fees are stated in 705 KAR 4:010.
3. Minimum or uniform standards contained in the federal mandate. Federal regulations do not contain standards for tuition and fees. The tuition and fees established for accredited schools are acceptable for federal legislation.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than

those required by the federal mandate? The federal regulations allow requirements to be set by the school; therefore, there is not a specific federal requirement for comparison.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Six-year Plan for Adult and Technical Education proposes an increase in tuition and fees as a part of the programming and school improvement effort. This new regulation provides a phase-in of the tuition and fee increases over the biennium and also establishes a refund policy.

EDUCATION AND HUMANITIES CABINET
Deparatment of Education
Office of Programs

709 KAR 1:011. Repeal of 709 KAR 1:010.

RELATES TO: KRS 13A.222
STATUTORY AUTHORITY: 156.070
NECESSITY AND FUNCTION: KRS 13A.222 requires definitions sections to be inserted at the beginning of each administrative regulation to which they apply. This regulation is no longer necessary or appropriate.

Section 1. 709 KAR 1:010 is repealed.

GEORGE R. SIEMENS, JR., Chairman
APPROVED BY AGENCY: March 20, 1990
FILED WITH LRC: April 5, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing has been scheduled on May 24, 1990 at 10 a.m. EST, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulations adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its March 20 meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Frankfort, Kentucky 40601, on or before May 19, 1990. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Brenda Rollins
(1) Type and number of entities affected: N/A
(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: N/A
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This regulation repeals 709 KAR 1:010 which defines terms and definitions. These definitions are now inserted at the beginning of each administrative regulation, thus making this regulation unnecessary.
TIERING: Was tiering applied?

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 100:073. Use of radionuclides in the healing arts.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 211.844 to provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this regulation is to provide requirements and provisions for the use of radioactive material in the healing arts and for issuance of licenses authorizing the medical use of radioactive material.

Section 1. Applicability. This regulation establishes requirements for specific licensees to possess, use, and transfer radioactive material for medical uses.

Section 2. License Required. (1) No person shall manufacture, produce, acquire, receive, possess, use, or transfer radioactive material for medical use except in accordance with a specific license issued pursuant to these regulations.
(2) Unless prohibited by license condition, an individual may receive, possess, use, or transfer radioactive material in accordance with the requirements in this regulation under the supervision of an authorized user as provided in Section 9 of this regulation.

Section 3. License Amendments. A licensee shall apply for and receive a license amendment:
(1) Before using radioactive material for a method or type of medical use not permitted by the license issued under this regulation;
(2) Before permitting anyone, except a visiting authorized user described in Section 10 of this regulation, to work as an authorized user under the license;
(3) Before changing a radiation safety officer or teletherapy physicist;
(4) Before ordering radioactive material in excess of the amount specified on the license;
(5) Before adding to or changing the areas of use or address or addresses of use identified in the application or on the license; and
(6) Before changing statements, representations, and procedures which are incorporated into the license.

Section 4. Notifications. A licensee shall notify the cabinet in writing within thirty (30) days when an authorized user, radiation safety officer, or teletherapy physicist, permanently discontinues performance of duties under the license.

Section 5. ALARA Program. (1) Each licensee shall develop and implement a written program to maintain radiation doses and releases of radioactive material in effluents to unrestricted areas as low as reasonably achievable in accordance with 902 KAR 100:015, Section 2 of these regulations.

(2) To satisfy the requirement of this section:

(a) The management, radiation safety officer, and all authorized users shall participate in the establishment, implementation, and operation of the program as required by these regulations or the Radiation Safety Committee; or

(b) For licensees that are not medical institutions, management and all authorized users shall participate in the program as required by the radiation safety officer.

(3) The ALARA program shall include an annual review by the Radiation Safety Committee for licensees that are medical institutions, or management and the radiation safety officer for licensees that are not medical institutions, of summaries of the types and amounts of radioactive material used, occupational dose reports, and continuing education and training for all personnel who work with or in the vicinity of radioactive material. The purpose of the review is to ensure that individuals make every reasonable effort to maintain occupational doses, doses to the general public, and releases of radioactive material as low as reasonably achievable, taking into account the state of technology, and the cost of improvements in relation to benefits.

(4) The licensee shall retain a current written description of the ALARA program for the duration of the license. The written description shall include:

(a) A commitment by management to keep occupational doses as low as reasonably achievable;

(b) A requirement that the radiation safety officer brief management once each year on the radiation safety program;

(c) Personnel exposure investigational levels that, when exceeded, will initiate an investigation by the radiation safety officer of the cause of the exposure; and

(d) Personnel exposure investigational levels that, when exceeded, will initiate a prompt investigation by the radiation safety officer of the cause of the exposure and a consideration of actions that might be taken to reduce the probability of recurrence.

Section 6. Radiation Safety Officer. (1) A licensee shall appoint a radiation safety officer responsible for implementing the radiation safety program. The licensee, through the radiation safety officer, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's radioactive material program.

(2) The radiation safety officer shall:

(a) Investigate overexposures, accidents, spills, losses, thefts, unauthorized receipts, uses, transfers, and disposals, and other deviations from approved radiation safety practice and implement corrective actions as necessary;

(b) Implement written policy and procedures for:

1. Authorizing the purchase of radioactive material;
2. Receiving and opening packages of radioactive material;
3. Storing radioactive material;
4. Keeping an inventory record of radioactive material;
5. Using radioactive material safely;
6. Taking emergency action if control of radioactive material is lost;
7. Performing periodic radiation surveys;
8. Performing checks of survey instruments and other safety equipment;
9. Disposing of radioactive material;
10. Training personnel who work in or frequent areas where radioactive material is used or stored; and
11. Keeping a copy of all records and reports required by cabinet regulations, a copy of these regulations, a copy of each licensing request and license and amendments, and the written policy and procedures required by the regulations; and

(c) For medical use not sited at a medical institution, approve or disapprove radiation safety program changes with the advice and consent of management prior to submittal to the cabinet for licensing action; or

(d) For medical use sited at a medical institution, assist the Radiation Safety Committee in the performance of its duties.

Section 7. Radiation Safety Committee. Each medical institution licensee shall establish a Radiation Safety Committee to oversee the use of radioactive material.

(1) The committee shall meet the following administrative requirements:

(a) Membership must consist of at least three (3) individuals and shall include an authorized user of each type of use permitted by the license, the radiation safety officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a radiation safety officer. Other members may be included as the licensee deems appropriate.

(b) The committee shall meet at least once each calendar quarter.

(c) To establish a quorum and to conduct business, one-half of the committee's membership shall be present, including the radiation safety officer and the management's representative.

(d) The minutes of each Radiation Safety Committee meeting shall include:

1. The date of the meeting;
2. Members present;
3. Members absent;
4. Summary of deliberations and discussions;
5. Recommended actions and the numerical results of all ballots; and
6. Document any reviews required in Section 3 and Section 7(2) of this regulation.

(e) The committee shall provide each member with a copy of the meeting minutes and retain one (1) copy until the cabinet authorizes its disposition.

(2) To oversee the use of licensed material, the committee shall:

(a) Be responsible for monitoring the

institutional program to maintain occupational doses as low as reasonably achievable;

(b) Review, on the basis of safety and with regard to the training and experience standards of this regulation, and approve or disapprove any individual who is to be listed as an authorized user, the radiation safety officer, or teletherapy physicist before submitting a license application or request for amendment or renewal;

(c) Review on the basis of safety and approve or disapprove each proposed method of use of radioactive material;

(d) Review on the basis of safety, and approve with the advice and consent of the radiation safety officer and the management representative, or disapprove procedures and radiation safety program changes prior to submittal to the cabinet for licensing action;

(e) Review quarterly, with the assistance of the radiation safety officer, occupational radiation exposure records of all personnel working with radioactive material;

(f) Review quarterly, with the assistance of the radiation safety officer, all incidents involving radioactive material with respect to cause and subsequent actions taken;

(g) Review annually, with the assistance of the radiation safety officer, the radioactive material program; and

(h) Establish a table of investigational levels for occupational dose that, when exceeded, will initiate investigations and considerations of action by the radiation safety officer.

Section 8. Statement of Authorities and Responsibilities. (1) A licensee shall provide sufficient authority and organizational freedom to the radiation safety officer and the Radiation Safety Committee to:

(a) Identify radiation safety problems;

(b) Initiate, recommend, or provide solutions; and

(c) Verify implementation of corrective actions.

(2) A licensee shall establish in writing the authorities, duties, responsibilities, and radiation safety activities of the radiation safety officer and the Radiation Safety Committee and retain the current edition of these statements as a record until the cabinet terminates the license.

Section 9. Supervision. (1) A licensee who permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user as allowed by Section 2 of this regulation shall:

(a) Instruct the supervised individual in the principles of radiation safety appropriate to that individual's use of radioactive material;

(b) Review the supervised individual's use of radioactive material, provide reinstruction as needed and review records kept to reflect this use;

(c) Require the authorized user to be immediately available to communicate with the supervised individual;

(d) Require the authorized user to be able to be physically present and available to the supervised individual on one (1) hour notice; and

(e) Require that only those individuals specifically trained, and designated by the authorized user, shall be permitted to administer radionuclides or radiation to patients.

(2) A licensee shall require the supervised individual receiving, possessing, using or transferring radioactive material under Section 2 of this regulation to:

(a) Follow the instructions of the supervising authorized user;

(b) Follow the procedures established by the radiation safety officer; and

(c) Comply with these regulations and the license conditions with respect to the use of radioactive material.

Section 10. Visiting Authorized User. (1) A licensee may permit any visiting authorized user to use licensed material for medical use under the terms of the licensee's license for sixty (60) days each year if:

(a) The visiting authorized user has the prior written permission of the licensee's management and, if the use occurs on behalf of an institution, the institution's Radiation Safety Committee;

(b) The licensee has a copy of the cabinet, another agreement state, or U.S. Nuclear Regulatory Commission license that identifies the visiting authorized user by name as an authorized user for medical use; and the supervising authorized user need not be present for each use of radioactive material; and

(c) Only those procedures for which the visiting authorized user is specifically authorized by the cabinet, another agreement state, or U.S. Nuclear Regulatory Commission license are performed by that individual.

(2) A licensee need not apply for a license amendment in order to permit a visiting authorized user to use licensed material as described in this section.

(3) A licensee shall retain copies of the records specified in this section for five (5) years from the date of the last visit.

Section 11. Mobile Nuclear Medicine Service Administrative Requirements. (1) The cabinet will only license mobile nuclear medicine services in accordance with this regulation and other applicable requirements of these regulations to serve clients who are not licensed for medical use by the cabinet.

(2) Mobile nuclear medicine service licensees shall retain for three (3) years after the last provision of service a letter signed by the management of each location where services are rendered that authorizes use of radioactive material.

(3) A mobile nuclear medicine service shall not have radioactive material delivered directly from the manufacturer or the distributor to the client's address of use.

Section 12. Records and Reports of Misadministrations. (1) When a misadministration involves any therapy procedure, the licensee shall notify the cabinet. The licensee shall also notify the referring physician of the affected patient and the patient or a responsible relative or guardian, unless the referring physician agrees to inform the patient or believes, based on medical judgment, that telling the patient or the patient's responsible relative or guardian would be harmful to one or the other, respectively. These notifications

must be made within twenty-four (24) hours after the licensee discovers the misadministration. If the referring physician, patient, or the patient's responsible relative or guardian cannot be reached within twenty-four (24) hours, the licensee shall notify them as soon as practicable. The licensee is not required to notify the patient or the patient's responsible relative or guardian without first consulting the referring physician; however, the licensee shall not delay medical care for the patient because of this.

(2) Within fifteen (15) days after an initial therapy misadministration report to the cabinet, the licensee shall report, in writing, to the cabinet and to the referring physician, and furnish a copy of the report to the patient or the patient's responsible relative or guardian if either was previously notified by the licensee as required by this section. The written report shall include the licensee's name; the referring physician's name; a brief description of the event; the effect on the patient; the action taken to prevent recurrence; whether the licensee informed the patient or the patient's responsible relative or guardian, and if not, why not. The report shall not include the patient's name or other information that could lead to identification of the patient.

(3) When a misadministration involves a diagnostic procedure, the radiation safety officer shall promptly investigate its cause, make a record for cabinet review, and retain the record as directed in this section. The licensee shall also notify the referring physician and the cabinet in writing within fifteen (15) days if the misadministration involved the use of radioactive material not intended for medical use, administration of dosage five (5)-fold different from the intended dosage, or administration of radioactive material such that the patient is likely to receive an organ dose greater than two (2) rems or a whole body dose greater than 500 millirems. Licensees may use dosimetry tables in package inserts, corrected only for amount of radioactivity administered, to determine whether a report is required.

(4) Each licensee shall retain a record of each misadministration for ten (10) years. The record shall contain the names of all individuals involved in the event, including the physician, allied health personnel, the patient, and the patient's referring physician, the patient's social security number or identification number if one has been assigned, a brief description of the event, the effect on the patient, and the action taken, if any, to prevent recurrence.

(5) Aside from the notification requirement, nothing in this section shall affect any rights or duties of licensees, and physicians in relation to each other, patients, or responsible relatives or guardians.

Section 13. Suppliers. A licensee shall use for medical use only:

(1) Radioactive material manufactured, labeled, packaged, and distributed in accordance with a license issued pursuant to these regulations or the equivalent regulations of another agreement state, or the U.S. Nuclear Regulatory Commission; and

(2) Reagent kits that have been manufactured, labeled, packaged, and distributed in accordance with an approval issued by the U.S. Department of Health and Human Services, Food and Drug Administration.

Section 14. Quality Control of Imaging Equipment. Each licensee shall establish written quality control procedures for all equipment used to obtain images from radionuclide studies. As a minimum, the procedures shall include quality control procedures recommended by equipment manufacturers or procedures which have been approved by the cabinet. The licensee shall conduct quality control procedures in accordance with written procedures.

Section 15. Possession, Use, Calibration, and Check of Dose Calibrators. (1) A medical use licensee authorized to administer radiopharmaceuticals shall possess a dose calibrator and use it to measure the amount of activity administered to each patient.

(2) A licensee shall:

(a) Check each dose calibrator for constancy with a dedicated check source at the beginning of each day of use. To satisfy the requirement of this section, the check shall be done on a frequently used setting with a sealed source of not less than ten (10) microcuries of radium-226 or fifty (50) microcuries of any other photon-emitting radionuclide with a half-life greater than ninety (90) days;

(b) Test each dose calibrator for accuracy upon installation and at intervals not to exceed twelve (12) months thereafter by assaying at least two (2) sealed sources containing different radionuclides, the activity of which the manufacturer has determined within five (5) percent of the stated activity, with minimum activity of ten (10) microcuries for radium-226 and fifty (50) microcuries for any other photon-emitting radionuclide, and at least one (1) of which has a principal photon energy between 100 keV and 500 keV;

(c) Test each dose calibrator for linearity upon installation and at intervals not to exceed three (3) months thereafter over the range of use between ten (10) microcuries and the highest dosage that will be administered; and

(d) Test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used. The licensee shall keep a record of this test for the duration of the use of the dose calibrator.

(3) A licensee shall mathematically correct dosage readings for any geometry or linearity error that exceeds ten (10) percent if the dosage is greater than ten (10) microcuries and shall repair or replace the dose calibrator if the accuracy or constancy error exceeds ten (10) percent.

(4) A licensee shall also perform checks and tests required by this section following adjustment or repair of the dose calibrator.

(5) A licensee shall retain a record of each check and test required by this section for three (3) years. The records required shall include:

(a) For subsection (2)(a) of this section, the model and serial number of the dose calibrator, the identity and calibrated activity of the radionuclide contained in the check source, the date of the check, the activity measured, the instrument settings, and the initials of the individual who performed the check;

(b) For subsection (2)(b) of this section, the

model and serial number of the dose calibrator, the model and serial number of each source used and the identity of the radionuclide contained in the source and its activity, the date of the test, the results of the test, the instrument settings, and the signature of the radiation safety officer;

(c) For subsection (2)(c) of this section, the model and serial number of the dose calibrator, the calculated activities, the measured activities, the date of the test, and the signature of the radiation safety officer; and

(d) For subsection (2)(d) of this section, the model and serial number of the dose calibrator, the configuration and calibrated activity of the source measured, the activity of the source, the activity measured and the instrument setting for each volume measured, the date of the test, and the signature of the radiation safety officer.

Section 16. Calibration and Check of Survey Instruments. (1) A licensee shall ensure that the survey instruments used to show compliance with this regulation have been calibrated before first use, annually, and following repair.

(2) To satisfy the requirements of this section, the licensee shall:

(a) Calibrate all required scale readings up to 1000 millirems per hour with a radiation source;

(b) For each scale that shall be calibrated, calibrate two (2) readings separated by at least fifty (50) percent of scale rating; and

(c) Conspicuously note on the instrument the apparent dose rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(3) The licensee shall:

(a) Consider a point as calibrated if the indicated dose rate differs from the calculated dose rate by not more than ten (10) percent; and

(b) Consider a point as calibrated if the indicated dose rate differs from the calculated dose rate by not more than twenty (20) percent and shall conspicuously attach a correction chart or graph to the instrument.

(4) A licensee shall check each survey instrument for proper operation with the dedicated check source before each use. The licensee is not required to keep records of these checks.

(5) The licensee shall retain a record of each calibration required in this section for three (3) years. The record shall include:

(a) A description of the calibration procedure; and

(b) A description of the source used and the certified dose rates from the source, and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, the signature of the individual who performed the calibration, and the date of calibration.

(6) To meet the requirements of this section, the licensee may obtain the services of individuals licensed by the cabinet, the U.S. Nuclear Regulatory Commission, or another agreement state, to perform calibrations of survey instruments. Records of calibrations which contain information required by paragraph (5) of this section shall be maintained by the licensee.

Section 17. Assay of Radiopharmaceutical Dosages. A licensee shall:

(1) Assay, before medical use, the activity of each radiopharmaceutical dosage that contains more than ten (10) microcuries of a photon-emitting radionuclide;

(2) Assay, before medical use, the activity of each radiopharmaceutical dosage with a desired activity of ten (10) microcuries or less of a photon-emitting radionuclide to verify that the dosage does not exceed ten (10) microcuries; and

(3) Retain a record of the assays required by this section for three (3) years. To satisfy this requirement, the record shall contain the:

(a) Generic name, trade name, or abbreviation of the radiopharmaceutical, lot number, expiration dates and the radionuclide;

(b) Patient's name, and identification number if one has been assigned;

(c) Prescribed dosage and activity of the dosage at the time of assay, or a notation that the total activity is less than ten (10) microcuries;

(d) Date and time of the assay and administration; and

(e) Initials of the individual who performed the assay.

Section 18. Authorization for Calibration and Reference Sources. Any person authorized by Section 2 of this regulation for medical use of radioactive material may receive, possess, and use the following radioactive material for check, calibration and reference use:

(1) Sealed sources, not exceeding fifteen (15) millicuries each, manufactured and distributed by persons specifically licensed pursuant to these regulations or equivalent provisions of the U.S. Nuclear Regulatory Commission, or another agreement state;

(2) Any radioactive material listed in Section 29 or 31 of this regulation with a half-life of 100 days or less in individual amounts not to exceed fifteen (15) millicuries;

(3) Any radioactive material listed in Sections 29 or 31 of this regulation with a half-life greater than 100 days in individual amounts not to exceed 200 microcuries each; and

(4) Technetium-99m in individual amounts not to exceed fifty (50) millicuries.

Section 19. Requirements for Possession of Sealed Sources and Brachytherapy Sources. (1) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer or equivalent instructions approved by the cabinet and shall maintain the instructions for the duration of source use in a legible form convenient to users.

(2) A licensee in possession of a sealed source shall assure that:

(a) The source is tested for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six (6) months before transfer to the licensee; and

(b) The source is tested for leakage at intervals not to exceed six (6) months or at intervals approved by the cabinet, another agreement state, or the U.S. Nuclear Regulatory Commission.

(3) To satisfy the leak test requirements of this section, the licensee shall assure that:

(a) Leak tests are capable of detecting the presence of 0.005 microcurie of radioactive material on the test sample, or in the case of

radium, the escape of radon at the rate of 0.001 microcurie per twenty-four (24) hours;

(b) Test samples are taken from the source or from the surfaces of the device in which the source is mounted or stored on which radioactive contamination might be expected to accumulate; and

(c) Test samples are taken when the source is in the "off" position.

(4) A licensee shall retain leak test records for five (5) years. The records shall contain the model number, and serial number, if assigned, of each source tested, the identity of each source radionuclide and its estimated activity, the measured activity of each test sample expressed in microcuries, a description of the method used to measure each test sample, the date of the test, and the signature of the radiation safety officer.

(5) If the leak test reveals the presence of 0.005 microcurie or more of removable contamination, the licensee shall:

(a) Immediately withdraw the sealed source from use and store it in accordance with the requirements of these regulations; and

(b) File a report with the cabinet within five (5) days of receiving the leak test results, describing the equipment involved, the test results, and the action taken.

(6) A licensee need not perform a leak test on the following sources:

(a) Sources containing only radioactive material with a half-life of less than thirty (30) days;

(b) Sources containing only radioactive material as a gas;

(c) Sources containing 100 microcuries or less of beta or photon-emitting material or ten (10) microcuries or less of alpha-emitting material;

(d) Seeds of iridium-192 encased in nylon ribbon; and

(e) Sources stored and not being used. The licensee shall, however, test each source for leakage before any use or transfer unless it has been tested for leakage within six (6) months before the date of use or transfer.

(7) A licensee in possession of a sealed source or brachytherapy source shall conduct a physical inventory of all such sources at intervals not to exceed three (3) months. The licensee shall retain each inventory record for five (5) years. The inventory records shall contain the model number of each source, the serial number if one has been assigned, the identity of each source radionuclide and its estimated activity, the location of each source, date of the inventory, and the signature of the radiation safety officer.

(8) A licensee in possession of a sealed source or brachytherapy source shall survey with a radiation survey instrument at intervals not to exceed three (3) months all areas where such sources are stored. This does not apply to teletherapy sources in teletherapy units or sealed sources in diagnostic devices.

(9) A licensee shall retain a record of each survey required in this section for three (3) years. The record shall include the date of the survey, a sketch of each area that was surveyed, and the measured dose rate at several points in each area expressed in millirems per hour, the model number and serial number of the survey instrument used to make the survey, and the signature of the radiation safety officer.

Section 20. Syringe Shields. (1) A licensee shall keep syringes that contain radioactive material to be administered in a radiation shield.

(2) A licensee shall require each individual who prepares or administers radiopharmaceuticals to use a syringe radiation shield unless the use of the shield is contraindicated for that patient.

Section 21. Syringe Labels. A licensee shall conspicuously label each syringe, or syringe radiation shield that contains a syringe with a radiopharmaceutical, with the radiopharmaceutical name or its abbreviation, the type of diagnostic study or therapy procedure to be performed, or the patient's name unless the radiopharmaceutical is to be administered immediately.

Section 22. Vial Shields. A licensee shall require each individual preparing or handling a vial that contains a radiopharmaceutical to keep the vial in a vial radiation shield.

Section 23. Vial Shield Labels. A licensee shall conspicuously label each vial radiation shield that contains a vial of a radiopharmaceutical with the radiopharmaceutical name or its abbreviation.

Section 24. Surveys for Contamination and Ambient Radiation Dose Rate. (1) A licensee shall survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

(2) A licensee shall survey with a radiation detection survey instrument at least once each week all areas where radiopharmaceuticals or radioactive wastes are stored.

(3) A licensee shall conduct the surveys required by this section so as to be able to measure dose rates as low as one-tenth (0.1) millirem per hour.

(4) A licensee shall establish dose rate action levels for the surveys required by this section and shall require that the individual performing the survey immediately notify the radiation safety officer if a dose rate exceeds an action level.

(5) A licensee shall survey for removable contamination each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered and each week where radioactive materials are stored.

(6) A licensee shall conduct the contamination surveys so as to be able to detect contamination on each wipe sample of 2000 disintegrations per minute.

(7) A licensee shall establish removable contamination action levels for the surveys and shall require that the individual performing the survey immediately notify the radiation safety officer if contamination exceeds action levels.

(8) A licensee shall retain a record of each survey required by this section for three (3) years. The record must include the date of the survey, a sketch of each area surveyed, action levels established for each area, the measured dose rate at several points in each area expressed in millirems per hour or the removable contamination in each area expressed in disintegrations per minute per 100 square centimeters, the serial number and the model

number of the instrument used to make the survey or analyze the samples, and the initials of the individual who performed the survey.

Section 25. Release of Patients Containing Radiopharmaceuticals or Permanent Implants. (1) A licensee shall not authorize release from confinement for medical care any patient administered a radiopharmaceutical until either:

(a) The dose rate from the patient is less than five (5) millirems per hour at a distance of one (1) meter; or

(b) The activity in the patient is less than thirty (30) millicuries.

(2) A licensee shall not authorize release from confinement for medical care any patient administered a permanent implant until the dose rate from the patient is less than five (5) millirems per hour at a distance of one (1) meter.

Section 26. Mobile Nuclear Medicine Service Technical Requirements. A licensee providing mobile nuclear medicine service shall:

(1) Transport to each address of use only syringes or vials containing prepared radiopharmaceuticals or radiopharmaceuticals that are intended for reconstitution of radiopharmaceutical kits;

(2) Bring into each address of use all radioactive material to be used and, before leaving, remove all unused radioactive material and associated radioactive waste;

(3) Secure or keep under constant surveillance and immediate control all radioactive material when in transit or at an address of use;

(4) Check survey instruments and dose calibrators as required in Section 15 and Section 16 of this regulation, and check all other transported equipment for proper function before medical use at each address of use;

(5) Carry a calibrated survey meter in each vehicle that is being used to transport radioactive material, and, before leaving a client address of use, survey all areas of radiopharmaceutical use with a radiation detection survey instrument to ensure that all radiopharmaceuticals and all associated radioactive waste have been removed; and

(6) Retain a record of each survey required by this section for three (3) years. The record must include the date of the survey, a sketch of each area that was surveyed, the measured dose rate at several points in each area of use expressed in millirems per hour, the model and serial number of the instrument used to make the survey, and the initials of the individual who performed the survey.

Section 27. Storage of Volatiles and Gases. (1) A licensee shall store volatile radiopharmaceuticals and radioactive gases in the shippers' radiation shield and container.

(2) A licensee shall store and use a multidose container in a properly functioning fume hood.

Section 28. Decay-in-storage. (1) A licensee shall hold radioactive material with a physical half-life of less than sixty-five (65) days for decay-in-storage before disposal in ordinary trash and is exempt from the requirements of 902 KAR 100:021, Section 2 of these regulations if the licensee:

(a) Holds radioactive material for decay a minimum of ten (10) half-lives;

(b) Monitors radioactive material at the container surface before disposal as ordinary trash and determines that its radioactivity cannot be distinguished from the background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding;

(c) Removes or obliterates all radiation labels; and

(d) Separates and monitors each generator column individually with all radiation shielding removed to ensure that its contents have decayed to background radiation level before disposal.

(2) For radioactive material disposed in accordance with this section, the licensee shall retain a record of each disposal for three (3) years. The record must include the date of the disposal, the date on which the radioactive material was placed in storage, the radionuclides disposed, the model and serial number of the survey instrument used, the background dose rate, the radiation dose rate measured at the surface of each waste container, and the name of the individual who performed the disposal.

Section 29. Use of Radiopharmaceuticals for Uptake, Dilution, or Excretion Studies. (1) A licensee may use the following prepared radiopharmaceuticals for diagnostic studies involving the measurement of uptake, dilution, or excretion:

(a) Iodine-131 as sodium iodide, iodinated human serum albumin (IHSA), labeled rose bengal, or sodium iodohippurate;

(b) Iodine-125 as sodium iodide or iodinated human serum albumin (IHSA);

(c) Cobalt-57 as labeled cyanocobalamin;

(d) Cobalt-58 as labeled cyanocobalamin;

(e) Cobalt-60 as labeled cyanocobalamin;

(f) Chromium-51 as sodium chromate or labeled human serum albumin;

(g) Iron-59 as citrate;

(h) Technetium-99m as pertechnetate;

(i) Any radioactive material in a radiopharmaceutical for a diagnostic use involving measurements of uptake, dilution, or excretion for which the Food and Drug Administration (FDA) has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND) or approved a "New Drug Application" (NDA).

(2) A licensee using a radiopharmaceutical for a clinical procedure other than one specified in the product label or package insert instructions shall comply with the product label or package insert instructions regarding physical form, route of administration and dosage range.

Section 30. Possession of Survey Instrument. A licensee authorized to use radioactive material for uptake, dilution, and excretion studies shall possess a portable radiation detection survey instrument capable of detecting dose rates over the range one-tenth (0.1) millirem per hour to fifty (50) millirems per hour. The instrument shall be operable and calibrated in accordance with Section 16 of this regulation.

Section 31. Use of Radiopharmaceuticals, Generators, and Reagent Kits for Imaging and Localization Studies. (1) A licensee may use the following radiopharmaceuticals, generators, and reagent kits for imaging and localization studies:

(a) Molybdenum-99/technetium-99m generators for the elution or extraction of technetium-99m as pertechnetate;
(b) Technetium-99m as pertechnetate;
(c) Prepared radiopharmaceuticals and reagent kits for the preparation of the following technetium-99m labeled radiopharmaceuticals:
1. Sulfur colloid;
2. Pentetate sodium;
3. Human serum albumin microspheres;
4. Polyphosphate;
5. Macroaggregated human serum albumin;
6. Etidronate sodium;
7. Stannous pyrophosphate;
8. Human serum albumin;
9. Medronate sodium;
10. Gluceptate sodium;
11. Oxidronate sodium;
12. Disofenin; and
13. Succimer.
(d) Iodine-131 as sodium iodide, iodinated human serum albumin, macroaggregated iodinated human serum albumin, colloidal (macroaggregated) iodinated human serum albumin, rose bengal, or sodium iodohippurate;
(e) Iodine-125 as sodium iodide or fibrinogen;
(f) Chromium-51 as human serum albumin;
(g) Gold-198 in colloidal form;
(h) Mercury-197 as chlormerodrin;
(i) Selenium-75 as selenomethionine;
(j) Strontium-85 as nitrate;
(k) Ytterbium-169 as pentetate sodium;
(l) Gallium-67 as citrate;
(m) Indium-111 as chloride or DTPA;
(n) Tin-113/indium-113m generators for the elution of indium-113m as chloride;
(o) Yttrium-87/strontium-87m generators for the elution of strontium-87m;
(p) Thallium-201 as chloride;
(q) Iodine-123 as sodium iodide or iodohippurate;
(r) Any radioactive material in a diagnostic radiopharmaceutical, except aerosol or gaseous form, or any generator or reagent kit for preparation and diagnostic use of a radiopharmaceutical containing radioactive material for which the Food and Drug Administration has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND) or approved a "New Drug Application" (NDA).
(2) A licensee using radiopharmaceuticals for clinical procedures shall comply with the product label or package insert regarding physical form, route of administration, and dosage range.
(3) A licensee shall elute generators in compliance with Section 32 of this regulation and prepare radiopharmaceuticals from kits in accordance with the manufacturer's instructions.
(4) Technetium-99m pentetate as an aerosol for lung function studies is not subject to the restrictions in subsection (2) of this section.
(5) Provided the conditions of Section 33 of this regulation are met, a licensee shall use radioactive aerosols or gases only if specific application is made to and approved by the cabinet.

Section 32. Permissible Molybdenum-99 Concentration. (1) A licensee shall not administer to humans a radiopharmaceutical containing more than 0.15 microcurie of molybdenum-99 per millicurie of technetium-99m.
(2) A licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators shall measure the molybdenum-99 concentration in each elute or extract.
(3) This testing shall be conducted according to written procedures and by personnel who have been specifically trained to perform the test.
(4) A licensee who must measure molybdenum concentration shall retain a record of each measurement for three (3) years. The record shall include, for each elution or extraction of technetium-99m, the measured activity of the technetium expressed in millicuries, the measured activity of molybdenum expressed in microcuries, the ratio of the measures expressed as microcuries of molybdenum per millicurie of technetium, the date of the test, and the initials of the individual who performed the test.
(5) A licensee shall report immediately to the cabinet each occurrence of molybdenum-99 concentration exceeding the limits specified in this section.

Section 33. Control of Aerosols and Gases. (1) A licensee who administers radioactive aerosols or gases shall do so with a system that will keep airborne concentrations within the limits prescribed by 902 KAR 100:020, Section 4 and Section 8 of these regulations.
(2) The system shall either be directly vented to the atmosphere through an air exhaust or provide for collection and decay or disposal of the aerosol or gas in a shielded container.
(3) A licensee shall only administer radioactive gases in rooms that are at negative pressure compared to surrounding rooms.
(4) Before receiving, using, or storing a radioactive gas, the licensee shall calculate the amount of time needed after a release to reduce the concentration in the area of use to the occupational limit listed in 902 KAR 100:025 of these regulations. The calculation shall be based on the highest activity of gas handled in a single container and the measured available air exhaust rate.
(5) A licensee shall post the time calculated in this section at the area of use and require that, in case of a gas spill, individuals evacuate the room until the posted time has elapsed.
(6) A licensee shall check the operation of collection systems monthly and measure the ventilation rates in areas of use at intervals not to exceed six (6) months. Records of these checks and measurements shall be maintained for three (3) years.
(7) A copy of the calculations required in subsection (4) of this section shall be recorded and retained for the duration of the license.

Section 34. Possession of Survey Instruments. A licensee authorized to use radioactive material for imaging and localization studies shall possess a portable radiation detection survey instrument capable of detecting dose rates over the range of one-tenth (0.1) millirem per hour to fifty (50) millirems per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range one (1) millirem per hour to 1000 millirems per hour. The instruments shall be operable and calibrated in accordance with Section 16 of this regulation.

Section 35. Use of Radiopharmaceuticals for Therapy. A licensee may use the following prepared radiopharmaceuticals:

(1) Iodine-131 as iodide for treatment of hyperthyroidism, cardiac dysfunction, and thyroid carcinoma;

(2) Phosphorus-32 as soluble phosphate for treatment of polycythemia vera, leukemia, and bone metastases;

(3) Phosphorus-32 as colloidal chromic phosphate for intracavitary treatment of malignant effusions;

(4) Gold-198 as colloid for intracavitary treatment of malignant effusions;

(5) Any radioactive material in a radiopharmaceutical and for a therapeutic use for which the Food and Drug Administration has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND), or approved a "New Drug Application" (NDA). The licensee shall comply with the package insert instructions regarding indications and method of administration.

Section 36. Safety Instruction. (1) A licensee shall provide oral and written radiation safety instruction for all personnel caring for patients undergoing radiopharmaceutical therapy. Refresher training shall be provided at intervals not to exceed one (1) year.

(2) The instruction shall describe the licensee's procedures for:

(a) Patient control;

(b) Visitor control;

(c) Contamination control;

(d) Waste control; and

(e) Notification of the radiation safety officer or authorized user in case of the patient's death or medical emergency.

(3) A licensee shall keep a record of individuals receiving instruction including a description of the instruction, the date of instruction, and the name of the individual who gave the instruction. Such record shall be maintained for inspection by the cabinet for three (3) years.

Section 37. Safety Precautions. (1) For each patient receiving radiopharmaceutical therapy and hospitalized for compliance with Section 25 of this regulation, a licensee shall:

(a) Provide a private room with a private sanitary facility;

(b) Post the patient's door with a "Caution: Radioactive Material" sign and note on the door or on the patient's chart where and how long visitors may stay in the patient's room;

(c) Authorize visits by individuals under eighteen (18) years of age only on a case-by-case basis with the approval of the authorized user after consultation with the radiation safety officer;

(d) Promptly after administration of the dosage, measure the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of 902 KAR 100:020, Section 7 of these regulations and retain for three (3) years a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in millirems per hour, the model and serial number of the instrument used to make the survey, and the initials of the individual who made the survey;

(e) Either monitor material and items removed from the patient's room to determine that any contamination cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle these materials and items as radioactive waste;

(f) Provide the patient with radiation safety guidance that will help to keep radiation dose to household members and the public as low as reasonably achievable before authorizing release of the patient;

(g) Survey the patient's room and private sanitary facility for removable contamination with a radiation detection survey instrument before assigning another patient to the room. The room must not be reassigned until removable contamination is less than 200 disintegrations per minute per 100 square centimeters; and

(h) Measure the thyroid burden of each individual who helped prepare or administer a dosage of iodine-131 within three (3) days after administering the dosage, and retain for the period required by 902 KAR 100:020, Section 15(3) of these regulations a record of each thyroid burden measurement, date of measurement, the name of the individual whose thyroid burden was measured, and the initials of the individual who made the measurements.

(2) A licensee shall notify the radiation safety officer or the authorized user immediately if the patient dies or has a medical emergency.

Section 38. Possession of Survey Instruments. A licensee authorized to use radioactive material for radiopharmaceutical therapy shall possess a portable radiation detection survey instrument capable of detecting dose rates over the range one-tenth (0.1) millirem per hour to fifty (50) millirems per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range one (1) millirem per hour to 1000 millirems per hour. The instruments shall be operable and calibrated in accordance with Section 16 of this regulation.

Section 39. Use of Sealed Sources for Diagnosis. A licensee shall use the following sealed sources in accordance with the manufacturer's radiation safety and handling instructions:

(1) Iodine-125 as a sealed source in a device for bone mineral analysis;

(2) Americium-241 as a sealed source in a device for bone mineral analysis;

(3) Gadolinium-153 as a sealed source in a device for bone mineral analysis; and

(4) Iodine-125 as a sealed source in a portable device for imaging.

Section 40. Availability of Survey Instrument. A licensee authorized to use radioactive material as a sealed source for diagnostic purposes shall have available for use a portable radiation detection survey instrument capable of detecting dose rates over the range one-tenth (0.1) millirem per hour to fifty (50) millirems per hour or a portable radiation measurement survey instrument capable of measuring dose rates over the range one (1) millirem per hour to 1000 millirems per hour. The instrument shall

be operable and calibrated in accordance with Section 16 of this regulation.

Section 41. Use of Sources for Brachytherapy. A licensee shall use the following sources in accordance with the manufacturer's radiation safety and handling instructions:

(1) Cesium-137 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(2) Cobalt-60 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(3) Gold-198 as a sealed source in seeds for interstitial treatment of cancer;

(4) Iodine-125 as a sealed source in seeds for interstitial treatment of cancer;

(5) Iridium-192 as seeds encased in nylon ribbon for interstitial treatment of cancer;

(6) Radium-226 as a sealed source in needles or applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(7) Radon-222 as seeds for interstitial treatment of cancer;

(8) Palladium-103 as a sealed source in seeds for interstitial treatment of cancer; and

(9) Strontium-90 as a sealed source in an applicator for treatment of superficial eye conditions.

Section 42. Safety Instruction. (1) The licensee shall provide oral and written radiation safety instruction to all personnel caring for a patient receiving implant therapy. Refresher training shall be provided at intervals not to exceed one (1) year.

(2) The instruction shall describe:

(a) Size and appearance of the brachytherapy sources;

(b) Safe handling and shielding instructions in case of a dislodged source;

(c) Procedures for patient control;

(d) Procedures for visitor control; and

(e) Procedures for notification of the radiation safety officer or authorized user if the patient dies or has a medical emergency.

(3) A licensee shall maintain a record of individuals receiving instruction including, a description of the instruction, the date of instruction, and the name of the individual who gave the instruction for three (3) years.

Section 43. Safety Precautions. (1) For each patient receiving implant therapy a licensee shall:

(a) Not place the patient in the same room with a patient who is not receiving radiation therapy unless the licensee can demonstrate compliance with the requirement of 902 KAR 100:020, Section 7(1) of these regulations at a distance of one (1) meter from the implant;

(b) Post the patient's door with a "Caution: Radioactive Materials" sign and note on the door or the patient's chart where and how long visitors may stay in the patient's room;

(c) Authorize visits by individuals under eighteen (18) years of age only on a case-by-case basis with the approval of the authorized user after consultation with the radiation safety officer;

(d) Promptly after implanting the sources, survey the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with 902 KAR 100:020, Section 7(1) of these regulations and retain for three (3) years a record of each survey that includes the time and date of the survey, a sketch of the area or list of points surveyed, the measured dose rate at several points expressed in millirems per hour, the model and serial number of the instrument used to make the survey, and the initials of the individual who made the survey; and

(e) Provide the patient with radiation safety guidance that will help keep the radiation dose to household members and the public as low as reasonably achievable before releasing the patient if the patient was administered a permanent implant.

(2) A licensee shall notify the radiation safety officer or authorized user immediately if the patient dies or has a medical emergency.

Section 44. Brachytherapy Sources Inventory. (1) Each time brachytherapy sources are returned to an area of storage from an area of use, the licensee shall immediately count or otherwise verify the number returned to ensure that all sources taken from the storage area have been returned.

(2) A licensee shall make a record of brachytherapy source utilization which includes:

(a) The names of the individuals permitted to handle the sources;

(b) The number and activity of sources removed from storage, the room number of use and patient's name, the time and date they were removed from storage, the number and activity of sources in storage after the removal, and the initials of the individual who removed the sources from storage; and

(c) The number and activity of sources returned to storage, the room number of use and patient's name, the time and date they were returned to storage, the number and activity of sources in storage after the return, and the initials of the individual who returned the sources to storage.

(3) Immediately after implanting sources in a patient and immediately after removal of sources from a patient, the licensee shall make a radiation survey of the patient and the area of use to confirm that no sources have been misplaced. The licensee shall make a record of each survey.

(4) A licensee shall maintain the records required in this section for three (3) years.

Section 45. Release of Patients Treated With Temporary Implants. (1) Immediately after removing the last temporary implant source from a patient, the licensee shall make a radiation survey of the patient with a radiation detection survey instrument to confirm that all sources have been removed. The licensee shall not release from confinement for medical care a patient treated by temporary implants until all sources have been removed.

(2) A licensee shall maintain a record of patient surveys which demonstrate compliance with this section for three (3) years. Each record shall include the date of the survey, the name of the patient, the dose rate from the patient expressed as millirems per hour and measured within one (1) meter from the patient, and the initials of the individual who made the survey.

Section 46. Possession of Survey Instruments. A licensee authorized to use radioactive material for implant therapy shall possess a portable radiation detection survey instrument capable of detecting dose rates over the range one-tenth (0.1) millirem per hour to fifty (50) millirems per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range one (1) millirem per hour to 1000 millirems per hour. The instruments shall be operable and calibrated in accordance with Section 16 of this regulation.

Section 47. Training for Nonexperienced Radiation Safety Officer. Except as provided in Section 48 of this regulation, an individual fulfilling the responsibilities of the radiation safety officer as provided in Section 6 of this regulation shall:

(1) Be certified by the:

(a) American Board of Health Physics in Comprehensive Health Physics;

(b) American Board of Radiology in Radiological Physics, Therapeutic Radiological Physics, or Medical Nuclear Physics;

(c) American Board of Nuclear Medicine;

(d) American Board of Science in Nuclear Medicine; or

(e) Board of Pharmaceutical Specialties in Nuclear Pharmacy or Science; or

(2) Have had 200 hours of classroom and laboratory training as follows:

(a) Radiation physics and instrumentation;

(b) Radiation protection;

(c) Mathematics pertaining to the use and measurement of radioactivity;

(d) Radiation biology;

(e) Radiopharmaceutical chemistry; and

(f) One (1) year of full time experience in radiation safety at a medical institution under the supervision of the individual identified as the radiation safety officer on the cabinet, another agreement state, or U.S. Nuclear Regulatory Commission license that authorizes the medical use of radioactive material;

(3) Be an authorized user for those radioactive material uses that come within the radiation safety officer's responsibilities.

Section 48. Training for Experienced Radiation Safety Officer. An individual identified as a radiation safety officer on the cabinet, another agreement state, or U.S. Nuclear Regulatory Commission license before the effective date of this regulation who oversees only the use of radioactive material for which the licensee was authorized on that date need not comply with the training requirements of Section 47 of this regulation.

Section 49. Training for Uptake, Dilution, or Excretion Studies. Except as provided in Sections 56 and 57 of this regulation, the licensee shall require the authorized user of a radiopharmaceutical listed in Section 29 of this regulation to be a physician who:

(1) Is certified in:

(a) Nuclear medicine by the American Board of Nuclear Medicine; or

(b) Diagnostic radiology by the American Board of Radiology; or

(c) Diagnostic radiology or radiology within the previous five (5) years by the American Osteopathic Board of Radiology; or

(d) Nuclear medicine by the American Osteopathic Board of Nuclear Medicine; or

(2) Has completed forty (40) hours of instruction in basic radionuclide handling techniques applicable to the use of prepared radiopharmaceuticals, and twenty (20) hours of supervised clinical experience.

(a) To satisfy the basic instruction requirement, forty (40) hours of classroom and laboratory instruction shall include:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity;

4. Radiation biology; and

5. Radiopharmaceutical chemistry.

(b) To satisfy the requirement for twenty (20) hours of supervised clinical experience, training must be under the supervision of an authorized user at a medical institution and shall include:

1. Examining patients and reviewing their case histories to determine their suitability for radionuclide diagnosis, limitations, or contraindications;

2. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

3. Administering dosages to patients and using syringe radiation shields;

4. Collaborating with the authorized user in the interpretation of radionuclide test results; and

5. Patient follow-up; or

(3) Has successfully completed a six (6) month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in this section.

Section 50. Training for Imaging and Localization Studies. Except as provided in Sections 56 or 57 of this regulation, the licensee shall require the authorized user of a radiopharmaceutical, generator, or reagent kit specified in Section 31 of this regulation to be a physician who:

(1) Is certified in:

(a) Nuclear medicine by the American Board of Nuclear Medicine; or

(b) Diagnostic radiology by the American Board of Radiology; or

(c) Diagnostic radiology or radiology within the previous five (5) years by the American Osteopathic Board of Radiology; or

(d) Nuclear medicine by the American Osteopathic Board of Nuclear Medicine; or

(2) Has completed 200 hours of instruction in basic radionuclide handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, 500 hours of supervised work experience, and 500 hours of supervised clinical experience.

(a) To satisfy the basic instruction requirement, 200 hours of classroom and laboratory training shall include:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity;

4. Radiopharmaceutical chemistry; and

5. Radiation biology.

(b) To satisfy the requirement for 500 hours of supervised work experience, training shall be

under the supervision of an authorized user at a medical institution and shall include:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;
3. Calculating and safely preparing patient dosages;
4. Using administrative controls to prevent the misadministration of radioactive material;
5. Using emergency procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
6. Eluting technetium-99m from generator systems, assaying and testing the elute for molybdenum-99 and alumina contamination, and processing the elute with reagent kits to prepare technetium-99m labeled radiopharmaceuticals.

(c) To satisfy the requirement for 500 hours of supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution and shall include:

1. Examining patients and reviewing their case histories to determine their suitability for radionuclide diagnosis, limitations, or contraindications;
2. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;
3. Administering dosages to patients and using syringe radiation shields;
4. Collaborating with the authorized user in the interpretation of radionuclide test results; and
5. Patient follow-up; or

(3) Has successfully completed a six (6) month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in this section.

Section 51. Training for Therapeutic Use of Radiopharmaceuticals. Except as provided in Section 56 of this regulation, the licensee shall require the authorized user of a radiopharmaceutical listed in Section 35 of this regulation for therapy to be a physician who:

(1) Is certified by:

(a) The American Board of Nuclear Medicine; or

(b) The American Board of Radiology in radiology, therapeutic radiology or radiation oncology; or

(2) Has completed eighty (80) hours of instruction in basic radionuclide handling techniques applicable to the use of therapeutic radiopharmaceuticals, and has had supervised clinical experience.

(a) To satisfy the requirement for instruction, eighty (80) hours of classroom and laboratory training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity; and
4. Radiation biology;

(b) To satisfy the requirement for supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution and shall include:

1. Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten (10) individuals;
2. Use of soluble phosphorus-32 for the treatment of ascites, polycythemia vera, leukemia, or bone metastases in three (3) individuals;
3. Use of iodine-131 for treatment of thyroid carcinoma in three (3) individuals; and
4. Use of colloidal chromic phosphorus-32 or of colloidal gold-198 for intracavitary treatment of malignant effusions in three (3) individuals.

Section 52. Training for Therapeutic Use of Brachytherapy Sources. Except as provided in Section 56 of this regulation, the licensee shall require the authorized user using a brachytherapy source specified in Section 41 of this regulation for therapy to be a physician who:

(1) Is certified in:

(a) Radiology, therapeutic radiology or radiation oncology by the American Board of Radiology; or

(b) Radiation oncology by the American Osteopathic Board of Radiology; or

(c) Radiology, with a specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(d) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(2) Is in the active practice of therapeutic radiology, has completed 200 hours of instruction in basic radionuclide handling techniques applicable to the therapeutic use of brachytherapy sources and 500 hours of supervised work experience and a minimum of three (3) years of supervised clinical experience.

(a) To satisfy the requirement for instruction, 200 hours of classroom and laboratory training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity; and
4. Radiation biology.

(b) To satisfy the requirement for 500 hours of supervised work experience, training shall be under the supervision of an authorized user at a medical institution and shall include:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Checking survey meters for proper operation;
3. Preparing, implanting, and removing sealed sources;
4. Using administrative controls to prevent the misadministration of radioactive material; and
5. Using emergency procedures to control radioactive material.

(c) To satisfy the requirement for a period of supervised clinical experience, training shall include one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience shall include:

1. Examining individuals and reviewing their

case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;
2. Selecting the proper brachytherapy sources, dose, and method of administration;
3. Calculating the dose; and
4. Postadministration follow-up and review of case histories in collaboration with the authorized user.

Section 53. Training for Teletherapy. Except as provided in Section 56 of this regulation, the licensee shall require the authorized user of a sealed source specified in 902 KAR 100:017, Section 2 in a teletherapy unit to be a physician who:
(1) Is certified in:
(a) Radiology, therapeutic radiology or radiation oncology by the American Board of Radiology; or
(b) Radiation oncology by the American Osteopathic Board of Radiology; or
(c) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or
(d) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or
(2) Is in the active practice of therapeutic radiology, and has completed 200 hours of instruction in basic radionuclide techniques applicable to the use of a sealed source in a teletherapy unit, 500 hours of supervised work experience, and a minimum of three (3) years of supervised clinical experience.
(a) To satisfy the requirement for instruction, the classroom and laboratory training shall include:
1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity; and
4. Radiation biology.
(b) To satisfy the requirement for supervised work experience, training shall be under the supervision of an authorized user at an institution and shall include:
1. Review of the full calibration measurements and periodic spot checks;
2. Preparing treatment plans and calculating treatment times;
3. Using administrative controls to prevent misadministrations;
4. Implementing emergency procedures to be followed in the event of the abnormal operation of a teletherapy unit or console; and
5. Checking and using survey meters.
(c) To satisfy the requirement for a period of supervised clinical experience, training shall include one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience shall include:
1. Examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment, and any limitations or contraindications;
2. Selecting the proper dose and how it is to be administered;
3. Calculating the teletherapy doses and collaborating with the authorized user in the review of patients' progress and consideration of the need to modify originally prescribed doses as warranted by patients' reaction to radiation; and
4. Postadministration follow-up and review of case histories.

Section 54. Training for Ophthalmic Use of Strontium-90. Except as provided in Section 56 of this regulation, the licensee shall require the authorized user using only strontium-90 for opthalmic radiotherapy to be a physician who:
(1) Is certified in radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; or
(2) Is in the active practice of therapeutic radiology or ophthalmology, and has completed twenty-four (24) hours of instruction in basic radionuclide handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy.
(a) To satisfy the requirement for instruction, the classroom and laboratory training shall include:
1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity; and
4. Radiation biology.
(b) To satisfy the requirement for a period of supervised clinical training in ophthalmic radiotherapy, training shall be under the supervision of an authorized user at a medical institution and shall include the use of strontium-90 for the ophthalmic treatment of five (5) individuals that includes:
1. Examination of each individual to be treated;
2. Calculation of the dose to be administered;
3. Administration of the dose; and
4. Follow-up and review of each individual's case history.

Section 55. Training for Use of Sealed Sources for Diagnosis. Except as provided in Section 56 of this regulation, the licensee shall require the authorized user using a sealed source in a device specified in Section 39 of this regulation to be a physician, dentist, or podiatrist who:
(1) Is certified in:
(a) Radiology, diagnostic radiology with special competence in nuclear radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; or
(b) Nuclear medicine by the American Board of Nuclear Medicine; or
(c) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or
(2) Has completed eight (8) hours of classroom and laboratory instruction in basic radionuclide handling techniques specifically applicable to the use of the device. To satisfy the requirement for instruction, the training shall include:
(a) Radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;
(b) Radiation biology; and
(c) Radiation protection and training in the use of the device for the purposes authorized by the license.

Section 56. Training for Experienced Authorized Users. Practitioners of the healing arts identified as authorized users for the human use of radioactive material on the cabinet, another agreement state or U. S. Nuclear Regulatory Commission license, before the effective date of this regulation, who perform only those methods of use for which they were authorized on that date need not comply with the training requirements of Section 47 through Section 55 of this regulation.

Section 57. Physician Training in a Three-month Program. A physician who, before July 1, 1984, began a three (3)-month nuclear medicine training program approved by the Accreditation Council for Graduate Medical Education and has successfully completed the program, is exempted from the requirements of Section 49 or Section 50 of this regulation.

Section 58. Recentness of Training. The training and experience specified in Section 47 through Section 55 of this regulation shall have been obtained within the five (5) years preceding the date of application or the individual shall have had continuing applicable experience since the required training and experience was completed.

Section 59. Repeals. 902 KAR 100:051, Specific licenses for human use; 902 KAR 100:075, Groups classifications; and 902 KAR 100:095, Sealed sources; are hereby repealed.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: February 14, 1990
FILED WITH LRC: April 5, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 22, 1990 at 9 a.m. in the Department for Employment Services, Second Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 17, 1990, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald R. Hughes, Sr.
(1) Type and number of entities affected: 94 radioactive material licensees.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to those affected entities.
1. First year: Does not apply.
2. Continuing costs or savings: Does not apply.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Does not apply.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements provided the licensee remains in compliance.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency.
1. First year: Does not apply.
2. Continuing costs or savings: Does not apply.
3. Additional factors increasing or decreasing costs: Does not apply.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulations must be identical to those of the U.S. Nuclear Regulatory Commission. No alternative is available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: There is 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: None
TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 274 of the Atomic Energy Act of 1954, as amended.
2. State compliance standards. This regulation provides requirements and provisions for the use of radioactive material in the healing arts and for issuance of licenses authorizing the medical use of radioactive material.
3. Minimum or uniform standards contained in the federal mandate. Federal and state requirements are identical.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements/responsibilities are the same.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal and state standards are identical.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:390. Incorporation by reference of the hearing 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 hearing 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 shall incorporate by reference the hearing services manual effective February 1, 1990 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, M.D., Secretary
APPROVED BY AGENCY: February 1, 1990
FILED WITH LRC: April 6, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 17, 1990, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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 hearing 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.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the April 12, 1990 Meeting

The April meeting of the Administrative Regulation Review Subcommittee was held on Thursday, April 12, 1990 at 10 a.m. in Room 107. Representative Mark D. O'Brien, Chairman, called the meeting to order, and the secretary called the roll. On motion of Representative Bruce, seconded by Senator McCuiston, the minutes of the March 12, 1990 meeting were approved.

Present April 12, 1990 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Pat McCuiston and Bill Quinlan; Representatives Jim Bruce, Ronny Layman and Tom Kerr.

Guests: Ralph Deitemeyer, Richard L. Ross, Don Rune, Board of Pharmacy; Kenneth Record, Kentucky Society of Hospital Pharmacists; Dick Haughaboo, St. Elizabeth Medical Center; David Shore, Trigg County Hospital; David W. Carby, Board of Medical Licensure; Carroll Roberts, Greg Holmes, Board of Hairdressers; Larry Perkins, State Board of Registration for Professional Engineers and Land Surveyors; Greg Holmes, Board of Podiatry; Mike Wilkerson, Department of Agriculture; John C. Kalmey, Kentucky Purebred Dairy Cattle Association; Carl Bradley, Frank Dickerson, Shelby C. Jett, Linda Stacy, Annette Hayden, Betty Beshoar, Susan Bush, Pat Haight, Lisa B. Detherage, Bob Knarr, Art Williams, John F. Nichols, Jr., Natural Resources and Environmental Protection Cabinet; Leslie Cole, Cecilia M. Hayden, Environmental Quality Commission; A. Jack May, Department of Criminal Justice Training - Justice Cabinet; Michael Bradley, Ellen Tharpe, Corrections Cabinet; Gary Bale, Rita Lindsey Osborne, Department of Education; John Hudson, Kentucky School for the Deaf; Charles E. McCoy, Karen Early, Rex Hunt, Robert Whittaker, Labor Cabinet; Claude G. Rhorer, Jr., Ralph Dennis, Public Service Commision; Judith G. Walden, Department of Housing, Buildings and Construction; Barbara Coleman, Delano Miller, David Nichols, Pat Lawrence, E. D. Klatte, Cabinet for Human Resources; Diana Taylor, Lt. Governor's Office; Jack Baker, Addington Resources, Inc.; Mertigene Bell, Citizens Against Pollution; Corinne Whitehead, Coalition for Health Concern; Jo Ann Shipp, Mary B. Welch, Community Farm Alliance; John Cooper, Gray Construction Company; Janet Brown, William M. Brown, Robert Carte, Anna L. Chinn, Roxie Elliott, Rosetta Fackler, Mary Grizzel, Jane Harrod, Mary Jane Hartlage, David Holmes, Donald H. Meadows, Helen Meadows, Oscar Messer, Mary Parte, Judy Petersen, Phillip Shepherd, Addie Sizemore, Belle Sizemore, Daisy C. Sizemore, Nelle Sizemore, Robert S. Tribble, Jean True, Patty Wallace, Ralph Young, Kentuckians for the Commonwealth; Carl W. Breeding, Texas Gas; Tony Sholar, Kentucky Chamber of Commerce; Janie Douglass, Kentucky Conservation Committee; Nancy Galvagni, Kentucky Hospital Association; Tom Fitzgerald, Elizabeth Notter, Kentucky Resources Concil, Inc.; Randall W. Russell, Kenvirons, Inc.; Stan Cox, Hank Graddy, Sierra Club.

Press: Melanie Bullard, Steve Flood, WAVE-3 TV; Bob Geiger, Herald-Leader; John Voskuhl, Courier Journal.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Donna Pierce, and Carla Arnold.

The Administrative Regulation Review Subcommittee met on April 12, 1990, and submits this report:

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Discussion of the waste management regulations began with general comments either supporting or opposing the regulations. Several individuals representing various aspects of the public spoke against the weakening of the regulations following the public hearing. They were especially concerned with the lack of notice for modifications. Tom Fitzgerald was concerned about the definition of "contaminate" in that it was applied to specific concentrations of chemicals rather than any degree above background level. He also felt that changing protection of "groundwater" to "underground drinking water supplies" was in violation of KRS Chapter 224.

The following regulations were amended as follows: (1) to correct spelling and punctuation errors; (2) changes made based upon Subcommittee and staff recommendation; and (3) to incorporate responses in the statement of consideration which were inadvertently omitted.

The Subcommittee approved the following two recommendations: (1) That the Cabinet review and hold public hearings on the effectiveness of these regulations and report annually to the Subcommittee on these reviews and hearings; and (2) That the Cabinet investigate the Roe Creek Landfill located in Lawrence County and the Green Valley Landfill in Greenup County and report back to the Subcommittee as soon as possible.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: General Administrative Procedures

401 KAR 30:010 (Definitions.)

401 KAR 30:020 (General provisions.)

Solid Waste Facilities

401 KAR 47:030 (Environmental performance standards.)

401 KAR 47:070 (Operator certification.)

401 KAR 47:080 (Classification of solid waste sites or facilities.)

401 KAR 47:090 (Solid waste permit fees.)

401 KAR 47:100 (General provisions for obtaining a solid waste permit.)

401 KAR 47:110 (Granted permit-by-rule.)

401 KAR 47:130 (Changes to solid waste permits; expiration of solid waste permits.)

401 KAR 47:140 (Public information and permit issuance procedures.)

401 KAR 47:160 (Application procedures.)

401 KAR 47:170 (Notice of intent to apply for a solid waste permit.)

401 KAR 47:180 (Contents of the administrative application for solid waste landfills.) In addition to the amendments stated above, this regulation was amended by reinstating the word "compliance" in Section 10 and deleting the word "bonding".

401 KAR 47:190 (Contents of the technical application for solid waste landfills.)

Standards for Solid Waste Facilities

401 KAR 48:050 (Siting requirements for solid waste landfills.) This regulation was amended to clarify that a solid waste landfill shall not be operated in a manner that may attract birds when that landfill is within a certain distance of an airport runway and shall not pose a bird hazard to aircraft.

401 KAR 48:060 (Technical requirements for construction/demolition debris landfill.)

401 KAR 48:070 (Design requirements for contained landfills.)

401 KAR 48:080 (Liner and cap design requirements for contained landfills.)

401 KAR 48:090 (Operating requirements for contained landfills.)

401 KAR 48:170 (Technical requirements for residual landfills.)

401 KAR 48:200 (Landfarming and composting.)

401 KAR 48:300 (Surface and groundwater monitoring and corrective action.)

401 KAR 48:310 (Financial requirements and bonds.)

Solid Waste Planning

401 KAR 49:010 (General planning and management provisions for solid waste.)

401 KAR 49:060 (Application for designation as a solid waste management area.)

401 KAR 49:070 (Contents of the area plan.)

Justice Cabinet: Department of Criminal Justice Training: Special Law Enforcement Officers

500 KAR 2:030 (Special law enforcement officers: evaluation examination.) This regulation was amended to comply with the drafting requirements of KRS Chapter 13A, and to insert the requirement that examinations test the knowledge of applicants in Standard First Aid CPR.

Corrections Cabinet: Office of the Secretary

501 KAR 6:020 (Corrections policies and procedures.) This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A.

501 KAR 6:030 (Kentucky State Reformatory.) This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A. An objection had been raised to KSR 08-00-08, relating to deaths outside the facility. The cabinet explained that the coroner must be notified by staff in order to ensure that all requirements are complied with, and that the coroner would notify the facility regarding a death occurring outside the facility of which the facility was unaware. Other language and reference errors were corrected.

501 KAR 6:040 (Kentucky State Penitentiary.) This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A.

501 KAR 6:060 (Northpoint Training Center.) This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A.

501 KAR 6:070 (Kentucky Correctional Institute for Women.) This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A. Objections had been raised that KCIW 10-01-01 duplicated Cabinet policy. Cabinet personnel stated that the duplication was required to meet accreditation standards. The Cabinet agreed to meet with Subcommittee staff to review the issue of policy duplications during the next interim. An objection had been raised to KCIW 15-01-01 relating to the period adjustment committee tapes were retained. Cabinet personnel stated that they were retained because there was no statute of limitations on inmate litigation.

501 KAR 6:090 (Frankfort Career Development Center.) This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A. An objection had been raised to FCDC 15-03-01 relating to the period adjustment committee tapes were retained. Cabinet personnel stated that they were retained because there was no statute of limitations on inmate litigation. Regarding the reporting of certain diseases, reports of those diseases are governed by CPP 13.5, which requires reporting to the Cabinet for Human Resources.

501 KAR 6:120 (Blackburn Correctional Complex.) This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A. An objection had been raised to BCC 15-06-01 relating to the period adjustment committee tapes were retained. Cabinet personnel stated that they were retained because there was no statute of limitations on inmate litigation.

501 KAR 6:130 (Western Kentucky Farm Center.) This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A. An objection had been made that WKFC 15-02-01 contained policy already covered by Cabinet policy. Cabinet personnel stated that this was done to meet accreditation standards and that they would meet with Subcommittee staff to discuss this issue during the interim.

501 KAR 6:150 (Eastern Kentucky Correctional Complex.) This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A. An objection had been raised to EKCC 15-06-01 relating to the period adjustment committee tapes were retained. Cabinet personnel stated that they were retained because there was no statute of limitations on inmate litigation.

Justice Cabinet: Department of Training: Kentucky Law Enforcement Council

The following regulations were amended to comply with the drafting requirements of KRS Chapter 13A.

503 KAR 1:110 (Basic training: graduation requirements; records.)

503 KAR 1:120 (In-service training: graduation requirements; recognized courses; records.)

General Training Provision

503 KAR 3:010 (Basic law enforcement training course trainee conduct requirements; procedures and penalties.)

503 KAR 3:020 (In-service law enforcement training course trainee conduct requirements; procedures and penalties.)

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.) Section 6(2) was amended to reword the language to make it clear that a change in the use of a structure that would cause a greater hazard to the public would not be approved.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

General Government Cabinet: Board of Pharmacy
201 KAR 2:116 (Drug products with bioinequivalence problems.)
Board of Medical Licensure
201 KAR 9:061 (Limited licenses.)
Board of Hairdressers and Cosmetologists
201 KAR 12:110 (School license.)
201 KAR 12:120 (School faculty.)
201 KAR 12:130 (School fees for services.)
201 KAR 12:140 (School equipment.)
201 KAR 12:150 (School records.)
Board of Registration for Professional Engineers and Land Surveyors
201 KAR 18:040 (Fees.)
Board of Podiatry
201 KAR 25:022 (Reinstatement of surrendered license with waiver of renewal requirements for exclusively altruistic and gratuitous practice.)

Department of Agriculture: Fairs and Shows
302 KAR 15:020 (Dairy cattle shows and sales.)

NOTE: See comments on page one on Waste Management Regulations.
Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: Enforcement and Compliance Monitoring for Hazardous Wastes
401 KAR 40:060 (County enforcement representative.)
Solid Waste Facilities
401 KAR 47:120 (Conditions applicable to all solid waste permits.)
401 KAR 47:150 (Special types of permits.)

Corrections Cabinet: Office of the Secretary
501 KAR 6:050 (Luther Luckett Correctional Complex.) An objection had been raised that the Complex's policy duplicated language in the Cabinet policy. The Subcommittee and Cabinet agreed to review this issue during the next interim to determine whether such duplication was required by accreditation standards. The permanent retention of adjustment hearing tapes was questioned. Cabinet personnel stated that they were retained because there was no statute of limitations on inmate litigation.

Justice Cabinet: Department of Training: Kentucky Law Enforcement Council
503 KAR 1:090 (Approval of course curriculums.)
General Training Provision
503 KAR 3:030 (Training charges.)
Law Enforcement Foundation Program Fund
503 KAR 5:090 (Participation: requirements; application; withdrawal.)

Education and Humanities Cabinet: State Board for Elementary and Secondary Education: Office of Instruction: Elementary and Secondary Education Act
704 KAR 10:050 (Courses not in program of studies; procedure for offering.)
Office of Education for Exceptional Children: Exceptional and Handicapped Programs
707 KAR 1:090 (Kentucky School for the Deaf; code of conduct.)

Labor Cabinet: Department for Workplace Standards: Labor Standards; Wages and Hours
803 KAR 1:055 (Applicability of prevailing wage requirements.)
Occupational Safety and Health
803 KAR 2:320 (Adoption of 29 CFR Part 1910.1000 - 1910.1500.)

Public Protection and Regulation Cabinet: Public Service Commission: Utilities
807 KAR 5:022 (Gas safety and service.) The initial review recommended that this regulation be broken down into a number of other regulations, each dealing with a separate topic. Agency personnel agreed to meet with Subcommittee staff during the next interim to determine whether this was required and whether it was feasible.
807 KAR 5:026 (Gas service; gathering systems.)
807 KAR 5:027 (Gas pipeline safety; reports of leaks.)

Cabinet for Human Resources: Department for Health Services: State and Local Confinement Facilities
902 KAR 9:010 (Environmental health.) The initial review raised questions on the deletion of language relating to the ratio of showers and toilets to inmates; language specifying conditions in which variances may be granted; and information specifying items to be included in a written request. Agency personnel explained that the ratio of showers and toilets to inmates is governed by the State Plumbing Code and that a cross-reference to that code and regulations under the code is made in this regulation. They added that the Cabinet did not have jurisdiction over this subject matter. Regarding questions raised concerning variances, Cabinet personnel explained that the hearing procedure established by this regulation would ensure that variances met the conditions and information requirements referred to in the staff review.

The following regulations were deferred at the promulgating agency's request:

201 KAR 2:074 (Pharmacy services in hospitals.) Nancy Galvagni, Kentucky Hospital Association, objected to this administrative regulation on the grounds that it would require all hospitals to operate pharmacies. She stated that the Cabinet for Human Resources, which has authority to establish licensure requirements, does not require this. Rather, the cabinet permits hospitals to maintain "drug rooms", which are rooms in which prescribed medications are stored and from which they are distributed to patients. She felt that the Board had no authority to impose this requirement. A representative of the Cabinet was also present. At the suggestion of Chairman O'Brien, the Cabinet, the Kentucky Hospital Association, and the Board agreed to meet with Subcommittee staff to resolve their differences.
201 KAR 2:076 (Parenteral pharmaceutical compounding.) A representative of the Kentucky Hospital Association stated that the requirement in Section 5(1) that other products shall not be compounded in a vertical flow, Class II, biological safety cabinet in which oncology agents are compounded is objectionable to hospitals and to pharmacists. It was felt that the use of the cabinet for the compounding of other products should be at the discretion of

the pharmacist. In addition, the requirement in the regulation that patient profiles should be retained for 5 years was objected to. She stated that the CHR licensure standards require only that medical records be retained for such period; that a patient profile is not part of a medical record; and that information in the patient profile can be found in the patient medical record. At the request of Chairman O'Brien, the Board agreed to defer this regulation and to meet with representatives of the Kentucky Hospital Association and the Cabinet for Human Resources in order to resolve their differences.

Department of Agriculture: Organic Agricultural Product Certification
302 KAR 40:010 (Standard organic agricultural product requirements.)

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality
401 KAR 5:026 (Classification of waters.)
401 KAR 5:029 (General provisions.)
401 KAR 5:031 (Surface water standards.)

Corrections Cabinet: Office of the Secretary
501 KAR 6:110 (Roederer Farm Center.)

Other Business:

Corrections Cabinet: Office of the Secretary
501 KAR 6:140 (Bell Forestry Camp.) This regulation was found deficient by the Subcommittee at its January, 1990 meeting as follows: BCFC 02-01-03, as it related to transportation of inmates, violated KRS 197.180, which required transportation of a released inmate to the county from which he was sent to the institution. However, because of parole board determinations, and other valid considerations, the cabinet did not comply with the statute. The Subcommittee objected to the regulation as not conforming to statutory authority, but pointed out that the correct procedure would be to amend the statute during the current session. The Subcommittee approved a motion that this regulation did not comply with statutory authority.

During the 1990 session, House Bill 603 amended various portions of KRS Chapter 197, one section deleting the requirement that a convict be released to the county from which he was sent. As of today's meeting, this bill had been passed by both houses and signed by the Governor.

The Corrections Cabinet requested that the objection to this regulation be reconsidered since the statute has been amended, and the regulation now conforms to statutory authority upon the effective date of House Bill 603.

The Subcommittee approved a motion to: (1) Reconsider this regulation; and (2) Remove the objection to the regulation. Motion passed.

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 12:45 p.m. until May 11, 1990 at 10 a.m..

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301 KAR 4:010		
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302 KAR 15:020		
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302 KAR 40:010	2069	
401 KAR 4:120		
Repealed	1336	11-22-89
401 KAR 4:125	503	
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401 KAR 5:005		
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Amended	1191	1-9-90
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Amended	603	
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401 KAR 5:029		
Amended	833	
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401 KAR 5:031		
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401 KAR 30:020		
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401 KAR 31:040		
Amended	389	
Amended	761	
As Amended	1159	11-22-89
401 KAR 31:160		
Amended	402	11-22-89
401 KAR 31:170		
Amended	405	11-22-89
401 KAR 34:350	512	
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401 KAR 38:190		
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Amended	773	11-22-89
401 KAR 39:010		
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401 KAR 39:020		
Amended	617	
Amended	1198	1-9-90
401 KAR 39:030		
Amended	619	
Amended	1199	
As Amended	1340	1-9-90
401 KAR 39:060		
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401 KAR 39:070		
Amended	625	
Amended	1200	
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401 KAR 39:080		
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401 KAR 39:090		
Amended	629	
Amended	1201	1-9-90
401 KAR 39:110		
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Amended	1202	1-9-90
401 KAR 40:060	1721	
Amended	2170	
401 KAR 47:020		
Repealed	1857	1-16-90
401 KAR 47:030	1724	
Amended	2171	
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401 KAR 47:040		
Repealed	1888	1-16-90
401 KAR 47:050		
Repealed	1900	1-16-90
401 KAR 47:060		
Repealed	1860	1-16-90
401 KAR 47:070		
Amended	1642	
Amended	2174	
401 KAR 47:080	1727	
Amended	2178	
As Amended	2348	
401 KAR 47:090	1732	
Amended	2182	
401 KAR 47:100	1734	
Amended	2183	
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401 KAR 47:110	1737	
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401 KAR 47:120	1739	
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401 KAR 47:140	1744	
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401 KAR 48:300	1798	
Amended	2229	
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401 KAR 48:310	1807	
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Amended	1648	
Amended	2241	
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401 KAR 49:020		
Repealed	1922	1-16-90
401 KAR 49:030		
Repealed	1922	1-16-90
401 KAR 49:050		
Repealed	1922	1-16-90
401 KAR 49:060	1813	
Amended	2243	
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401 KAR 49:070	1817	
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405 KAR 8:010		
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Amended	1405	3-8-90
Amended	1963	
501 KAR 6:030		
Amended	49	9-2-89
Amended	184	9-19-89
Amended	437	10-17-89
Amended	646	12-6-89
Amended	852	1-12-90
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Amended	1965	
501 KAR 6:040		
Amended	50	9-2-89
Amended	648	12-6-89
Amended	1408	3-8-90
Amended	1967	
Amended	2456	
501 KAR 6:050		
Amended	186	9-19-89
Amended	1238	2-3-90
Amended	1968	
501 KAR 6:060		
Amended	188	9-19-89
Amended	649	12-6-89
Amended	1410	3-8-90
Amended	1970	
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501 KAR 6:070		
Amended	1971	
Amended	2457	
501 KAR 6:090		
Amended	1973	
501 KAR 6:110		
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501 KAR 6:120		
Amended	439	10-17-89
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501 KAR 6:130		
Amended	189	9-19-89
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502 KAR 45:050		
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502 KAR 45:060		
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Amended	1654	
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502 KAR 45:090		
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502 KAR 45:100		
Amended	1656	4-12-90
502 KAR 45:110		
Amended	1657	4-12-90
502 KAR 45:120		
Amended	1658	4-12-90
502 KAR 45:125	286	9-19-89
503 KAR 1:090		
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503 KAR 1:110		
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503 KAR 1:120		
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503 KAR 3:010	2076	
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503 KAR 3:020	2081	
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503 KAR 3:030	2085	
503 KAR 5:090		
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600 KAR 3:020	286	
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600 KAR 4:020		
Amended	856	1-12-90
601 KAR 1:005		
Amended	1242	
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601 KAR 1:025		
Amended	651	
Amended	1206	1-12-90
601 KAR 1:045		
Amended	191	10-4-89
601 KAR 1:090		
Amended	441	11-4-89
601 KAR 1:140		
Amended	1411	3-8-90
601 KAR 1:145	1531	3-8-90
601 KAR 9:045		
Amended	1244	
As Amended	1586	2-3-90
601 KAR 12:040		
Amended	860	
Withdrawn		1-9-90
601 KAR 35:060		
Amended	1246	2-3-90
602 KAR 20:010		
Repealed	748	11-4-89
602 KAR 20:020		
Amended	443	
As Amended	748	11-4-89
602 KAR 20:025		
Repealed	748	11-4-89
602 KAR 20:030		
Amended	445	11-4-89
602 KAR 20:040		
Amended	446	11-4-89
602 KAR 20:050		
Repealed	748	11-4-89
602 KAR 20:060		
Repealed	748	11-4-89
602 KAR 20:070		
Repealed	748	11-4-89
602 KAR 20:080		
Repealed	748	11-4-89
602 KAR 20:100		
Amended	861	1-12-90
602 KAR 20:110		
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602 KAR 20:120	514	11-4-89
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Amended	862	
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603 KAR 5:077		
Amended	1247	2-3-90
603 KAR 5:110		
Amended	192	10-4-89
603 KAR 5:150		
Amended	1413	3-8-90
603 KAR 5:230		
Amended	448	11-4-89
Amended	1659	4-12-90
701 KAR 5:060		
Amended	652	Died*
Amended	1248	2-3-90
702 KAR 1:115		
Amended	195	
As Amended	537	10-8-89
702 KAR 3:135		
Amended	1251	2-3-90
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 4:120	99	
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702 KAR 4:130	99	
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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		
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702 KAR 6:030		
Amended	1252	2-3-90
702 KAR 6:040		
Amended	1253	2-3-90
702 KAR 6:070		
Amended	1254	2-3-90
702 KAR 6:080		
Repealed	1287	2-3-90
702 KAR 6:081	1287	2-3-90
702 KAR 6:090	2290	
702 KAR 7:030		
Amended	657	
As Amended	1182	12-6-89
702 KAR 7:065		
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702 KAR 7:070		
Amended	1256	3-8-90
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Amended	2264	
704 KAR 3:005		
Amended	1257	
Withdrawn		12-15-89
704 KAR 3:290		
Repealed	288	10-8-89
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Amended	203	10-8-89
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704 KAR 3:360		
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704 KAR 10:022		
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704 KAR 10:050		
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704 KAR 20:057		
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704 KAR 20:070		
Amended	208	
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704 KAR 20:080		
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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
704 KAR 20:530	678	12-6-89
704 KAR 20:540	679	12-6-89
704 KAR 20:550		
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704 KAR 20:560	680	12-6-89
704 KAR 20:570	2291	
705 KAR 4:010		
Amended	2459	
705 KAR 4:220	2620	
705 KAR 5:130		
Amended	212	10-8-89
706 KAR 1:060	1081	1-12-90
706 KAR 1:070	1085	1-12-90
706 KAR 1:080	1087	1-12-90
706 KAR 1:090	1089	1-12-90
706 KAR 1:100	1092	1-12-90
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707 KAR 1:051		
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707 KAR 1:090		
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709 KAR 1:011	2622	
709 KAR 1:020		
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709 KAR 1:030		
Amended	2463	
709 KAR 1:050		
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709 KAR 1:051	291	10-8-89
709 KAR 1:060		
Amended	224	10-8-89
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755 KAR 1:010	1288	
Withdrawn		3-8-90
Amended	2292	
755 KAR 1:020	1289	
Withdrawn		3-8-90
Amended	2293	
755 KAR 1:030	1290	
Withdrawn		3-8-90
Amended	2293	
755 KAR 1:040	1292	
Withdrawn		3-8-90
Amended	2294	
755 KAR 1:050	1293	
Withdrawn		3-8-90
Amended	2295	
755 KAR 1:060	1294	
Withdrawn		3-8-90
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760 KAR 1:010	1533	
Withdrawn		3-19-90
760 KAR 1:020	1534	
Withdrawn		3-19-90
760 KAR 1:030	1535	
Withdrawn		3-19-90
760 KAR 1:040	1537	
Withdrawn		3-19-90
760 KAR 1:050	1537	
Withdrawn		3-19-90
765 KAR 1:010	1538	
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765 KAR 1:020	1539	
Withdrawn		3-5-90
765 KAR 1:030	1540	
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765 KAR 1:040	1541	
Withdrawn		3-5-90
765 KAR 1:050	1542	
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765 KAR 1:070	1546	
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765 KAR 1:080	1547	
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765 KAR 1:090	1548	
Withdrawn		3-5-90
765 KAR 1:100	1549	
Withdrawn		3-5-90
765 KAR 1:110	1550	
Withdrawn		3-5-90
765 KAR 1:120	1551	
Withdrawn		3-5-90
765 KAR 1:130	1552	
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765 KAR 1:140	1553	
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765 KAR 1:150	1555	
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770 KAR 1:010	1555	
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770 KAR 1:020	1557	
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770 KAR 1:030	1558	
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770 KAR 1:040	1560	
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770 KAR 1:050	1560	
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801 KAR 1:010		
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801 KAR 1:020		
Amended	487	
801 KAR 1:030		
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801 KAR 1:040		
Amended	488	
801 KAR 1:050		
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801 KAR 1:060		
Repealed	486	10-6-89
801 KAR 1:100		
Repealed	486	10-6-89
803 KAR 1:055	2088	
803 KAR 1:090		
Amended	2466	
803 KAR 2:020		
Amended	227	9-21-89
Repealed	1097	12-15-89
803 KAR 2:027		
Repealed	1097	12-15-89
803 KAR 2:030		
Repealed	1097	12-15-89
803 KAR 2:031	1097	12-15-89
803 KAR 2:032		
Repealed	1097	12-15-89
803 KAR 2:300	682	12-15-89
803 KAR 2:301	683	12-15-89
803 KAR 2:302	684	12-15-89
803 KAR 2:303	685	12-15-89
803 KAR 2:304	686	12-15-89
803 KAR 2:305	686	12-15-89
Amended	1697	4-12-90
803 KAR 2:306	687	12-15-89
803 KAR 2:307	689	12-15-89
803 KAR 2:308	690	12-15-89
803 KAR 2:309	692	12-15-89
Amended	1698	
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803 KAR 2:310	693	12-15-89
803 KAR 2:311	694	12-15-89
803 KAR 2:312	1098	12-15-89
803 KAR 2:313	695	12-15-89
803 KAR 2:314	696	12-15-89
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803 KAR 2:317	699	12-15-89
803 KAR 2:318	700	12-15-89
803 KAR 2:319	700	12-15-89
803 KAR 2:320	701	12-15-89
Amended	1990	
803 KAR 2:400	703	12-15-89
803 KAR 2:401	1098	12-15-89
803 KAR 2:402	1099	12-15-89
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803 KAR 2:406	710	12-15-89
803 KAR 2:407	1100	12-15-89
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803 KAR 2:418	716	12-15-89
Amended	1700	4-12-90
803 KAR 2:419	1104	12-15-89
803 KAR 2:420	717	12-15-89
803 KAR 2:421	719	12-15-89
803 KAR 2:422	1105	12-15-89
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803 KAR 2:500	720	12-15-89
803 KAR 2:600	721	12-15-89
803 KAR 6:010	2296	
803 KAR 25:090		
Amended	31	
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803 KAR 25:100		
Amended	31	
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804 KAR 9:010		
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806 KAR 14:120	100	Died*
806 KAR 14:121	516	11-4-89
807 KAR 5:022		
Amended	1414	Died*
Amended	1994	
807 KAR 5:026		
Amended	1460	Died*
Amended	2039	
807 KAR 5:027		
Amended	1463	Died*
Amended	2042	
807 KAR 5:031		
Amended	1467	3-8-90
807 KAR 5:041		
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807 KAR 5:054		
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808 KAR 10:040		
Amended	662	
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808 KAR 10:210		
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810 KAR 1:020		
Amended	870	1-12-90
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815 KAR 7:010		
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815 KAR 10:035	1298	
Withdrawn		2-23-90
815 KAR 15:010		
Amended	55	8-22-89
815 KAR 15:020		
Amended	59	
As Amended	353	8-22-89
815 KAR 15:030		
Amended	64	8-22-89
815 KAR 15:040		
Amended	67	8-22-89
815 KAR 15:085	104	
Withdrawn		8-29-89
815 KAR 20:020		
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815 KAR 20:070		
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815 KAR 20:110		
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Amended	904	1-12-90
815 KAR 20:130		
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815 KAR 20:191		
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815 KAR 25:010		
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815 KAR 45:015		
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815 KAR 45:020		
Amended	1497	3-8-90
815 KAR 45:035		
Amended	1498	
As Amended	2140	4-12-90
815 KAR 45:040		
Amended	1501	
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815 KAR 45:050		
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Amended	918	1-12-90
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Amended	924	1-12-90
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