Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on October 11-12, 1990. See **tentative** agenda on pages 1317-1320 in this Administrative Register.

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

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

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October 11, 1990, 10 a.m., Room 110, Capitol Annex

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October 12, 1990, 10 a.m., Room 110, Capitol Annex

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Department of Highways

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603 KAR 5:230 & E. Bridge weight limits on the extended weight coal or coal haul road system.

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Office of School Administration and Finance

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702 KAR 3:190. Maximum class sizes. (Not Amended After Hearing)

Pupil Transportation

702 KAR 5:150. Transportation of preschool children. (??Amended After Hearing??)

School Terms, Attendence and Operation

702 KAR 7:050. Attendance; resident, nonresident. (Not Amended After Hearing)
702 KAR 7:065. Designation of agent to manage high school interscholastic athletics. (Amended After Hearing)
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Office of Instruction

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Administration

781 KAR 1:010 & E. Department of Vocational Rehabilitation appeal procedures. (Amended After Hearing)

781 KAR 1:020 & E. General provisions for operation of the Department of Vocational Rehabilitation. (Amended After Hearing)

781 KAR 1:030 & E. Order of selection and economic need tests for vocational rehabilitation services. (Amended After Hearing)

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Health Services and Facilities

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Aging Services

905 KAR 8:140. Hearing procedures for area agency on aging contractor selection actions. (Amended After Hearing)

Department for Medicaid Services

Medicaid Services

907 KAR 1:010 & E. Payments for physicians'services. (Amended After Hearing)

907 KAR 1:013 & E. Payments for hospital inpatients services. (Amended After Hearing)

907 KAR 1:015 & E. Payments for hospital outpatient services. (Amended After Hearing)

907 KAR 1:017 & E. Hospital indigent care assurance program (HICAP).

907 KAR 1:470. Durable medical equipment.

Department for Mental Retardation Services

Institutional Care

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

ADMINISTRATIVE 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 administrative 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 administrative 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 administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative 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 ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
103 KAR 44:040E

This emergency administrative regulation is filed under the provisions of KRS 13A.190 which authorizes emergency regulations in those situations where the two and a half month ordinary filing procedure is too slow. This emergency regulation continues a partial motor vehicle usage tax exemption which has been in existence since prior to 1975, the validity of which has been challenged by the Joint Interim Appropriations and Revenue Committee. Elimination of the exemption during the ordinary regulation promgulation process would inflict increased motor vehicle usage tax liability on Kentucky consumers by inequitable increases in certain vehicle values while appropriate General Assembly committees were again considering the merits of continuing the partial exemption for these vehicles. This emergency regulation shall be replaced by an ordinary administrative regulation.

WALLACE G. WILKINSON, Governor
C. EMMETT CALVERT, Secretary

REVENUE CABINET
Department of Administrative Services

103 KAR 44:040E. Motor vehicle valuation.

RELATES TO: KRS 138.450, 138.460, 138.470
STATUTORY AUTHORITY: KRS Chapter 13A, 131.130
EFFECTIVE: September 14, 1990
NECESSITY AND FUNCTION: This regulation establishes procedures for the valuation of certain motor vehicles for motor vehicle usage tax purposes.

Section 1. Definitions. "New motor vehicle" means a motor vehicle, as defined in KRS 138.450, of the current model year which has not previously been registered in any state or country. "New motor vehicle" shall not include a vehicle not previously registered in any state or country which is:

(1) Not of the current model year. A vehicle shall be deemed to be of the current model year until January 1 of the subsequent model year or the date subsequent model year vehicles of the same make are offered for sale by local dealers, whichever is earlier; or

(2) Used for demonstration purposes only by a registered dealer having a franchise to sell new the particular make of vehicle being offered for sale (dealer demonstrator vehicle), if such vehicle has an odometer reading of at least 1,000 miles before it is registered in this state; or

(3) Used by representatives of the manufacturer (factory executive vehicle), if such vehicle has an odometer reading of at least 1,000 miles before it is registered in this state.

Section 2. Tax Base for New Motor Vehicles. A new motor vehcile shall be subject to usage tax based on its retail price as provided in KRS 138.450.

Section 3. Tax Base for Other Vehicles Not Previously Registered in Any State or Country. Any motor vehicle which has not previously been registered in any state or country but which is not a new motor vehicle as defined in Section 1 of this regulation shall be subject to usage tax based upon a retail price determined as follows:

(1) The greater of:

(a) Seventy-five (75) percent of the Manufacturer's Suggested Retail price, including all options (whether installed by the manufacturer, distributor or dealer) and transportation charges;

(b) The average retail value of the vehicle as reflected in the automotive price reference manual prescribed by the Revenue Cabinet for valuing used motor vehicles, exclusive of any trade-in allowance; or

(c) The actual selling price of the vehicle to the customer registering the vehicle, exclusive of any trade-in allowance.

(2) In no case shall the tax base determined pursuant to subsection (1) of this section exceed the retail price of the vehicle as determined under Section 2 of this regulation for new motor vehicles.

Section 4. Documentation of Taxable Base. For any motor vehicle being registered in this state

pursuant to Section 3, the selling dealer shall complete, in duplicate, and give to the county clerk a Certification of Motor Vehicle Usage Tax Valuation, Revenue Form 71A216. A copy of the vehicle window sticker or manufacturer's invoice reflecting the Manufacturer's Suggested Retail Price of the vehicle shall be attached to the form together with a copy of the sales contract evidencing the actual selling price of the vehicle to the customer.

C. EMMETT CALVERT, Secretary
APPROVED BY AGENCY: September 13, 1990
FILED WITH LRC: September 14, 1990 at 9 a.m.

STATEMENT OF EMERGENCY
301 KAR 2:044E

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because insufficient time precludes timely effectiveness of the administrative regulation. This emergency regulation will be replaced by an ordinary administrative regulation.

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

TOURISM CABINET
Department of Fish and Wildlife Resources

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

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.300, 150.305, 150.320, 150.330, 150.340, 150.360, 150.603
STATUTORY AUTHORITY: KRS 13A.350, 150.025
EFFECTIVE: August 23, 1990
NECESSITY AND FUNCTION: In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates where appropriate and add provisions governing use of steel shot.

Section 1. Seasons. (1) Doves: September 1 through September 30; October 6 [7] through October 29 [30]; December 1 through December 6.
(2) Woodcock: October 1 through December 4.
(3) Common snipe: October 1 through December 4.
(4) Wood duck: September 12 [6] through September 16 [10].

Section 2. Limits.

Species	Bag Limits	Possession Limits
Doves	15	30
Woodcock	5	10
Common snipe	8	16
Wood ducks	2	4

The possession limit is double the daily bag limit.

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

Section 4. Shooting Hours. (1) Doves: from 11 a.m. until sunset during the period September 1 through September 30 and October 6 [7] through October 29 [30]; from sunrise to sunset during the period December 1 through December 6.
(2) Common snipe and woodcock: from one-half (1/2) hour before sunrise to sunset.
(3) Wood duck: from one-half (1/2) hour before sunrise to sunset.

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

Section 6. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this regulation apply to the following areas:
(1) Ballard Wildlife Management Area, located in Ballard County.
(a) Doves: September 1 through September 30; and October 6 [7] through October 13 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.
(b) Woodcock and snipe: seasons closed.
(2) West Kentucky Wildlife Management Area, located in McCracken County.
(a) Doves: September 1 through September 30; and October 6 [7] through October 13 only.
(b) Woodcock and snipe: hunting permitted on tracts 2, 3, 6, and 7 only.
(c) All tracts designated by numbers followed by the letter "A" are closed to hunting.
(3) Central Kentucky Wildlife Management Area, located in Madison County.
(a) Doves: September 1 through September 30; and October 6 [7] through October 13 only.
(b) Woodcock and snipe: seasons closed.
(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.
(a) Doves: September 1 through September 30 and December 1 through December 6 only.
(b) Woodcock and snipe: December 1 through December 4 only.
(5) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties.
(a) Doves: postwide from September 1 through September 21 [22] and December 1 through December 6 [4]. On designated areas only from

September 22 through October 6 [October 7 through October 30].

(b) Woodcock: postwide from November 22 [23] through December 3 [8] and January 3 [4] through January 27 [29]. On designated areas only from December 4 [9] through December 31.

(c) Snipe: postwide from [September 1 through September 22,] November 22 [23] through December 3 [8] and January 3 [4] through January 31 [29]. On designated areas only from December 4 [9] through December 31.

(d) September wood duck: September 13 [6] through 16 [10] only. Hunting permitted during these permits in designated areas only.

(6) Paintsville Lake Wildlife Management Area located in Johnson and Morgan counties and Dewey Lake Wildlife Management Area located in Floyd County.

(a) Doves: September 1 through September 30; and October 6 through October 13 only.

(b) Wood duck: September 12 through September 16.

(7) [(6)] Closed areas:

(a) The hunting of doves, woodcock, and common snipe[, and ducks] is prohibited on Camp Webb Refuge Area, Grayson Lake. [the following wildlife management areas: that portion of Grayson Lake Wildlife Management Area west of KY 1496 and east of the area formed by the line created by Bruin Creek and that section of the Little Sandy River (Grayson Lake) extending north from the confluence of Bruin Creek; Beaver Creek Wildlife Management Area, including all private in-holdings, located in Pulaski and McCreary Counties; Robinson Forest Wildlife Management Area, located in Breathitt, Perry, and Knott Counties; Redbird Wildlife Management Area, including all private in-holdings, located in Leslie and Clay Counties; Cane Creek Wildlife Management Area, including all private in-holdings, located in Laurel County; and Mill Creek Wildlife Management Area, located in Jackson County.]

(b) Waterfowl hunting is prohibited on the following areas on Grayson Lake: the Camp Webb Refuge Area; the area north of Rosedale Point, Deer Creek Fork, west of Route 1496; within fifty (50) yards of the State Park shoreline.

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

Section 8. Use of Steel Shot. Except for the areas requiring use of steel shot identified in subsections (1) and (2) of this section, all provisions of 301 KAR 3:080, Prohibition of lead shot for waterfowl and dove hunting, apply.

(1) Western steel shot zone. That area of Western Kentucky west of an eastern boundary described by the lines and/or roads as follows: The Purchase Parkway from Fulton, Kentucky, on the Kentucky-Tennessee border northeast to the Interstate 24 - Purchase Parkway junction; northeast on I-24 to the Lyon County line; then on a line including all of Lyon, Caldwell and Hopkins Counties to Fredonia; north from Fredonia on US 641 to US 60 at Marion; north on US 60 to the Union County line; northeast and north along the Union County Henderson County lines to the Indiana-Kentucky border north of Newman, Kentucky.

(2) Bracken and Olham Counties.

DON R. McCORMICK, Commissioner
RON GENTRY, Secretary
DAVID GODBY, Chairman
APPROVED BY AGENCY: August 24, 1990
FILED WITH LRC: August 23, 1990 at 9 a.m.

STATEMENT OF EMERGENCY
601 KAR 13:070E

House Bill 43 passed during the 1990 regular session of the General Assembly required withholding of driving privileges for school dropouts and those who are academically deficient in school districts which have an alternative education program approved by the Department of Education. After discussions with both the Attorney General and the Department of Education, it has been decided that the implementation of the bill may not be made retroactively. Rather the standards must be met by the students beginning with the first semester of the 1990-91 school year. Therefore, no one could be considered to be academically deficient under the provisions of this bill until after the 1990 fall semester. This administrative regulation is needed on an emergency basis because the school year will begin before the ordinary regulation is effective. Having the emergency regulation in effect will provide public notice of the interpretation of the law as it relates to academic deficiency. This emergency administrative regulation will be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on August 28, 1990.

WALLACE G. WILKINSON, Governor
MILO D. BRYANT, Secretary

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 13:070. School attendance and academic sufficiency verification.

RELATES TO: KRS 186.440, 186.450, 186.470, 186.560
STATUTORY AUTHORITY: KRS 186.400
EFFECTIVE: August 28, 1990
NECESSITY AND FUNCTION: HB 43 passed in the Regular Session of the 1990 General Assembly is applicable only in those counties of Kentucky served by a school district which has an alternative education program approved by the Department of Education. The bill requires anyone under the age of eighteen (18) years who is applying for either a learner's permit or operator's license and who has not graduated from high school to present verification issued by his school within the preceding thirty (30) days that he is enrolled in school and has not been found academically deficient. Further, KRS 186.560 requires the Transportation Cabinet as soon as notified to revoke the license of a person under the age of eighteen (18) years who has dropped out of school or is academically deficient. This administrative regulation sets forth the information which is to be submitted to the Transportation Cabinet and the circuit court clerk in order for them to meet their statutory duties. It further sets forth the times when a school attendance form is to be

presented and the steps to be followed by a youth in having his driving privilege restored.

Section 1. No person shall be declared to be academically deficient for any school semester prior to the fall semester of 1990.

Section 2. School Enrollment Verification. An applicant under the age of eighteen (18) years seeking either an operator's license or a learner's permit who resides within the boundaries of a school district which has alternative education program approved by the Department of Education shall submit a school enrollment verification form from either a public, common or private school as provided in 704 KAR 7:100, Section 4 or shall submit proof of high school graduation to the circuit court clerk in his county of residence. The school enrollment verification form shall contain at a minimum the following information:
(1) Applicant's full name;
(2) Applicant's Social Security Number;
(3) Applicant's full address;
(4) Applicant's date of birth;
(5) Name of the school district;
(6) Name of the school;
(7) School district address;
(8) Signature and title of the school district official executing the verification form;
(9) Certification of the applicant's school enrollment in accordance with KRS Chapter 159;
(10) After the end of the 1990 fall semester, certification that the applicant is not academically deficient in accordance with KRS Chapter 159; and
(11) Date of verification which shall be within the preceding thirty (30) days but shall not be prior to July 13, 1990.

Section 3. Home Schooling Verification. An applicant for a learner's permit or operator's license who resides within the boundaries of a school district which has an alternative education program approved by the Department of Education, who is under the age of eighteen (18) years, who has not graduated from high school and who is being schooled at home shall present schooling verification to the circuit court clerk in his county of residence. The verification shall contain at least the following information:
(1) Applicant's full name;
(2) Applicant's Social Security Number;
(3) Applicant's full address;
(4) Applicant's date of birth;
(5) Parent or guardian's full name;
(6) Parent or guardian's address;
(7) Signature of parent or guardian;
(8) Certification that applicant is being schooled at home;
(9) After the 1990 fall semester, certification that the applicant is not academically deficient in accordance with KRS Chapter 159; and
(10) Date of verification which shall be within the preceding thirty (30) days but shall not be prior to July 13, 1990.

Section 4. Certification of School Dropout or Academic Deficiency. (1) When the superintendent of a school district which has an alternative program approved by the Department of Education certifies to the Transportation Cabinet that a student has dropped out of school or is academically deficient, the superintendent shall provide the following information to the Division of Driver Licensing, State Office Building, Second Floor, High and Clinton Streets, Frankfort, Kentucky 40622:
(a) Student's full name;
(b) Student's address;
(c) Student's Social Security Number;
(d) Student's date of birth;
(e) Certification that the student has dropped out of school or after the 1990 fall semester, is academically deficient as defined in KRS Chapter 159;
(f) Certification that the school district has an alternative education program approved by the Department of Education;
(g) Superintendent's name;
(h) Name of school district;
(i) Signature of superintendent or other person authorized by the superintendent to submit the certification; and
(j) Date of certification.
(2) The Transportation Cabinet shall prepare a form containing space for the above information and certifications. The forms shall be made available to the Department of Education for distribution.

Section 5. Return to School or Academic Sufficiency. A student who is reapplying for driving privilege after a return to school or achieving academic sufficiency shall submit a verification of this from his school district to the circuit court clerk in his county of residence. The verification shall contain at least the following:
(1) Applicant's full name;
(2) Applicant's address;
(3) Applicant's Social Security Number;
(4) Applicant's date of birth;
(5) Name and address of the school district;
(6) Name and address of the school;
(7) Signature and title of the school district official executing the verification form;
(8) Certification of applicant's reenrollment in school in accordance with KRS Chapter 159;
(9) Certification that the applicant is not academically deficient in accordance with KRS Chapter 159; and
(10) Date of the verification.

Section 6. Driving Privilege Restoration. Any person who is eligible to have his driving privilege restored only because he has reached his 18th birthday, that is, he neither has been certified by his school district as once again being a student in good standing nor has a court ordered the restoration of his driving privilege, shall pay the thirty (30) dollar reinstatement and relicensing fee required by KRS 186.440 and KRS 186.450 and the Kentucky State Police shall again examine the applicant.

Section 7. Any person denied an instruction permit or operator's license because he was not eligible for a school enrollment or home schooling verification form may, for the reasons set forth in KRS Chapter 159, petition the jurisdictional court for an operator's license eligibility order so that he might apply for an instruction permit or operator's license.

Section 8. Counties with Multiple School Districts. In a county with multiple school districts, if at least one (1) but not all have

an alternative education program approved by the Department of Education, then all applicants for an instruction permit or operator's license under the age of eighteen (18) years shall present to the circuit clerk's office either a school enrollment or home schooling verification form as described in Sections 2 and 3 of this regulation, proof of high school graduation or proof from his school on a form approved by Department of Vehicle Regulation that he resides in a district which does not have an approved alternative education program.

JEROME LENTZ, Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: August 23, 1990
FILED WITH LRC: August 28, 1990 at 4 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:006E

The Family Support Act of 1988 requires that vast changes in the concept and operation of the AFDC program be implemented. Failure to implement these changes timely will result in the loss of federal financial participation in the AFDC program. As a condition of operating an AFDC program, states shall comply with two major changes effective October 1, 1990:

(a) The implementation of the Aid to Families with Dependent Children-Unemployed Parent (AFDC-UP) program as mandated by federal law at 42 U.S.C. 607 and as described in 45 CFR 233.100.

(b) The implementation of the Job Opportunities and Basic Skills (JOBS) program, as mandated by federal regulation at 45 CFR 250.

In order to comply with the federal mandate effective October 1, 1990, this emergency regulation shall be filed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

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

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

904 KAR 2:006E. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.52, 205.10, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 233.100, 250

STATUTORY AUTHORITY: KRS 194.050, 205.200(2), (3)

EFFECTIVE: September 14, 1990

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC) in accordance with Title IV-A of the Social Security Act. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with the Social Security Act and federal regulations. This regulation sets forth the technical requirements of residence, deprivation, living with a relative, age, one (1) category of assistance, work registration, job opportunities and basic skills (JOBS) program participation [work program participation], cooperation in child support enforcement activities and potential entitlement for other programs for eligibility for AFDC.

Section 1. Definitions. (1) "Assessment" means the ongoing evaluation of an individual's educational and vocational potential.

(2) "Barriers" are any hardships the individual shall overcome to participate in education, training or employment.

(3) "Case manager" means the Department for Social Insurance (DSI) individual who:

(a) Determines ongoing AFDC or medical assistance (MA) or food stamp (FS) eligibility and benefit levels for all case action in the household of a JOBS participant;

(b) Aids the JOBS participant by brokering services for the participant;

(c) Identifies and resolves barriers to the extent possible; and

(d) Delivers JOBS related services to the participant.

(4) "Conciliation" is a process in which participation problems in the JOBS program can be resolved.

(5) "JOBS" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support.

(6) "Target population" means that group composed of each individual who:

(a) Is receiving AFDC, and who has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;

(b) Makes application for AFDC and has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;

(c) Is a custodial parent under the age of twenty-four (24) who:

1. Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school or a high school equivalency course of instruction; or

2. Had little or no work experience in the preceding year; or

(d) Is a member of a family in which the youngest child is within two (2) years of being ineligible for AFDC because of age.

Section 2. [1.] Residence and Citizenship. [Residence is determined in accordance with 45 CFR 233.40 which, in summary, provides that a]

1. Residence. A resident is anyone who is:

(a) Living in the state;

(b) Entered the state with a job commitment or seeking employment; and

(c) [is] Not receiving AFDC benefits from another state. [Citizenship is determined in accordance with 45 CFR 233.50 which states that]

(2) Citizenship. AFDC shall [can] be provided only to:

(a) Citizens; [or]

(b) Aliens lawfully admitted for permanent residence; or

(c) Aliens otherwise permanently residing in the United States under color of law.

Section 3. [2.] Deprivation. (1) To be eligible for AFDC, a child shall [must] be in need and shall [must] be deprived of parental support of a natural or adoptive parent or care due to: [the]

(a) Death;

(b) Continued absence from the home; [or]

(c) Physical or mental incapacity; or
(d) Effective October 1, 1990, unemployment. [of a natural or adoptive parent.]
(2) A married child living with his spouse in the home of his parents is not deprived of parental support or care.
(3) A married child living in the home of his parents but divorced or legally separated from his spouse is deprived of parental support if he is dependent on the parent and a parent is:
(a) Dead;
(b) Incapacitated; [or]
(c) Unemployed; or
(d) Continually absent from the home.
(4) [(2)] Continued absence from the home.
(a) To be eligible for AFDC, a needy child shall [must] be physically separated from the parent and:
1. The nature of the absence of the parent [is such as either to] interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and
2. The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.
(b) Absence may be voluntary or involuntary.
1. Voluntary absence includes:
a. Divorce;
b. Legal separation;
c. Marriage annulment;
d. Desertion of thirty (30) days or more;
e. Forced separation of seven (7) days or more; or
f. Birth out-of-wedlock.
2. Involuntary absence includes:
a. Commitment to a penal institution for thirty (30) days or more;
b. Long-term hospitalization;
c. Deportation; or
d. Single parent adoption.
(c) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.
(5) [(3)] Incapacity.
(a) All determinations regarding whether a child has been deprived of parental support or care by reason of the physical or mental incapacity of a natural or adoptive parent shall be in conformance with federal regulations found at 45 CFR §233.90(c)(1)(iv) and the criteria set forth in this subsection.
(b) Each determination shall be based on a full consideration and assessment of all medical, social, and economic factors involving a particular claimant.
(c) If [Should] a verified medical condition exists, then all relevant social and economic factors shall [will] be considered to determine whether the parent's condition is the cause of and results in a parent's inability to support or care for the child[(ren)].
1. [(a)] Incapacity exists in each case when the following criteria are met:
a. [1.] It is medically determined that one (1) parent has a physical or mental defect, illness or impairment which was:
(i) Present at the time of application; and
(ii) Which has continued or is expected to last for a period of at least thirty (30) calendar days. This may include [, including] a period[, if any,] in which the claimant is undergoing planned diagnostic studies or evaluation of rehabilitation potential; and
b. [2.] It is determined by nonmedical evaluation that such defect, illness or impairment is [of such] debilitating to the extent of reducing [nature as to reduce] substantially or eliminating the parent's ability to support or care for an otherwise eligible child.
2. [(b)] Factors to be considered in making the medical determination shall include:
a. [1.] The claimant's medical history and subjective complaints regarding an alleged physical or mental defect, illness or impairment; and
b. [2.] Competent medical testimony relevant to:
(i) [a.] Whether a physical or mental defect, illness or impairment exists;
(ii) [b.] Whether the defect, illness or impairment is enough to reduce the parent's ability to support or care for a child; and
(iii) [c.] Whether the defect, illness or impairment is likely to last thirty (30) days. The thirty (30) days is not intended to be a "waiting period." Rather, expected duration is substantial and pertinent to causal relationship.
3. [(c)] Factors to be considered in making the nonmedical evaluation shall include:
a. [1.] The claimant's:
(i) Age;
(ii) Employment history;
(iii) Vocational training;
(iv) Educational background; and
(v) Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and
b. [2.] The extent and accessibility of employment opportunities available in the claimant's area of residence.
4. [(d)] In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of handicapped individuals shall be taken into account; and
a. [1.] Available printed materials that provide information regarding available employment opportunities shall be researched;
b. [2.] The local Department for Employment Service (DES) office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and
c. [3.] The claimant shall be referred, if necessary, for further appraisal of his abilities.
5. [(e)] A written report shall be made of the determination under this subsection.
6. [(f)] Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing [in accordance with federal regulations found at 45 CFR §205.10].
(6) Unemployment. The determination that a child is deprived of parental support due to the unemployment of a parent shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a prior labor market attachment.
(a) Principal wage earner (PWE). The PWE is the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application.
1. If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE

using the best evidence available.

2. If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (4)(b) of this section.

3. Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

4. PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(b) Unemployment. A parent shall be considered to be unemployed if:

1. Employed less than 100 hours in a calendar month; or

2. Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent was under the 100 hour standard in the prior two (2) months and is expected to be under the 100 hour standard in the following month.

(c) Prior labor market attachment (PLMA).

1. PLMA is met if the parent:

a. Earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, within any thirteen (13) calendar quarter periods ending within one (1) year of the application;

b. Within twelve (12) months prior to application, received unemployment compensation; or

c. Is currently receiving unemployment compensation or if potentially eligible, has made application for unemployment insurance benefits.

2. In determining whether or not criteria in subsection (4)(c)1a of this section is met, the following shall be taken into consideration:

a. Participation in a work or training program shall be considered as earning an income in determining PLMA.

b. Full-time attendance, as defined by the school or institution, in educational activities may be substituted for two (2) of the six (6) calendar quarters.

c. Gross income from self-employment and farming qualify as earned income in determining prior labor market attachment. The self-employed individual does not have to realize a profit to meet this requirement.

(d) Restrictions. Unemployment shall not exist if the PWE:

1. Is on strike;

2. Is temporarily unemployed:

a. Due to weather conditions or lack of work;

b. If there is a job to return to; and

c. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

3. Is unavailable for full-time employment;

4. Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

5. Has not met the criteria of unemployment for at least thirty (30) days;

6. Has not applied for unemployment benefits, if potentially eligible;

7. Is not:

a. Registered for work under Section 8 of this regulation; or

b. Subject to JOBS, under Section 9 of this regulation; or

8. Has refused a bona fine offer of employment or training for employment without good cause in the thirty (30) days prior to AFDC-UP eligibility or during the course of receipt of AFDC-UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 is met.

Section 4. [3.] Living with a Specified Relative. To be eligible for AFDC a needy child shall [must] be living in the home of a relative [as specified in the Social Security Act and interpreted] as follows:

(1) A blood relative, including father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, first cousin.

(2) Also relatives of the half-blood and preceding generations as denoted by prefixes of grand, great or great-great; a stepfather, stepmother, stepbrother, stepsister.

(3) Any person listed above if parent has had paternity established through the administrative determination process. An administrative determination of paternity is limited to situations in which the following types of evidence are present:

(a) A birth certificate listing the alleged parent; or

(b) Legal documents such as:

1. Hospital records;

2. Juvenile court records;

3. Wills; and

4. Other court records which clearly indicate the relationship of the alleged parent or relative; or

(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or

(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:

1. School records;

2. Bible records;

3. Immigration records;

4. Naturalization records;

5. Church documents, such as baptismal certificates;

6. Passport;

7. Military records;

8. U.S. Census records; or

9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(e) Rebuttal of paternity.

1. Effective April 1, 1987, in cases in which the parent or, in the absence of the parent, the caretaker relative alleges the evidence present in paragraphs (a) or (b) of this subsection is erroneous and provides substantiation of the erroneous information, the parent or [/] caretaker relative shall provide a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.

2. Presence of the sworn statement or affidavit will serve as rebuttal to the evidence present in paragraphs (a) or (b) of this subsection and a determination of paternity will not be acknowledged.

(4) Adoptive parents as well as the natural and other legally adopted children and other relatives of such parents.

(5) Husband or wife of any persons listed above even if the marriage may have terminated,

providing termination occurred after the birth of the child.

(6) If the parent continues to exercise control over the child, a child is considered as living in the home even when temporarily absent for:

(a) Medical care;

(b) Attendance at boarding school;

(c) College or vocational school;

(d) Emergency foster care; or

(e) Short visits with friends or relatives[, if the parent continues to exercise control over the child].

Section 5. [4.] Age and School Attendance. (1) A child may be eligible for AFDC from birth to age eighteen (18). [, or]

(2) A child may be eligible to age nineteen (19) if:

(a) A full-time student in a secondary school; or

(b) The equivalent level of vocational or technical training; and

(c) [if] Expected to complete the program prior to or during the month of their 19th birthday.

(3) Full- and part-time is defined in 904 KAR 2:016, standards for need and amount; AFDC.

(4) Unless he has indicated an intention not to reenter school, a child is considered in regular attendance in months in which he is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency [unless he has indicated an intention not to reenter school].

Section 6. [5.] One Category of Assistance. (1) A child or adult relative shall not be eligible for AFDC if receiving supplemental security income (SSI).

(2) If a child who receive SSI meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility factors are met.

Section 7. [6.] Strikers. (1) A family shall be ineligible for benefits for any month in which the natural or adoptive parent, with whom the child is living is, on the last day of such month, participating in a strike; and

(2) No individual shall be considered eligible for benefits for any month if, on the last day of such month, such individual is participating in a strike.

(3) Strike shall be defined to include 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.

[Section 7. Work Registration. Unless exempt under the criteria specified in Title IV of the Social Security Act and 45 CFR Section 224.20(b), an individual who has applied for or is receiving AFDC shall be ineligible for benefits if he refuses to register for work.]

Section 8. Work Registration. (1) In a case based on the deprivation of unemployment, the PWE shall register for work with the DES if:

(a) He resides in a non-JOBS county; or

(b) He resides in a JOBS county and is exempt from participation as specified in Section 9(1)(e) of this regulation.

(2) Failure of the PWE to register for work shall cause the case to be ineligible.

Section 9. Job Opportunities and Basic Skills (JOBS) Training Program. (1) Exemptions. Effective October 1, 1990, all AFDC recipients are required to participate in the JOBS program if the program is available in the county of residence unless the recipient:

(a) Is a child who:

1. Is under age sixteen (16); or

2. Attends, full time, an elementary secondary, vocational or technical school (unless he was enrolled in school through the JOBS program);

(b) Is ill and the illness or injury is serious enough to temporarily prevent entry into employment or training;

(c) Is incapacitated to the extent that the physical or mental impairment would prevent the recipient from participating in the JOBS program. This may include a period of recuperation after child birth if prescribed by a woman's physician;

(d) Is sixty (60) years old or older;

(e) Resides in a county which offers the JOBS program but in a location in which travel time to the JOBS activity would exceed two (2) hours round trip by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility;

(f) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity;

(g) Is working at least thirty (30) hours per week;

(h) Is pregnant and the child is expected to be born within the following six (6) month period;

(i) Is the parent or other relative who is personally providing care for a child under age three (3), except as specified in subsection (5)(c) of this section;

(j) Is a full-time VISTA volunteer.

(2) Volunteers. All persons in active JOBS counties who are exempt as specified in subsection (1) of this section may volunteer to participate in the JOBS program.

(a) The DSI shall give first priority for JOBS services to volunteers within the target population to be served.

(b) A volunteer who is exempt, as specified in subsection (1) of this section and who stops participating without good cause, shall lose priority status for JOBS services if he volunteers at a later time.

(c) A volunteer who is not exempt and who stops participating without good cause shall be subject to sanctions, as specified in subsection (10) of this section.

(3) Components. All JOBS counties shall offer the following services and activities:

(a) Education is provided:

1. Below the postsecondary level:

a. High school or equivalent;

b. Basic or remedial education; and

c. English as a second language; or

2. At the postsecondary level if:

a. The occupational assessment indicates that

the participant has the aptitude to perform a specific job for which this education and training is required;

b. The participant has or is capable of achieving the basic literacy skills required by the occupation; and

c. Jobs are available in the specific occupation for which education and training is needed.

(b) Job skills training which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area.

(c) Job readiness activities that help prepare participants for work by familiarizing them with workplace expectations, attitudes and appropriate behavior.

(d) Job development and job placement activities for soliciting public and private employers' job openings, marketing participants, and securing job interviews for participants.

(4) Optional components. All JOBS counties shall offer job search, which provides group and individual assistance and training with job-seeking activities, and at least one (1) of the following components:

(a) On-the-job training in which a JOBS participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job;

(b) Community work experience program which provides unpaid work experience and training to assist participants to move promptly into regular public or private employment.

(c) Work supplementation in which AFDC funds are used to develop and subsidize jobs for AFDC recipients. A portion of the participant's AFDC grant shall be reduced and paid to the employer instead of to the participant to subsidize the individual's wages. This component shall be implemented effective January 1, 1991.

(5) JOBS participation requirements.

(a) Assessment. When an AFDC recipient has been identified as a JOBS participant, the individual shall be referred to a JOBS case manager. The case manager shall make an assessment of the individual's employability. The assessment shall include consideration of basic skills, work skills, occupational skills, and barriers. The assessment shall be based on:

1. Education, child care and other supportive service needs;

2. The individual's proficiencies, skills deficiencies, and prior work experience;

3. The needs of the family of the participant;

4. Any other relevant factors.

(b) Employability plan. Based on the findings of the assessment, the agency and participant shall jointly develop an employability plan. This plan shall contain:

1. An employment goal for the participant;

2. Services to be provided by the agency (including child care);

3. JOBS activities to be undertaken to achieve the employment goal;

4. Other needs of the family.

(c) Special participation requirements for education.

1. An AFDC parent under age twenty (20) who resides in a JOBS county shall be required to participate in educational activities if:

a. The parent is not otherwise exempt;

b. The parent lacks a high school diploma or has basic skills in reading or math below the 8.9 grade level.

2. For purposes of this requirement, the exemption contained at subsection (1)(i) of this section shall not qualify the participant for exemption from JOBS educational activities.

3. The agency may require a parent aged eighteen (18) or nineteen (19) to participate in work or training activities instead of education if:

a. The parent fails to make good progress in successfully completing educational activities; or

b. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for the parent.

(d) Participation for parents with children under age six (6). Participants with children under age six (6) who are not required to participate in education (as specified in subsection (5)(c) of this section) shall not be required to participate in the JOBS program for more than twenty (20) hours per week.

(6) Self-initiated JOBS activities. Self-initiated JOBS activities refer to approved activities of individuals who of their own accord began education or training activities. These individuals shall be in good standing at an institution of higher education or school or other entity offering a course of vocational or technical training. Activity below the postsecondary level shall be included if it is determined to be appropriate for the participant's employability plan. Both exempt and nonexempt individuals may be approved for self-initiated education or training for their JOBS activity. The participant shall be attending:

(a) At least half time, as defined by the institution;

(b) A JTPA-funded program, if in training;

(c) A public source or private institution that is licensed by the Kentucky Board for Proprietary Education or recognized by the appropriate regulatory agency or licensing body for the state in which the training is located; or

(d) Other education or training which would otherwise be an approved JOBS activity, for example:

1. GED;

2. Literacy;

3. Other approved education attended less than half time.

(7) Good and satisfactory progress.

(a) Each participant in an education or training component shall meet good and satisfactory progress requirements. Good and satisfactory progress criteria for all JOBS educational activities and approved self-initiated education is established by the educational institution. Good and satisfactory progress shall be measured and reported to the DSI at the following intervals:

1. Literacy, adult basic education, or general educational development. Good and satisfactory progress is measured at the end of seventy-five (75) hours or the 12th month of instruction, whichever comes first.

2. High school. Good and satisfactory progress shall be measured at the end of each semester or quarter.

3. Technical. Good and satisfactory progress shall be measured at regularly scheduled intervals, as defined by the institution.

4. Proprietary school. Good and satisfactory progress shall be measured at the end of each regularly scheduled grading period as defined by the institution, never to exceed a twelve (12) month period.

5. College. Good and satisfactory progress shall be measured at the end of a semester or quarter.

6. DES components. Good and satisfactory progress shall be measured on a monthly basis.

(8) Conciliation. A conciliatory meeting shall be conducted in the following instances:

(a) At the request of a JOBS participant;

(b) At the request of a component provider; or

(c) When a situation is identified which could result in a sanction (as specified in subsection (10) of this section).

(d) The DSI, the DES, or both agencies jointly shall conduct the conciliatory meetings. During the meetings, the agency shall determine if additional services are needed to assist with JOBS participation. Participation shall be monitored for thirty (30) days following the initial meeting to ensure that the dispute has been resolved. The thirty (30) day period may be extended for an additional thirty (30) days, if necessary.

(e) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

(9) Good cause.

(a) Good cause for noncompliance in the JOBS program or refusal to accept employment shall be found if:

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

2. Necessary child care is not available;

3. Employment would result in a net loss of cash income;

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

5. Unavailability of transportation (including unavailability due to costs which exceed the reimbursement) with no readily accessible alternative means of transportation available;

6. Travel time to the work site or JOBS component site exceeds two (2) hours round trip daily;

7. Illness of another household member requiring the presence of the participant;

8. The participant is temporarily incarcerated;

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

10. Work demands or conditions render continued employment unreasonable. Examples are:

a. Consistently not being paid on schedule; or

b. The presence of a risk to the individual's health or safety;

11. Wage rates are decreased subsequent to acceptance of employment;

12. The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize;

13. A household emergency occurs, such as:

a. Death of a member of the immediate family;

b. Entry into a spouse abuse center;

c. Natural disasters;

d. Court appearance;

e. Victim of crime; or

f. Flooded basement; or

14. The participant receives temporary military assignment.

(b) The duration of good cause criteria may vary according to individual circumstances.

(10) Sanctions.

(a) When an AFDC recipient fails to comply with the requirements of the JOBS program, he shall be subject to JOBS and AFDC sanctions. Failure to comply shall be found when the participant:

1. Fails without good cause to participate in the required interview, assessment, and employability plan activities;

2. Fails without good cause to participate in the program;

3. Refuses without good cause to accept employment; or

4. Terminates employment or reduces earnings without good cause.

(b) Persons who have failed to comply without good cause shall be sanctioned, as follows:

1. The participant is excluded from JOBS activities and services:

a. For the first failure to comply, until the failure to comply ceases;

b. For the second failure to comply, until the failure to comply ceases, or three (3) months, whichever is longer; and

c. For any subsequent failure to comply, until the failure to comply ceases, or six (6) months, whichever is longer.

2. In determining the amount of the AFDC grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS sanctions begin. In a case based on unemployment, the agency shall not take into account the needs of the sanctioned individual or the second parent, unless the second parent is participating in JOBS.

3. A sanctioned individual shall participate in a designated activity for two (2) weeks before the failure to comply is considered to have ceased. At that time, the sanctions shall be terminated.

Section 10. [8.] Jobs Through Employment and Training (JET). (1) Effective June 1, 1989, unless exempt from work registration, an individual who has applied for or is receiving AFDC shall be ineligible for benefits if he refuses to participate in the JET Program without good cause. The JET program shall close effective September 30, 1990. During the month of October 1990, JET participants in an education or skills training component shall continue their participation as a self-initiated participant in the JOBS program.

(2) Individuals exempt from JET are as follows:

(a) Individuals who are ill, disabled, or elderly;

(b) Individuals needed in the home to care for a sick or disabled person;

(c) Individuals working thirty (30) hours or more per week;

(d) A child under age sixteen (16) or attending school full time;

(e) A woman in at least the seventh month of pregnancy;

(f) Individuals living in a "remote" (non-JET) county;

(g) A parent or caretaker relative of a child under age six (6) who personally provides full-time care of the child with only very brief and infrequent absences from the home. Brief and infrequent absences without considering time traveled to and from work/school are defined as:

1. Employment by the caretaker relative of less than thirty (30) hours per week;
2. Less than full-time school attendance (or for college attendance, enrollment) by the caretaker relative;
3. Less than full-time school attendance (or for college attendance, enrollment) and less than fifteen (15) hours per week employment by the caretaker relative;
4. Attendance by the child under age six (6) in nursery school;
5. Additional brief and infrequent absences include:

a. Visits by the child under age six (6) with relatives, friends, the absent parent, neighbors, etc.;
b. Visits by the caretaker relative with relatives, friends, neighbors, etc.;
c. Routine shopping and errands;
d. Doctor's visits; and
e. Short-term hospitalization (less than thirty (30) days.

6. If a parent or other caretaker relative is absent from the child for reasons other than these listed, the absence is not considered brief and infrequent.

Section 11. [9.] Cooperation in Child Support Enforcement Activities. (1) Inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities [pursuant to 45 CFR 232.12] and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child[(ren)] made to a protective payee.

(2) If, after exclusion from the grant for failure to cooperate, the individual states that he is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.

(3) [Pursuant to 45 CFR Part 232.40,] The Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall [will] be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child(ren) adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or [/] recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction; and the department believes it would be detrimental to the child to require the applicant's or [/] recipient's cooperation; or

(e) The applicant or [/] recipient is being assisted by a public or licensed private social agency to resolve whether to keep the child or release him for adoption and discussion has not gone on for more than three (3) months and the cabinet believes it would be detrimental to the child to require the applicant's or [/] recipient's cooperation.

(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made [pursuant to the regulation at 45 CFR 232.42 and 45 CFR 232.43].

Section 12. [10.] Potential Entitlement for other Programs. (1) All applicants or [/] recipients shall [must] apply for any benefit[(s)] or benefits if potential entitlement exists.

(2) Failure to apply results in ineligibility for AFDC.

Section 13. [11.] Furnishing of Social Security Account Numbers. All applicants or [/] recipients shall [must] furnish social security account numbers [pursuant to 45 CFR 232.10].

Section 14. [12.] Assignment of Rights to Support. [Pursuant to KRS 205.720,] 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 child support owed for the child not to exceed the amount of AFDC payments made to the recipient.

Section 15. [13.] 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 16. Material Incorporated by Reference. (1) Forms necessary for participation in the JOBS program are being incorporated effective October 1, 1990.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON,, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 5, 1990
FILED WITH LRC: September 14, 1990 at 9 a.m.

STATEMENT OF EMERGENCY
904 KAR 2:016E

The Family Support Act of 1988 mandated substantive changes in the AFDC program. As a condition of operating an AFDC program, states shall have a Job Opportunities and Basic Skills (JOBS) program in place no later than October 1, 1990. Failure to do so will result in the loss of federal financial participation in the AFDC

program. Central to the concept of the JOBS program is the guarantee of child care and other supportive services to participants. This emergency regulation implements the mandatory child care and supportive services for participants in the JOBS program. The requirement for these services is contained in 45 CFR 255. In order to comply with the federal mandate effective October 1, 1990, this emergency regulation shall be filed. 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, 255, 256
STATUTORY AUTHORITY: KRS 205.200(2)
EFFECTIVE: September 14, 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) "Approved JOBS activities" means participation in component, precomponent, component preparation, preemployment, transitional extension or self-initiated JOBS activities which have been determined by the Department for Social Insurance to be consistent with employment goals.

(2) [(1)] "Assistance group" means a 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 or unemployed 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.

(3) [(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 extraordinary expenses, that are not included in the AFDC Standard of Need.

(4) "Certified child care providers" means a small family day care in a provider's home serving fewer than four (4) children. This provider has voluntarily registered with the Cabinet for Human Resources, Department for Social Services. Standards for certification are contained in 905 KAR 2:070.

(5) [(16)] "Claimant" means the individual responsible for an overpayment.

(6) [(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.

(7) "Component" means services and activities such as education, job skills training, job readiness, job development and placement, job search, on-the-job training, work supplementation or community work experience program activities available under the Job Opportunities and Basic Skills (JOBS) program. Each individual component is described in 904 KAR 2:006.

(8) "Component preparation" means the period in which assessment, testing, development of the employability plan and referrals for removal of barriers takes place.

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

(10) [(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.

(11) [(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].

(12) "Licensed child care providers" means day care centers serving twelve (12) or more children, or day care in a provider's home serving four (4) to twelve (12) children, which are licensed by the Division of Licensing and Regulation, Office of the Inspector General, as provided in 905 KAR 2:010.

(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) [(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 or [/] legal guardian is considered any person under the age of eighteen (18).

(15) [(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.

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

school attendance."

(17) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(18) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(19) [(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.

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

(21) [(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.

(22) [(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.

(23) "Self-initiated" means approved participation in which education or training activities are initiated by the client and determined to meet agency criteria. Specific criteria is contained in 904 KAR 2:006.

(24) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the AFDC case in which supportive service payments may continue if:

(a) The case is not eligible for transitional child care, as described in Section 9 of this regulation;

(b) The case is not discontinued due to fraudulent activity; and

(c) The case is not discontinued due to failure to comply with procedural requirements; and

(d) The JOBS participant elects to continue the approved component activity in which she is engaged at the time of discontinuance.

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

(26) "Unregulated child care providers" means private providers, such as friends or relatives, who are not required to be certified or licensed.

Section 2. Resource Limitations. (1) Real and personal property owned in whole or in part by an applicant or recipient including a sanctioned individual[(s)] and his parent[(s)], even if the parent[(s)] is not an applicant or recipient, if the applicant or [/] recipient is a dependent child living in the home of the [said] parent, shall be considered.

(2) 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:

(3) [(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 or [/] 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 or [/] benefits mandated by federal regulations.

(4) [(2)] Disposition of resources.

(a) An applicant or [/] recipient shall not have transferred or otherwise divested himself[/herself] of property without fair compensation in order to qualify for assistance.

(b) 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.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) 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 shall [will] apply:

(1) Gross income test.

(a) The total gross non-AFDC income of the assistance group, as well as income of parent[(s)], sanctioned individual and amount deemed available from the parent or [(s)/] legal guardian[(s)] of a minor parent or [/] 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.

(b) Disregards specified in Section 4(1) of this regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.

(2) Applicant eligibility test.

(a) An applicant eligibility test shall be applied if:

1. The gross income is below the gross income limitation standard; and

2. 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].

(b) The total gross income after application of exclusions or [/] 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.

(c) If income exceeds this standard, the assistance group is ineligible.

(d) 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.

(a) 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.

(b) If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible.

(c) 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) Ineligibility period.

(a) A period of ineligibility shall be established [in accordance with 45 CFR 233.20(a)(3)(ii)(F),] for an applicant or [/] recipient 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.

(b) The ineligibility period shall be recalculated if any of the following circumstances occur:

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

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

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

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

(a) Disregards applicable to stepparent income [and/]or income of the parent or [(s)/] legal guardian[(s)] of a minor parent or [/] 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;]

(d) [(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;

(e) [(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;]

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

(g) [(i)] Nonemergency medical transportation payments;

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

(i) [(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;

(j) [(l)] Highway relocation assistance;

(k) [(m)] Urban renewal assistance;

(l) [(n)] Federal disaster assistance and state disaster grants;

(m) [(o)] Home produce utilized for household consumption;

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

(o) [(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;

(p) [(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;

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

(r) [(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;

(s) [(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;

(t) [(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;

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

(v) [(x)] Payments made under the Low Income Home Energy Assistance Act (LIHEAP) and other energy assistance payments which are made to an energy provider or provided in-kind [permitted to be excluded pursuant to 45 CFR 233.53 (c)(5)(i)];

(w) [(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;

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

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

(z) [(bb)] Effective January 3, 1989, loans.

(aa) [(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.

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

(cc) [(ee)] 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].

(dd) [(ff)] Other benefits mandated by federal regulations or legislation.

(2) Applicant eligibility test. The exclusions or [/]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;

(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); and

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

(3) Benefit calculation. After eligibility is established, exclude or [/] 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)], for example [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 (for example [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 exclusions or [/] 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 or [(s)/] legal guardian[(s)] living in the home with a minor parent or [/] 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 or [/] disregards:

(a) The first seventy-five (75) [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 or [(s)/] legal guardian[(s)] of a minor parent or [/] 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 or [(s)/] legal guardian[(s)] of a minor parent or [/] legal guardian as dependents for purposes of determining his federal personal income tax liability;

(c) Any amount actually paid by the stepparent or parent or [(s)/] legal guardian[(s)] of a minor parent or [/] 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 or [(s)/] legal guardian[(s)] of a minor parent or [/] legal guardian for alimony or child support with respect to individuals not living in the household; and

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

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

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

Section 6. Alien Income and Resources. (1) 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.

(2) 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.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or [/] sponsor's spouse is not provided.

(5) 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.

(6) The provisions of this section shall not apply to those aliens identified in subsection (5) of this section [45 CFR 233.51(e)].

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

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

2. [(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;

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

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

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

(b) [(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. (1) The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities. [from which]

(2) 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

(3) 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.

(4) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

Section 8. Job Opportunities and Basic Skills (JOBS) Child Care and Supportive Services. (1) Individuals participating in the JOBS program shall be entitled to payment of:

(a) Child care;

(b) Transportation; and

(c) Other supportive service costs necessary for participation in an approved JOBS activity, as described in subsection (10) of this section.

(2) JOBS activities are described in 904 KAR 2:006, Section 9.

(3) Child care eligibility in JOBS components. Child care shall be paid for a child meeting the criteria specified in Section 9(1) of this regulation. Child care shall be provided in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Preemployment;

(e) Transitional extension; or

(f) On-the-job training (OJT) participants discontinued due to earned income or employment of 100 hours a month or more of the principal wage earner (PWE) in an AFDC-unemployed parent (AFDC-UP) case.

(4) Child care eligibility in self-initiated activities.

(a) Child care shall be provided in the same situations as in JOBS components with the following exceptions:
1. Transitional extension;
2. OJT participants discontinued due to increased earnings or hours of employment;
3. Component preparation; and
4. Precomponent, for persons waiting to enter self-initiated activities for the first time.
(b) Child care shall be provided only for approved self-initiated activities.
(5) Child care limitations.
(a) Child care payments shall be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates.
(b) Payments shall not be made to a provider if the provider is:
1. The parent;
2. The legal guardian;
3. A member of the AFDC assistance unit which includes the child needing care;
4. Not meeting applicable standards of state and local law; or
5. Not allowing parental access.
(c) Local market rates shall be determined by:
1. The type of provider;
2. The age of the child;
3. The special needs of the child. Special needs shall be verified by:
a. Entitlement to disability benefits; or
b. Written statement from a physician or professional from a service agency such as Comprehensive Care, or the Department for Social Services;
4. The amount of time care is needed; and
5. The geographical boundaries of the fifteen (15) area development districts.
(d) Full-time (FT) and part-time (PT) attendance shall be determined by the provider.
(e) FT and PT maximum payment levels shall be established for the following groups of dependent children:
1. "Special needs" includes children in no certain age group;
2. "Infants" includes children under age one (1);
3. "Toddlers" includes children from age one (1) up to age three (3);
4. "Preschool" includes children from age three (3) up to age five (5);
5. "School-age" includes children age five (5) and over.
(f) Child care maximum payments shall be made as follows:

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

	Preschool		School-Age	
	FT	PT	FT	PT
Licensed	$10	7	10	7
Certified	$ 9	6	9	6
Unregulated	$ 8	5	8	5

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	$10	10	10	7	9	6
Certified	$ 9	9	9	6	8	5
Unregulated	$ 8	8	8	5	7	4

	Preschool		School-Age	
	FT	PT	FT	PT
Licensed	$ 9	6	9	6
Certified	$ 8	5	8	5
Unregulated	$ 7	4	7	4

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	$10	10	9	6	9	6
Certified	$ 9	9	8	5	8	5
Unregulated	$ 8	8	7	4	7	4

	Preschool		School-Age	
	FT	PT	FT	PT
Licensed	$ 9	6	8	5
Certified	$ 8	5	7	4
Unregulated	$ 7	4	6	3

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	$12	12	12	9	10	7
Certified	$11	11	11	8	9	6
Unregulated	$10	10	10	7	8	5

	Preschool		School-Age	
	FT	PT	FT	PT
Licensed	$10	7	10	7
Certified	$ 9	6	9	6
Unregulated	$ 8	5	8	5

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	$10	10	10	7	9	6
Certified	$ 9	9	9	6	8	5
Unregulated	$ 8	8	8	5	7	4

	Preschool		School-Age	
	FT	PT	FT	PT
Licensed	$ 9	6	8	5
Certified	$ 8	5	7	4
Unregulated	$ 7	4	6	3

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$13	13	13	10	13	10
Certified	$12	12	12	9	12	9
Unregulated	$11	11	11	8	11	8

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$11	8	11	8
Certified	$10	7	10	7
Unregulated	$ 9	6	9	6

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$12	12	12	9	12	9
Certified	$11	11	11	8	11	8
Unregulated	$10	10	10	7	10	7

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$12	9	11	8
Certified	$11	8	10	7
Unregulated	$10	7	9	6

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	8	5	8	5
Certified	$ 9	9	7	4	7	4
Unregulated	$ 8	8	6	3	6	3

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$ 8	5	8	5
Certified	$ 7	4	7	4
Unregulated	$ 6	3	6	3

GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	8	5	8	5
Certified	$ 9	9	7	4	7	4
Unregulated	$ 8	8	6	3	6	3

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$ 8	5	8	5
Certified	$ 7	4	7	4
Unregulated	$ 6	3	6	3

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$10	7	9	6
Certified	$ 9	6	8	5
Unregulated	$ 8	5	7	4

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$10	7	10	7
Certified	$ 9	6	9	6
Unregulated	$ 8	5	8	5

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$11	11	11	8	11	8
Certified	$10	10	10	7	10	7
Unregulated	$ 9	9	9	6	9	6

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$ 9	6	9	6
Certified	$ 8	5	8	5
Unregulated	$ 7	4	7	4

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$ 9	6	10	7
Certified	$ 8	5	9	6
Unregulated	$ 7	4	8	5

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	$10	10	9	6	9	6
Certified	$ 9	9	8	5	8	5
Unregulated	$ 8	8	7	4	7	4

	Preschool		School-Age	
	FT	PT	FT	PT
Licensed	$ 9	6	9	6
Certified	$ 8	5	8	5
Unregulated	$ 7	4	7	4

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	$12	12	12	9	12	9
Certified	$11	11	11	8	11	8
Unregulated	$10	10	10	7	10	7

	Preschool		School-Age	
	FT	PT	FT	PT
Licensed	$11	8	11	8
Certified	$10	7	10	7
Unregulated	$ 9	6	9	6

(g) Child care payments shall be limited as follows:

1. Six (6) semesters (three (3) years) for a two (2) year postsecondary program;

2. Eight (8) semesters (nine (9) with good cause) for a four (4) year postsecondary program; or

3. No restrictions on other education and training activities.

(h) These limits apply to both full-time and part-time enrollment.

(i) In preemployment or precomponent, child care payments shall be limited to a period of two (2) weeks up to one (1) month if necessary to guarantee the child care arrangement shall not be lost.

(6) Authorization of child care payment.

(a) Child care payments shall be authorized upon the receipt of appropriate verification of the cost of care.

(b) Departmental forms required for verification are incorporated by reference in this regulation.

(c) Payments shall be authorized in accordance with 904 KAR 2:050.

(7) Restrictions on authorization of child care payments. Payment shall not be made if:

(a) Verification is not returned by the end of the month following the month in which the cost was incurred;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

(8) Transportation payments in JOBS components. Transportation reimbursement shall be paid in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Transitional extension; or

(e) On-the-job training (OJT) participants discontinued due to earned income or employment of 100 hours a month or more of the PWE in an AFDC-UP case.

(9) Transportation payments in self-initiated activities.

(a) Transportation shall be provided in the same situations as in JOBS components, with the exceptions of:

1. Transitional extension;

2. OJT participants discontinued due to increased earnings or hours of employment;

3. Component preparation; and

4. Precomponent, for persons waiting to enter self-initiated activities for the first time.

(b) Reimbursement shall be paid only for approved self-initiated activities.

(10) Transportation payment amount and authorization.

(a) A standard rate of three (3) dollars per day shall be paid for individuals participating in approved JOBS activities.

(b) Transportation reimbursement shall be made after receipt of appropriate verification. Departmental forms required for verification are incorporated by reference. Payments shall be made as specified in 904 KAR 2:050.

(c) Transportation payments shall be limited in the same manner as child care payments, as described in subsection (4)(g) of this section.

(d) In precomponent, transportation payments are limited to two (2) weeks up to one (1) month if necessary to guarantee that the arrangements shall not be lost.

(11) Restrictions on authorization of transportation payments. Payments shall not be made if:

(a) Appropriate verification is not returned by the end of the month following the month in which the cost was incurred;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

(12) Other supportive services in JOBS components.

(a) Nonrecurring services shall be provided if necessary for participation in the approved JOBS activities of:

1. Component preparation;

2. Component participation;

3. Transitional extension;

4. Preemployment; or

5. OJT participants discontinued due to earned income or increased hours of employment.

(b) These services shall be approved by the case manager as defined in 904 KAR 2:006.

(c) Examples of services which may be approved are the purchase of:

1. Remedial health care items or services not covered under the Medicaid program;

2. Necessary clothing; or

3. Any other item identified by a referral agency, the case manager, or the participant as being necessary for participation.

(13) Other supportive services in self-initiated activities. Nonrecurring services shall be provided in the same situations as in JOBS components, with the following exceptions:

(a) Transitional extension;

(b) OJT participants discontinued due to increased earnings or hours of employment; or

(c) Component preparation.

(14) Limitations on other supportive services.

(a) A cumulative limit of $300 in a twelve (12) month period, beginning with the first day of the month in which the first supportive service payment is made, shall be in effect for any participant in these approved JOBS activities:

1. Component preparation;

2. Component-related;

3. Transitional extension; or

4. OJT participants discontinued due to increased earnings or hours of employment.

(b) A separate $300 limit, per job, for preemployment supportive services may be paid.

(c) Other supportive services shall be limited in the same manner as child care payments, as described in subsection (4)(g) of this section.

(15) Restrictions on authorization of supportive service payments. Payments shall not be made for the period during which:

(a) Verification is not returned by the service provider;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

[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). (1) Effective April 1, 1990, child care assistance shall be provided by the state to families whose eligibility for AFDC assistance has ceased due to:

(a) Increased hours of, or earnings from, employment; or

(b) As a result of the loss of income disregards due to the expiration of the time limits at Section 4(3)(b) of this regulation [45 CFR 233.20(a)(11)].

(2) TCC shall be administered by the Cabinet for Human Resources, Department for Social Insurance through an interagency agreement with the Department for Social Services.

(3) Child care assistance shall be provided for children if the criteria in subsection (4) [(1)] of this section are met.

(4) [(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 Section 4(3)(b) of this regulation [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.

(5) [(2)] Time limitations.

(a) 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.

(b) Families may begin to receive child care in any month during the twelve (12) month eligibility period.

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

(7) [(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.

12. Employment would result in a net loss of cash income.

(b) Fails to cooperate with the state IV-A agency in establishing payments and enforcing child support obligations, per 904 KAR 2:006, Section 11 [as defined in 45 CFR 232.12].

(8) [(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.

(9) [(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 equivalent to seven and five-tenths (7.5) percent of gross income 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.

(10) [(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. 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 claimant;
(b) The overpaid assistance unit;
(c) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or
(d) 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) 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) 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. Provisions contained in this regulation shall become effective October 1, 1990 [April 1, 1990].

Section 12. Material Incorporated by Reference. (1) Forms necessary for verification of child care and supportive service payments in the JOBS program are incorporated effective October 1, 1990.
(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON,, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 5, 1990
FILED WITH LRC: September 14, 1990 at 9 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:036E

This emergency administrative regulation is being amended to delay implementation from September 1, 1990 to October 1, 1990 of a program change showing that drugs provided to long-term care residents will be dispensed through the regular pharmacy program rather than paid as a nursing home ancillary cost. This delay is necessary to allow the pharmacies additional time to revise their billing systems so as to be able to bill for the drugs. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on July 11, 1990, as follows: the implementation date of the change providing that drugs will no longer be reimbursed as an ancillary cost has been changed from September 1, 1990 to October 1, 1990. The ordinary administrative regulation to replace this emergency regulation was filed with the Regulations Compiler on July 5, 1990 and will be amended to reflect this emergency change at the LRC Subcommittee meeting in accordance with KRS Chapter 13A.

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: September 10, 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) Effective through September 30, 1990 (but not after that date), 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. Effective with regard to services provided on or after October 1, 1990, the cost of drugs provided eligible nursing home patients shall be reimbursed through the pharmacy program using ususal program limits and policies applicable to the pharmacy program except that hyperalimentation shall continue as an ancillary service.

(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 July [April] 1, 1990 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). Trending and indexing factors shall be adjusted downward to remove from the factors amounts which were included to account for minimum wage updates for which the cabinet has made a separate rate adjustment. 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 for SNFs and ICFs (but not for ICF/MRs), effective with regard to services provided on or after July 1, 1990, 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 7 [4]-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$40.99 [36.99] & below	$.92	$.58
41.00 - 41.99 [37.00-37.99]	$.86	$.50
42.00 - 42.99 [38.00-38.99]	$.78	$.41
43.00 - 43.99 [39.00-39.99]	$.70	$.32
44.00 - 44.99 [40.00-40.99]	$.61	$.21
45.00 - 45.99 [41.00-41.99]	$.51	$.09
46.00 - Maximum Payment* [42.00]	$.35	-

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

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

(Effective 7 [4]-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$ 96.99 [86.99] & below	$1.38	$.87
97.00 - 102.99 [87.00 - 92.99]	$1.29	$.75
103.00 - 108.99 [93.00 - 98.99]	$1.18	$.62
109.00 - 114.99 [99.00-104.99]	$1.06	$.47
115.00 - 120.99 [105.00 - 110.99]	$ .92	$.31
121.00 - 126.99 [111.00 - 116.99]	$ .76	$.13
127.00 - 133.49 [117.00 Maximum Payment*]	$ .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 7 [4]-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$59.99 [49.99] & below	$.92	$.58
60.00 - 61.99 [50.00 - 51.99]	.86	.50
62.00 - 63.99 [52.00 - 53.99]	.78	.41
64.00 - 65.99 [54.00 - 55.99]	.70	.32
66.00 - 67.99 [56.00 - 57.99]	.61	.21
68.00 - 69.99 [58.00 - 59.99]	.51	.09
70.00 [60.00] - Maximum Payment for Freestanding Facilities*	.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.

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

(Effective 7 [4]-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$68.99 [56.99] & below	$1.38	$.87
69.00 - 71.99 [57.00 - 59.99]	1.29	.75
72.00 - 74.99 [60.00 - 62.99]	1.18	.62
75.00 - 77.99 [63.00 - 65.99]	1.06	.47
78.00 - 80.99 [66.00 - 68.99]	.92	.31
81.00 - 83.99 [69.00 - 71.99]	.76	.13
84.00 - Maximum Payment* [72.00]	.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.

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum

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

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

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

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

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

ROY BUTLER,, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 28, 1990
FILED WITH LRC: September 10, 1990 at 9 a.m.

AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: This regulation was amended by the promulgating agency and the Interim Joint Committee on Business Organizations and Professions, and was adopted on August 17, 1990.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended)

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 reassessment [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; except

(c) Temporary failure to abide by the maximum staffing ratio of physical therapists to physical therapist's assistants or supportive personnel required in this section for a period not to exceed seven (7) consecutive work days shall not constitute a violation of this standard.

(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) Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;

(g) Reassessing [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) Reassessing each patient not otherwise noted [(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 reassessment [reevaluation].

(i) Reassessing [(h) Reevaluating] a patient whose medical condition has changed;

(j) [(i)] Establishing discharge planning for patients who require continued physical therapy;

(k) [(j)] Altering, extending, refusing or discontinuing treatment by the physical therapy service; and

(l) [(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) Reassessment [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 reassessment [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.

COMPILER'S NOTE: The following regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee and had not gone into effect as of noon on September 14, 1990.

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

603 KAR 5:240. Naming of road and bridges.

RELATES TO: KRS 177.074 [HB 423 (1990 RS)]
STATUTORY AUTHORITY: KRS 177.074 [HB 423 (1990 RS)]
NECESSITY AND FUNCTION: KRS 177.074 allows [HB 423 established a new section of KRS Chapter 177 allowing] roads and bridges to be named after an individual, historic event or any other name of historical significance. This administrative regulation sets forth the steps to be followed when petitioning the transportation secretary requesting a road or bridge name. It further sets forth the the standards for design and placement of signs denoting the name of the road or bridge.

Section 1. A person, organization or governmental unit who is petitioning the transportation cabinet to name a road segment or bridge shall submit the petition in writing. The petition shall contain at least the following information:
(1) Exact identification and location of the road segment or bridge;
(2) Specific civic or historic significance of the proposed name;
(3) Identification of the petitioner including [reason for involvement,] spokesperson's name, address, telephone number and position with organization or government unit; and
(4) A statement of whether the petitioner wishes to reimburse the transportation cabinet for preparation and erection of the commemorative signs or wishes to prepare signs and place them as approved by the department of highways.
(5) [Supportive statement from all jurisdictional units of local government.
(6)] Summary of the results of a public comment hearing held on the petition by the petitioner or a unit of local government.

Section 2. If a bridge is on a road segment which has been given a special name, the transportation secretary shall not approve a different name for the bridge. However, the commemorative signs on bridges which are in place on July 13, 1990 shall not be removed.

Section 3. The Department of Highways shall on limited access highways continue to identify the crossroads by highway number. Only when the name of the road has come into significant local use and when there is sufficient space on a sign may the name also be included.

Section 4. In order for the Secretary of Transportation to be convinced of the civic or historical significance of the person or events for which a petitioner wants a road or bridge named, the secretary shall notify each jurisdictional unit of local government of the petition. He shall request a resolution from each unit of government indicating its support or nonsupport for the petition.

Section 5. [4.] (1) If the transportation secretary agrees to name a highway segment or bridge, he shall offer to prepare and erect all signs and charge the petitioner only the actual cost of the preparation and installation of the signs.
(2) If the transportation secretary agrees to name a highway segment or bridge and the petitioner does not accept the offer from subsection (1) of this section, the petitioner shall cooperate with the jurisdictional highway district office to ensure that the signs are designed in good taste and safely erected, and in accordance with the provisions of the "Manual On Uniform Traffic Control Devices" adopted in 603 KAR 5:050.
(3) Except under unusual circumstances, there shall only be two (2) signs erected, one (1) at each end of the road segment or bridge.

O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: July 5, 1990
FILED WITH LRC: July 12, 1990 at 4 p.m.

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

702 KAR 3:030. Insurance requirements.

RELATES TO: KRS 160.105
STATUTORY AUTHORITY: KRS 156.070, 160.105
NECESSITY AND FUNCTION: KRS 160.105 directs the State Board for Elementary and Secondary [of] Education to require by regulation that each school district provide for fire and extended insurance coverage on nonsurplus buildings, at not greater than replacement cost but allowing for coinsurance and deductible features. This regulation implements that function by providing for a level of insurance coverage on school district buildings and[/or] structures sufficient to protect both the local school districts and any school revenue bond holders, as their interests may appear.

Section 1. Each local board of education shall submit to the chief state school officer [Superintendent of Public Instruction] for his approval, not less than sixty (60) days nor more than 120 days prior to the date of awarding insurance coverage, a schedule of values which reflects the estimated replacement cost, actual cash values, and the amount of fire and extended insurance coverage provided for each building and its contents owned by the local board of education which is not surplus to its needs as shown by the approved facilities plan. Each such building and its contents shall be insured for an amount equal to 100 percent of the replacement cost thereof as shown on the [aforesaid] schedule of values, and each policy covering such buildings and contents shall provide an agreed amount endorsement. The replacement cost of the building shall include the increased cost of construction brought about by code changes that have occurred since the original structure was built and which would be

required to [must] be incorporated within the rebuilt structure. Despite the required insuring of individual buildings and contents at 100 percent of replacement cost, a blanket limitation on an insurance carrier's liability per occurrence may be approved by the chief state school officer [Superintendent of Public Instruction] if an individual district's schedule of values exceeds $100,000,000 and if the blanket limitation equals at least $100,000,000 and, in addition, at least fifty (50) percent of total replacement costs as reflected by the approved schedule of values.

Section 2. Insurance on property specified in Section 1 shall be provided by carriers licensed to do business in the State of Kentucky and shall have features that provide for a minimum of eighty (80) percent coinsurance, a per occurrence deductible on all perils not to exceed five (5) percent of the prior year's capital outlay allotment or $10,000, whichever amount is smaller, and a replacement cost endorsement.

Section 3. Buildings requiring insurance and containing steam boilers shall have boiler and machinery coverage having a limit of liability equal to the total value of the real and personal property in the building in which the steam boiler is located.

Section 4. School districts may cover property in a self-insurance pool providing coverage at least equal to the standard of coverage specified in Sections 2 and 3 of this regulation. Such a self-insurance pool shall [must] be adequately reinsured by a carrier[(s)] approved to do business in the state of Kentucky and shall [must] provide facilities for insuring all of the property of an individual district to which this regulation applies.

Section 5. In the event a school building cannot be insured on a replacement cost basis, the policy insuring the building shall carry an agreed amount endorsement, and a certification signed by the local superintendent and board chairman shall be attached to the policy stating that it would not be fiscally responsible to provide replacement cost coverage for the building being insured.

Section 6. Insurance coverage provided for in Sections 2 and 3 of this regulation shall be obtained by local school districts by bids submitted on standard bid forms provided by the chief state school officer [Superintendent of Public Instruction] after having advertised for bids, where bids are required by KRS Chapter 45A or 424 as applicable.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 11, 1990
FILED WITH LRC: July 12, 1990 at 4 p.m.

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

702 KAR 3:130. Internal accounting.

RELATES TO: KRS 156.031, 156.070, 156.200
STATUTORY AUTHORITY: KRS 156.070, 156.160, 156.200
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; KRS 156.070 gives the State Board for Elementary and Secondary Education the management and control of the common schools; and KRS 156.200 gives the state board authority over accounting procedures and reports of local school districts. This regulation is necessary to establish uniform procedures for the accounting of school activity funds.

Section 1. "Internal accounts" shall be defined as all funds derived from fund raising activities sponsored under the auspices of the school except that funds raised or received by organizations which do not come under the direct supervision of school authorities shall not be considered internal accounts.

Section 2. The district board of education shall have the responsibility for administration and control of all internal accounts.

Section 3. The district board of education shall develop accounting procedures consistent with those set out in the Department of Education's [Manual,] "A Uniform Program of Accounting for School Activity Funds in Kentucky Schools," [Bureau of Administration and Finance for Local School Systems,] July, 1990 [August 1, 1978], a copy of which is incorporated [made a part of these regulations] by reference and which may be inspected, copied, and obtained from the Office of School Administration and Finance, 15th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m. [Superintendent of Public Instruction].

Section 4. Internal accounts shall be audited annually as follows:
(1) High school activity fund accounts shall be audited by a certified public accountant.
(2) The high school activity fund account for the purpose of making the audit shall be defined as follows:
(a) Schools with grade ranges of 10 through 12;
(b) Schools with grade ranges of 9 through 12;
(c) Schools with grade ranges of 7 through 12; and
(d) Schools with grade ranges of 1 through 12.
(3) Activity fund accounts other than high school accounts shall be audited either by a certified public accountant or a select committee approved by the Board of Education. The committee shall be composed of central office staff, principals, teachers or citizens who are not employees of the board.
(4) If an audit committee is selected by the Board of Education, the names and titles of the committee members shall be submitted to the chief state school officer [Superintendent of

Public Instruction] for approval prior to the date of the audit.

(5) The audit report shall be reviewed and accepted by the local board. All recommendations and exceptions listed in the audit shall be reviewed by the Department of Education's accounts examiner and a report made to the district Board of Education and the chief state school officer [Superintendent of Public Instruction]. A copy of the audit report shall be on file in both the office of the principal and the office of the superintendent of the local school district where they shall be open for public inspection.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 11, 1990
FILED WITH LRC: July 12, 1990 at 4 p.m.

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

702 KAR 5:030. Superintendents' responsibilities.

RELATES TO: KRS 156.031, 156.160, 189.540
STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS 156.160 and 189.540 require the State Board for Elementary and Secondary Education to promulgate regulations relating to the safety of public school children, the transportation of such children to and from school, and the operation of school buses. This regulation provides the district superintendent with the regulations necessary to assist him in administering the district's pupil transportation programs and to provide the maximum consistency throughout the state.

Section 1. Each school district superintendent shall be responsible for the general supervision of the district's pupil transportation program. The superintendent may designate another employee or other employees of the board to assist in carrying out this responsibility. For the purpose of these regulations, the word "superintendent" shall mean the superintendent or his designate.

Section 2. The superintendent shall require that a safety inspection be made on each school bus owned and operated by the board or contracted to the board at least once each month that the district's schools are in session. This inspection shall be made by a competent person. If, upon inspection, a school bus is found to be in unsafe operating condition, the superintendent shall withhold the bus from operation until the required repairs are made. The superintendent shall be responsible for keeping the records of the bus safety inspections on file, and shall be responsible for certifying to the Division of Pupil Transportation at least once each month that each school bus used during that month has received the proper safety inspection.

Section 3. The superintendent shall be responsible for preparing the school bus route maps, school bus inventories, and other reports required by the Division of Pupil Transportation for the purpose of making the pupil transportation cost calculation for the Fund to Support Education Excellence in Kentucky [Minimum Foundation Program].

Section 4. The superintendent shall be responsible for making reports on a monthly basis to the Division of Pupil Transportation on all school bus accidents that happened to the district's buses during the month.

Section 5. The superintendent shall be responsible for providing the necessary and required school bus driver training before a school bus driver shall enter into the duties of transporting pupils to and from school or events related to such schools. This training shall at least include the school bus driver course prescribed by the State Board for Elementary and Secondary Education, in accordance with 702 KAR 5:080, Sections 8, 9, and 10 and shall be conducted by a certified instructor. Evidence that the driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

Section 6. The superintendent shall be responsible for providing the required in-service school bus driver training which each school bus driver shall [must] complete annually for certification renewal, in accordance with 702 KAR 5:080, Section 10. The in-service training shall include at least eight (8) hours of required instruction conducted by a certified instructor. Evidence that each driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

Section 7. (1) The superintendent shall, **prior to the beginning of each school year,** perform a criminal records and driving history check **on** [prior to the initial employment of] all new **and previously employed** [of all currently employed] school bus drivers. **Employment for the school year shall be contingent upon such a check and appropriate action on such by the local superintendent.** [and school bus driver applicants for criminal history; alcohol and illegal drug use; and driving infraction conviction(s) prior to recommendation for employment. Current school bus drivers with a positive records check in such areas shall be considered for appropriate disciplinary action.]

(2) Within ten (10) days of any such occurrence, a school bus driver shall report to the local superintendent or his designee any revocation of his driver's license or conviction for DUI.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 11, 1990
FILED WITH LRC: July 12, 1990 at 4 p.m.

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

702 KAR 5:110. Vocational pupils, reimbursement for.

RELATES TO: KRS 156.031, 157.370
STATUTORY AUTHORITY: KRS 156.070, 157.320, 157.370
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS 157.370 requires a local board of education to be reimbursed separately from the Fund to Support Education Excellence in Kentucky [Foundation Program] for the cost of transporting pupils from a parent school to a vocational-technical school or to a vocational education center, according to State Board for Elementary and Secondary [of] Education regulations. This regulation establishes the terms under which reimbursement will be paid to those districts that so transport their secondary school pupils and establishes the reimbursement limits.

Section 1. Any local district may provide bus transportation for the district's secondary school pupils from their parent school to a state vocational-technical school, an area vocational education center, or to a vocational training site where an integral part of the basic vocational instructional program is being provided. For the purpose of these regulations, the place or site where the pupil receives basic vocational training shall be referred to as a vocational school.

Section 2. All applications to transport pupils to a vocational school for which reimbursement is to be claimed shall be submitted to the Division of Pupil Transportation for approval.

Section 3. Requests for reimbursement for transportation to a vocational school shall be the responsibility of the district providing the [said] transportation.

Section 4. Requests for reimbursement for transportation to a vocational school shall be made on a monthly basis to the Division of Pupil Transportation in the Office of School Administration and Finance [Local Services] in the Department of Education.

Section 5. Local districts that transport pupils to a vocational school on buses owned and operated by the district shall be reimbursed for these expenditures and to the following [this] extent:
(1) Bus mileage at a rate not to exceed the average cost per bus mile for county school districts, exclusive of driver's cost, as calculated by the Division of Pupil Transportation for the previous school year; and [.]
(2) The vocational school bus driver's cost at an hourly rate not to exceed the hourly rate paid by the district to a driver in the district's regular transportation program with similar qualifications.

Section 6. If a district's pupils are transported to a vocational school over a toll road as the nearest or best route, either on a board-owned bus or a bus contracted to the board, the district shall be reimbursed for the toll road fee in addition to mileage and driver's cost.

Section 7. A district that contracts for the transportation of its pupils to a vocational school shall be reimbursed an amount not to exceed the total amount that would result when the vocational school bus mileage is multiplied by the average cost per bus mile for county districts exclusive of driver's cost and the driver's total hours are multiplied by the average hourly rate paid by county school districts plus necessary toll road fees. The average mileage cost and average hourly rate shall be those calculated by the Division of Pupil Transportation for the previous school year.

Section 8. Bus mileage shall be calculated from the parent school to the vocational school over the nearest and best route. When the same bus is used to transport pupils to a vocational school from more than one (1) school within the same district, bus mileage shall be calculated from the school located farthest from the vocational school over the nearest and best route as the bus serves the other schools en route to the vocational school.

Section 9. The total hours of driver's pay per day that will be reimbursed for transporting pupils to a vocational school shall be calculated on the basis of what the driver does while the pupils are in class at the vocational school and shall be done by one (1) of these methods:
(1) If the driver waits at the vocational school for the full time that the pupils are in class, the driver's time shall start when the bus leaves the parent school farthest from which pupils are transported to the vocational school and shall stop when the pupils are returned to the farthest parent school.
(2) If the driver unloads the pupils at the vocational school, then takes the bus to another location and returns to pick up the pupils when the classes are finished, the first half of the drivers time shall start when the bus leaves the parent school farthest from the vocational school and ends when the driver reaches the point where the bus is parked until time to make the bus trip to the vocational school to return the pupils to their parent school. The second half of the driver's time shall start when the bus leaves the point where the bus was parked and ends when the bus reaches the parent school farthest from the vocational school.
(3) Insofar as it is possible or practical, the district shall pay the bus driver by the method that results in the least cost when the driver's time and the required bus mileage are considered in combination.

Section 10. The driver of the bus that transports pupils to a vocational school shall meet the same requirements as the district's bus

drivers that transport pupils to the district's public schools.

Section 11. The school districts shall be reimbursed for the cost of vocational school transportation for the actual number of days that pupils were transported to the vocational school up to a maximum of 175 days per school year.

Section 12. One district may make a contract with another district to transport the other district's pupils to a vocational school on the same bus with the transporting district's pupils or on a separate bus. Any such [Said] contract shall be made subject to approval by the Division of Pupil Transportation.

Section 13. When one district contracts to provide a bus or buses to transport another district's pupils to a vocational school, the district providing the bus or buses shall claim additional reimbursement only for the extra bus miles required and the extra hours of bus driver time required to provide this service for the other district.

Section 14. A district shall make maximum use of the bus that transports pupils to a vocational school through planning and routing. The use of more than one (1) bus for transporting pupils from any school or group of schools to a vocational school shall [will] be approved only when the length of time required for one (1) bus to pick up and transport the pupils would be impractical or when the number of pupils on one (1) bus would exceed seating capacity [necessitate that some pupils be standees].

Section 15. Districts shall not be reimbursed for the transportation of vocational school pupils on field trips, excursions, or recreational trips.

Section 16. Districts shall not be reimbursed for the vocational transportation from the parent school to the vocational school when the vocational school is on the same grounds or on adjacent grounds to the parent school or within one-half (1/2) mile of the parent school.

HENRY E. POGUE, IV, Chairman
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EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(As Amended)

702 KAR 6:075. Reports and funds.

RELATES TO: KRS 156.010, 156.031, 156.035, 156.100, 156.200, 156.480, 42 U.S.C. 1751 to 1969b, 42 U.S.C. 1771 to 1789, 7 CFR 210.9, 7 CFR 210.14, 7 CFR 210.15
STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070
NECESSITY AND FUNCTION: This regulation is promulgated under the authority of the State Board for Elementary and Secondary Education's mandate to implement federal education assistance programs and is needed to carry out the Congressional intent of the National School Act of 1946, the Child Nutrition Act of 1966 and all amendments thereto. This regulation is necessary to properly protect all funds accruing to the local school food service program.

Section 1. A local board of education shall be responsible for the safeguarding of all funds accruing to its school food service program and shall adopt a plan for handling those funds and bonding all personnel who receive or handle such funds.

Section 2. All revenue received by the school food service program, including, but not limited to, funds received as payments for meals by students and adult, federal and state reimbursements, and any interest earned on deposits of federal and state reimbursements shall be used only for the operation or improvement of the school food service program.

Section 3. School food service funds shall not be used to purchase land or acquire or construct buildings.

Section 4. All schools approved for participation in the federal school food service program(s) shall make required monthly reports (using approved forms) to the state Department of Education. A copy of the forms submitted to the Department of Education, as well as other financial records and reports pertaining to the school food service program and applications for free and reduced price meals shall be kept by the school or local board of education for a period of three (3) fiscal years after the close of the fiscal year applicable to such records and those shall be subject to audit by appropriate state or federal officials.

Section 5. All school meals for which federal reimbursement is claimed shall be priced as a complete unit.

Section 6. A local school food service program shall be operated on a non-profit basis where actual cash balances shall not exceed three (3) months' operating balance.

Section 7. The forms referenced in Section 4 of this regulation are incorporated by reference. The effective date of the forms is October 19, 1989. A copy of the form may be obtained by contacting the Division of School Food Services, attention: Betty Williamson, 564-4390. The material is available for inspection and copying between the hours of 8 a.m. to 4:30 p.m. EST in Room 614, Capital Plaza Tower, Frankfort, Kentucky.

POGUE, IV, Chairman
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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 in order to refine the language so as to be more concise and more consistent with other laws governing existing buildings and the required level of safety to be provided therein. The regulation shall replace Article 1 of the BOCA National Building Code as adopted in 815 KAR 7:025. [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.]

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) "Building " as defined by KRS 198B.010(4).

(4) "Building code official" means an inspector certified by the department in accordance with 815 KAR 7:070 and designated by the department or by a local government as an enforcement official for the Kentucky Building Code pursuant to KRS Chapter 198B. [the building official or other enforcement officer designated by the appointing authority of the department of a local governmental jurisdiction for the enforcement of this regulation or the codes and standards adopted herein.]

(5) "Commissioner" as defined by KRS 198B.010(11).

(6) "Department" as defined by KRS 198B.010(13).

(7) "Fire code official" means the State Fire Marshal, fire chief or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety (Fire Prevention Code) as set forth in Title 815, Chapter 10 of the Kentucky Administrative Regulations. [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 the Kentucky Standards of Safety (Fire Prevention Code). [Title 815 Chapter 10 of the Kentucky Administrative Regulations.]]

(8) "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) "KAR" means Kentucky Administrative Regulations.

(10) "KBC" means the Kentucky Building Code as established in this chapter.

(11) "KRS" means Kentucky Revised Statutes.

(12) "Kentucky Standards of Safety" means the Kentucky administrative regulations established by the Commissioner of the Department of Housing, Buildings and Construction pursuant to KRS 227.300 to serve as the fire prevention code for existing buildings as well as a supplement to this code, where applicable.

(13) [(12)] "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.

(14) "Ordinary repair" as defined by KRS 198B.010(21).

(15) [(13)] "Person" means a person, partnership, corporation or other legal entity.

(16) [(14)] "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.

(17) [(15)] "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 provisions of this regulation apply to:

(a) The construction, alteration, equipment, use and occupancy of buildings and structures;

(b) Additions to buildings and structures; and

(c) Appurtenances to buildings and structures; whether hereafter erected or, where expressly stated in this regulation, existing; and whether on land, over water, or on water, permanently moored to land, and substantially a land structure. [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 shall [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 code 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 code official may require submission of architectural and engineering plans and specifications bearing the professional seal of the designer prior to this [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, adequate means of egress, light and ventilation, 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 code officials to be adequately informed.

(7) Other local or state law must be consulted to determine the existence of other powers given to the building code official, such as those related to demolition or authority over unsafe structures, which are not specifically awarded in this regulation.

(8) The State Fire Marshal and the local fire code official shall continue to be the authority having jurisdiction for enforcement of the Kentucky Standards of Safety in existing buildings not regulated by this code, and [as well as] for continued fire safety maintenance in buildings constructed and approved under this regulation [code].

Section 3. Applicability. (1) The provisions of the KBC shall apply to [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 this regulation [the article] or any other provision of the Kentucky Building Code shall be subject to the penalties provided in Section 19 of this regulation.

(5) Referenced standards. The standards referenced in this code and listed in Appendix A shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and referenced standards, the provisions of this code shall apply.

Section 4. Ordinary Repairs and Maintenance. (1) Ordinary repairs to structures may be made without application or notice to the building code official, but the repairs shall not include the cutting away of any wall, partition, or portion thereof, the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exit requirements; nor shall ordinary repairs [. 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 **activities excluded by KRS 198B.010(21).** [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.]

(2) Maintenance. All buildings and structures and all parts thereof, both existing and new, shall be maintained in a safe and sanitary condition. All service equipment, means of egress, devices and safeguards which are required by this code in a building or structure, or which were required by a previous code in a building or structure, when erected, altered or repaired, shall be maintained in good working order.

(3) Owner's responsibility. The owner or the owner's designated agent shall be responsible for the safe and sanitary maintenance of the building or structure and its means of egress facilities at all times.

(4) Housekeeping inspections. Periodic inspections of existing uses and occupancies shall be made by the appropriate fire code and health officials to insure maintenance of equipment and good housekeeping conditions.

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 code 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 and deemed necessary by the building code official for the general safety and welfare of the occupants and the public, or as may be required by the Kentucky Standards of Safety (Fire Prevention Code) or the existing structures code adopted by local ordinance. Application of this code to existing buildings **shall not apply** [is not triggered] unless alterations, additions or changes in use as set forth in subsections (2) through (5) are proposed or occur. [, the Kentucky Standards of Safety (Fire Prevention Code), or the existing structures code adopted by local ordinance, as may be deemed necessary by the code 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 of any structure or portion thereof with the potential to cause a greater hazard to the public because of increased structural or fire loading or inadequate exits for the number of occupants without approval of the building code official. If the building code official determines that the structure meets the intent of the provisions of the code governing building construction for the proposed new use and occupancy and the proposed change does not result in any greater hazard to public safety or welfare, he shall approve the change. In making his decision, the building code 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.

(5) Moved structures. Buildings and structures moved into or within the **Commonwealth** [jurisdiction] shall comply with the provisions of this code for new buildings and structures and shall not be used or occupied in whole or in part until the certificate of occupancy has been issued by the building code official.

Section 7. Departments of Building Inspection. (1) Each local government singularly or by association with other local governments shall employ a building code 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 local building code 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 Local 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.] (1) The local building code official shall be responsible for the examination and approval of plans and specifications and the inspections necessary to determine compliance for the [following] buildings cited in KRS 198B.060(2). [:]

[(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.]

(2) [(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 in accordance with KRS 198B.060(5) and (6). [. 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) Each [The] building code official or his authorized representative shall [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 code officials. The building code 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 final decisions of the appeals board, [approved rules and orders,] the regulation, specifications and standards listed in Appendix A "Referenced Standards" of the 1990 [1987] Edition of BOCA National Building Code filed [herein] by reference in 815 KAR 7:025, 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 and enforceable where referred to by a specific section of the code.

Section 10. New Materials and Modifications. (1) Alternative materials and equipment. The provisions of this code are not intended to prevent the use of any material or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material or method of construction shall be approved when the building code official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fireresistance, durability and safety. [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 code official may accept supporting data from the following sources 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 code 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 code official having plan review responsibility shall allow variance [may vary] or modification to a [modify such] provision upon application of the owner or his representative only if he finds that the spirit and intent of the law is [shall be] observed and public safety and welfare are not jeopardized. [equivalent safeguards provided.] The application for modification and the final decision of the building code official shall be in writing. When a modification is granted by a local building code official, a copy of the application and the decision shall be forwarded to the department and the local fire code official.

(5) The board may withdraw authority for plan review and inspection for code compliance under this code 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. Preliminary Inspections. (1) Before issuing a permit the appropriate building code official shall, if deemed necessary, [may] examine or cause to be examined all buildings, structures and sites for which an application has been filed for a permit to construct, enlarge, alter, repair, remove, or change the use thereof. [required by this code.] No construction shall begin on buildings covered by this regulation until a local building code official has issued a permit for such construction and an official representing the department has issued a letter releasing the plans for construction (if the department [it] has plan review responsibility).

(2) Required inspections. After issuing a building or construction permit [for a building over which he has plan review responsibility] the building code official shall conduct periodic inspections [from time to time] during and upon completion of work for which a permit has been issued. [and he shall maintain] A record of all such examinations and inspections and of all violations of the KBC shall be maintained in accordance with the **Kentucky Records and Retention Plan**.

(3) Approved inspection agencies. The building code official may accept reports of approved inspection services and agencies 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 code official.

(5) Off-site construction. 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 7:025 [7:020]. The local building code official shall be responsible to inspect such system only for zoning, water supply and sewage disposal and other [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 code official shall set a time for said inspection and notify the owner or agent. If substantial 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 or other person holding the permit and the fire code official. It shall be the owner's responsibility to fulfill any compliance deficiencies noted.

(7) The building code official shall cooperate with the fire code official by allowing the fire code official to inspect all buildings during construction. Any recommendations made by the fire code official relating to fire safety in construction of a building shall be considered by the building code official and if a certificate of occupancy is issued contrary to said written recommendations the building code official shall give written notification of his decision to the fire code official and the department at once.

(8) Coordination of inspections. Whenever in the enforcement of this code or another code or ordinance, the responsibility of more than one (1) code official of the jurisdiction is involved, it shall be the duty of the code officials involved to coordinate their inspections and administrative orders as fully as practicable so that the owners and occupants of the structure shall not be subjected to visits by numerous inspectors nor multiple or conflicting orders. Whenever an inspector from any agency or department observes an apparent or actual violation of some provision of some law, ordinance or code not within the inspector's authority to enforce, the inspector shall report the findings to the code official having jurisdiction.

Section 12. Right of Entry. (1) 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.

(2) In the discharge of duties, the building code official or authorized representative shall have the authority to enter at any reasonable hour any building, structure or premises in the jurisdiction to enforce the provisions of this code.

Section 13. Application for Permit Required. (1) When permit required. 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 as described by Section 6(2) of this regulation; 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 code official 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) Form of application. The application for a permit shall be submitted in writing and in such form as the building code official [department] may prescribe and shall be accompanied by the required fee.

(3) Description of work. 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 code official. ael permits

(4) By whom application is made. Application for (a) permits 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 verified written statement by the [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) Plans and specifications. 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 code official shall cooperate with the fire code official by allowing the fire code official to review all plans. Any recommendations made by the fire code official relating to fire safety in construction of a building shall be considered by the building code 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 code 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 code 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 shall [will] be maintained, and where a penetration will be made for electrical, mechanical, plumbing and communication conduits, pipes and systems.

(8) Time limits for application. 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 code official shall [may] grant one (1) or more extensions of time for additional periods not exceeding ninety (90) days each if there is reasonable cause.

(9) Amendments to application. Subject to the limitations of other provisions of this 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) Revocation of permit. The building code 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) Action on application. The building code 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) Suspension of permit. 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) Previous approvals. 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) Signature to permit. The building code official shall attach his signature to every permit, or he may authorize a subordinate to affix such signature thereto.

(5) Conditions to permit. The building code official shall record and communicate to the owner or agent, the terms and conditions related to his approval to commence construction.

(6) Approval of part. The building code 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 shall [will] be granted.

(7) Approved plans. The building code 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 code official or his authorized representative at all reasonable times.

(8) Posting of permit. 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) Payment of fees. A permit shall not be issued until the fees [prescribed by the department or the local government] have been paid as prescribed by Section 16 of this regulation. 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) Compliance with code and other laws. 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) Change in site plan. 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 shall [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) General. 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, if applicable, and to the [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) Special fees. 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) New construction and alterations. The fees for plan review and inspection [building permits] and other functions performed by the department pursuant to KRS Chapter 198B shall be paid in accordance with 815 KAR 7:013. [may be designed to fully cover the cost of the service performed; and the department and] Each local government shall adopt reasonable fees for building permits and the performance of functions performed by it pursuant to this code. The fees shall be designed to comply with KRS 198B.060(18). [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) New buildings. A [No] building or structure hereafter erected [on which site preparation and assembly were begun, after the Kentucky Building Code becomes effective as to that building,] shall not be used or occupied in whole or in part until the appropriate building code official has issued [issues] a certificate of occupancy in accordance with this regulation [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 this regulation [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) Alterations. A building or structure hereafter enlarged, extended or altered to change from one (1) use group to another as described in Section 6(2) of this regulation [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 under that new use until a [the] certificate shall have been issued by the building code 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) Change in use and occupancy. 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) Temporary occupancy. Upon the request of the holder of a permit, the building code 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) Certificate information. When a building or structure is entitled thereto, the building code 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 of the KBC; [the fire grading as defined in Article 3 and Table 902;] the maximum live load on all floors as prescribed in Article 11 of the KBC; the occupancy load in the building and all parts thereof as defined in Article 3 and Article 8 of the KBC; and any special stipulations and conditions of the building permit.

Section 18. Posting Structures. (1) Posted use and occupancy. 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 in Article 3 of the KBC [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 occupant [occupancy] load.

(2) Posted occupant load. 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 installed and 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. Place of assembly rooms or spaces which have multiple-use capabilities shall be posted for all such uses.

(3) Replacement of posted signs. 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) Unlawful acts. 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) Notice of violation. The building code 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) Prosecution of violation. If the notice of violation is not complied with promptly, the building code 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 code 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. Emergency Measures. [21. Authority for Existing Buildings.] (1) Vacating structures. When, during construction on a building for which a permit is required, in the opinion of the building code official, there is actual and immediate danger of failure or collapse of a building or structure or any part thereof which would endanger life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the building or structure, the building code official is hereby authorized and empowered to order and require the inmates and occupants to vacate the same forthwith. The building code official shall cause to be posted at each entrance to such building a notice reading as follows: "This structure is unsafe and its use or occupancy has been prohibited by the building code official." It shall be unlawful for any person to enter such building or structure except for the purpose of making the required repairs or of demolishing the same. [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) Temporary safeguards. When in the opinion of the building code official, there is actual and immediate danger of collapse or failure of a building or structure over which he has jurisdiction which would endanger life, pursuant to KRS Chapter 198B and this regulation, the building code official shall order the necessary work or special inspection to be done to render such building or structure or part thereof temporarily safe. [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 21. Stop Work Order. [20. Notice to Owner.] (1) Upon notice from the building code 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 22. Local Board of Appeals. Local appeals boards may be appointed to hear appeals from the decisions of the local building code official in accordance with the provisions of KRS 198B.070.

Section 23. Appeals Board Procedures. (1) All appeals from [to] the decisions of building code officials shall be conducted in accordance with the appeals provisions of KRS 198B.070.

(2) Decisions rendered by the building code official with respect to enforcement of the Kentucky Building Code on any building may be appealed by the local fire code official of the jurisdiction if he is aggrieved by that decision. [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 code official or local building code official relative to those provisions is being contested and a copy of the decision rendered by the local appeals board, if any.

Section 24. Professional Architectural and Engineering Services. [Construction Control and Responsibilities.] (1) General. All design for new construction work, alteration, repair, expansion, addition or modification work involving the practice of professional architecture or engineering, as defined by KRS Chapter 322 nd 323 shall be prepared by Kentucky licensed professional architects or engineers and all plans, computations and specifications required for a building permit application for such work shall bear the required signature and seals thereof by the design professionals, as required by law. [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) Special inspections. When construction on a building began prior to approval by the building code official or the construction does

not conform to the approved plans or the standards required by the code, the building code official may require special inspections and reports thereof if necessary to assure safety. [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.]

(3) Fees and costs. All fees and costs related to the performance of special inspections by professional services shall be borne by the owner.

[Section 25. Validity. (1) Partial invalidity. 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) Segregation of invalid provisions. 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) Decisions involving existing structures. 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 25. [26.] Proof of Insurance. (1) The issuance of a building permit shall be contingent upon presentation of an affidavit, as required by KRS 198B.060(10). [to the effect that all contractors and subcontracctors employed or that will be employed in the construction, alteration or repair under the permit will be in compliance with Kentucky law relating to worker's compensation and unemployment insurance.]

(2) Compliance with this section may be achieved by having an affidavit of general applicability for all permits to be taken during the life of the construction company on file in the office of the building code official issuing the permit. The affidavit shall state that the contractor and all persons working in association with that contractor comply, or will comply, with the worker's compensation and unemployment insurance laws. [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 26. [27.] Alternative Codes. 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 27. [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 fire [life] safety requirements of the Kentucky Building Code.

Section 28. [29.] Until December 31, 1990 [1987], the department shall accept plans in conformity with the requirements of either the 1987 [1984] Edition BOCA Code or the 1990 [1987] Edition, together with any Kentucky amendments thereto. After December 31, 1990 [1987], all plans shall be designed to conform with the 1990 [1987] Edition of the BOCA Code as set forth in this regulation and 815 KAR 7:025.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: June 28, 1990
FILED WITH LRC: July 12, 1990 at 11 a.m.

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

815 KAR 7:025. Kentucky Building Code.

RELATES TO: KRS Chapter 198B
STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050
NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, which establishes standards for construction of buildings in the state. This regulation establishes the Kentucky Building Code basic provisions relating to construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety

during building operations, mechanical systems, energy conservation and electrical systems. This regulation includes the substance of 815 KAR 7:020, which is being repealed.

Section 1. Adoption of Building Code. (1) The "BOCA National Building Code/1990," Eleventh Edition, Articles 2 through 32 and Appendices A through D, published by Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477, is hereby incorporated by reference as it is set forth at length herein, except as amended in Section 2 through 33 of this regulation. Copies are available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(2) Article 1, Administration and Enforcement, is hereby deleted in its entirety. All requirements for the administration and enforcement of this regulation are set forth in 815 KAR 7:010 with fees established by 815 KAR 7:013.

Section 2. Article 2, Definitions, is hereby adopted in its entirety.

Section 3. Article 3, Use Group Classification. Amend Article 3 by making the following additions, deletions or changes:

(1) Amend subsection 304.1 to read as follows: "304.1 General: All buildings and structures, or parts thereof, other than those used for business training or vocational training, which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities, shall be classified in Use Group E. Educational type uses with a total occupant load of less than fifty (50) shall be classifed as Use Group B. School buildings, or parts thereof, for business training or vocational training shall be classified in the same use group as the business or vocation taught. **304.1.1 Day Care Facilities: A day care facility which provides care for more than four (4) persons for less than twenty-four (24) hours per day shall be classified as Use Group E.**"

(2) Delete subsection 307.3.1, Child care facility, in its entirety.

(3) Amend subsection 309.5, Use Group R-4 Structures, to read as follows: "309.5 Use group R-4 Structures: This use group shall include all detached one (1) or two (2) family dwellings not more than than three (3) stories in height, and their accessory structures as indicated in the One (1) and Two (2) Family Dwelling Code listed in Appendix A. All these structures shall be designed and built in accordance with the requirements of this code for Use Group R-3 structure, or with the requirements of the one (1) and two (2) family dwelling code, except that the requirements of the State Plumbing Code (Article 28) shall supersede those conflicting requirements of the One (1) and Two (2) Family Dwelling Code. This choice shall be made by the builder at the time of plans submission. A [Nevertheless, any] builder may use Exception #4 of Section 809.4 to determine minimum size of egress windows."

(4) Create a new subsection to read as follows: "310.4 Tobacco auction warehouses: Warehouses, for the sale of tobacco only, of Type 1, Type 2 or Type 3 construction, may be constructed without a sprinkler system if [when] all the following requirements have been met:

(a) The initial submission of plans to the Department of Housing, Buildings and Construction shall include a signed certificate by the owner that the warehouse shall be used solely for the sale of tobacco on a seasonal basis or for the storage of noncombustibles.

(b) A fire protective signaling system (manual fire alarm) and automatic fire detection system (smoke detection) with notification to the local fire service shall be provided with installation in accordance with Sections 1016, 1017 and 1020 of this code.

(c) An eighteen (18) foot paved and posted fire lane surrounding the entire perimeter of the building shall be provided and be accessible from a public street.

(d) A fifty (50) foot fire separation shall be maintained between the warehouse and the lot line and the warehouse and the nearest building.

Section 4. Article 4, Types of Construction Classification. Amend Article 4 by making the following additions, deletions or changes:

(1) Amend Table 401, Fireresistance Ratings of Structure Elements (In Hours), by creating a [another] footnote to read as follows: "Note 1. The fire partitions and floor/ceiling assembly ratings in R-2 buildings may be reduced to one (1) half (1/2) hour if [when] all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and if [when] equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(2) Amend the notation under "Dwelling unit separations" in column "Structure element" within Table 401 to read as follows: "(Sections 910.0, 913.0 and Notes f, j and l)."

Section 5. Article 5, General Building Limitations. Amend Article 5 by making the following additions, deletions or changes:

(1) Amend subsection 505.1 by changing the number "103.0" to read "106.0."

(2) Amend subsection 511.1 by changing the number "124.0" to read "123.0."

(3) Delete subsections 512.1 through 512.4.1 and insert in lieu thereof the following: "512.1 Barrier Free Design. Please see 815 KAR 7:060 (Article 33) for construction requirements providing accessibile buildings and facilities."

(4) Delete subsection 513.1, Approval, in its entirey.

Section 6. Article 6, Special Use and Occupancy Requirements. Amend Article 6 by making the following additions, deletions or changes:

(1) Amend Section 608.1, Attached Garages, by adding the following exception: "Exception: In lieu of the required one and three quarter (1 3/4) inch or twenty (20) minute door, an approved automatic sprinkler head located directly above the door in the garage and properly connected to the domestic water system."

(2) Create a new subsection 623.1.1 to read as follows: "623.1.1 The Cabinet for Human Resources, Department for Health Services, shall regulate the design and construction of new facilities as related to water distribution and

treatment systems for public swimming pools and the proper operation and maintenance of all pool facilities. See 902 KAR 10:120, Kentucky public swimming and bathing facilities regulation."

Section 7. Article 7, Interior Environmental Requirements. Amend Article 7 by making the following additions, deletions or changes: (1) Delete subsections 702.1 through 702.3 in their entirety.

(2) Amend subsection 708.1.3, Furred Ceilings, by adding the following exception: "Exception: Use Group R-3 basement recreation rooms, a furred ceiling height of six feet and eight inches (6'8") around the ducts may be made in the soffit area only for structural beams and mechanicals. The two-thirds (2/3) area requirements listed in this section **shall** [must] still be met."

(3) Amend subsection 709.3 to read as follows: "709.3 Alternative mechanical ventilation: Enclosed attic, rafter and crawl spaces and other uninhabited spaces such as unfinished basements, which are not ventilated as herein required, shall be equipped with a mechanical ventilation system conforming to the requirements of Section M-1605 of the mechanical code listed in Appendix A."

Section 8. Article 8, Means of Egress. Amend Article 8 by making the following additions, deletions or changes:

(1) Delete subsection 804.2.1 in its entirety.

(2) Amend Table 806.1.2 by adding an exception to Industrial areas to read as follows: "Exception: Use 200 gross for purposes of determining jurisdiction under Sections 108 and 109, design professional seal requirements, and Article 33 applicability."

(3) Create a new subsection 807.3.2 to read as follows: "807.3.2 Protection of egress: A required means of egress shall not discharge directly into a vehicular path unless guards are provided to protect vehicles from hitting the exit door in any outward opened position and to direct pedestrians in a path running parallel to the vehicular path. The guards shall prevent the exit door from being blocked by movable objects such as dumpsters or parked vehicles."

(4) Amend Table 809.3, Buildings with One Exit, to read as follows:

TABLE 809.3
BUILDINGS WITH ONE EXIT

Use Group	Maximum No. of Stories Above Grade	Maximum occupants, travel distances[d] or Dwelling Units Per Floor
All	1 story	50 occupants
B[b],F,M,S[a]	2 stories	30 occupants and a 75-foot travel distance
R-2	2 stories[e]	4 dwelling units and a travel distance of 50 feet
R-2	3 stories[c]	4 dwelling units

Note a. For the required number of exits for open parking structures, see Section 809.5

Note b. For the required number of exits for air traffic control towers, see Section 617.0.

Note c. Buildings of Use Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1 or 1004.2.2 shall have a maximum height of three (3) stories above grade.

Note d. One (1) foot = 304.8 mm.

Note e. When equipped with an NFiPA 13D sprinkler system listed in Appendix A, the travel distance shall be increased to seventy-five (75) feet and the number of dwelling units per floor shall be increased to eight (8), but not more than four (4) units shall share a single exit."

(5) Amend subsection 809.4, Emergency Escape, by adding two (2) additional exceptions to read as follows: "4. Egress windows located on the first and second stories in multiple family dwellings (R-2 and R-3 Use Groups) and one (1) and two (2) family dwellings may have a minimum net clear opening height dimension of twenty-two (22) inches and a minimum width dimension of twenty (20) inches; and the net clear opening area may be reduced to no less than four (4) square feet. The minimum total glazed area shall be five (5) square feet in the case of a ground floor window and not less than five and seven-tenths (5.7) square feet in the case of a second story window. (This exception applies only if the sash frames can be readily broken or removed.)" and "5. An outside window or exterior door for emergency escape **shall not be** [is not] required in R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(6) Amend Table 810.4, Corridor Fireresistance Rating, to read as follows:

TABLE 810.4
CORRIDOR FIRERESISTANCE RATING

Use Group	Total Required Capacity of all Exits from Corridor	Required Fireresistance Rating: Without sprinkler system	Required Fireresistance Rating: With sprinkler system[d]
H	>30	NP[e]	1 hr.
A,B,E,F,M,S	>30	1 hr.	0
I-1,R[a,f]	>10	1 hr.	1/2 hr.
I-2	All	1 hr.	0[b]
I-3	All	NP	0[c]

Note a. For reduction in fireresistance rating for Use Group R, see Section 810.4, Exception 2.

Note b. For requirements for Use Group I-2, see Section 610.3.

Note c. For reduction in fireresistance rating for Use Group I-3, see Table 611.8.

Note d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1 or 1004.2.2.

Note e. NP = Not Permitted.

Note f. In R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of

exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A, the required fire resistive rating shall be one-half (1/2) hour."

(7) Amend the exception to 810.4.1, Corridor walls as separation walls, to read as follows: "Exception: Tenant separation and dwelling unit separation walls which are also corridor walls shall not be required to have a fireresistance rating greater than that required by Table 810.4 where the building is equipped throughout with an automatic sprinkler system in accordance with Sections 1004.2.1, 1004.2.2 or 1004.2.3."

(8) Amend subsection 813.4.2, Panic Hardware, as follows:

(a) Amend the first sentence to read as follows: "All doors equipped with latching or locking devices in buildings of Use Group A and E or portions of buildings used for assembly or educational purposes and serving rooms or spaces with an occupant load greater than 100 shall be equipped with approved panic hardware."

(b) Create an exception to read as follows: "Exception: Panic hardward for Use Group A3 shall not be required for prinicpal entrance/exit doors if:

1. They are free-swinging; and
2. The calculated occupant load does not exceed 150; and
3. The latch/lock device is a thumb latch/lock or a key operated lock device in which the key cannot be removed from the side from which egress is to be made when it is locked."

Section 9. Article 9, Fireresistive Construction. Amend Article 9 by making the following additions, deletions, or changes:

(1) Amend subsection 901.2, Penetrations, to read as follows: "Plans for buildings shall indicate where penetrations **shall** [will] be made for electrical, mechanical, plumbing and communications conduits, pipes and systems, and shall also indicate the materials and methods for maintaining the required structural integrity, fireresistance rating and firestopping. Approved penetration assemblies shall be used for all combustible penetrations of fireresistant rated building elements as specified in Section 910.3.1."

(2) Amend subsection 903.4, Interior Hangings and Decorations, to read as follows: "Interior hangings and decorations shall comply with Section 903.4.1."

(3) Delete subsections 903.4.2, 903.4.3 and 903.4.4 in their entirety.

(4) Create a new subsection 904.4 to read as follows: "904.4 Combustible pipe: Combustible pipe shall be permitted in all use groups and construction types where approved by Article 28 of this Code and the Kentucky State Plumbing Code."

(5) Create a new subsection 904.4.1 to read as follows: "904.4.1 Vertical combustible pipe: Vertical combustible pipes shall comply with Sections 910.3.1 and 915.3.2."

(6) Create a new subsection 910.3.1, Through Penetration System, to read as follows: "910.3.1 Through Penetration System: Combustible cable trays, conduits, tubes or pipes **shall be** [are] allowed to penetrate a rated assembly **if** [when] they are protected with an approved through penetration protection system tested in accordance with ASTM E-814 listed in Appendix A. Exception: In R-1 and R-2 Use Groups when all dwelling units are not more than one (1) story above the lowest level of exit discharge and no more than one (1) level below the highest level of exit discharge, the through penetrations **shall not be** [are not] required to be protected with an ASTM E-814 system, **if** [when] equipped with an NFiPA sprinkler system listed in Appendix D".

(7) Create a new subsection 915.3.2 to read as follows: "915.3.2 Duct and pipe shafts: In all buildings other than buildings of Use Group R-2, vertical pipes arranged in groups of two (2) or more which penetrate two (2) or more floors and occupy an area of more than one (1) square foot (0.093 m^2), and vertical ducts which penetrate two (2) or more floors, shall be enclosed by construction of not less than one (1) hour fire-resistance rating to comply with this section. All combustible ducts connecting two (2) or more stories shall be enclosed as indicated herein.

Exceptions:

1. All buildings of Use Group R-2, vertical noncombustible ducts shall not be required to have a one (1) hour enclosure provided:

(a) The cross sectional area does not exceed thirty-five (35) square inches;

(b) The duct does not penetrate more than three (3) floors;

(c) The duct serves no more than one (1) dwelling unit and shall not join other ducts except above the top level for the purpose of utilizing a single roof penetration; and

(d) These ducts are restricted for use as a bathroom or kitchen exhaust, and combustion air supply and relief."

Section 10. Article 10, Fire Protection Systems. Amend Article 10 by making the following additions, deletions or changes:

(1) Amend subsection 1002.8 by amending the exception to read as follows: "Exception: Use Group R-1 buildings (hotels, motels, etc.) where all guestrooms are not more than one (1) story above the lowest level of exit discharge of the exits serving the guestroom (e.g., two (2) story building with basement). Each guestroom shall have at least one (1) door opening directly to an exterior exit access which leads directly to the exits."

(2) Amend subsection 1002.9 by creating two (2) exceptions to read as follows:

(a) "1002.9.1 Exception: Two (2) Story Buildings with Basement. Use Group R-2 buildings (apts., condos, dorms, etc.) where all dwelling units are not more than one (1) story above the lowest level of exist discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (e.g., two (2) story building with basment)."

(b) "1002.9.2 Exception: Existing buildings. R-2 buildings that exceed two (2) stories but have no more than six (6) dwelling units. This exception **shall** [does] not apply to buildings constructed after the effective date of this code."

(3) Create a new subsection 1004.2.3 to read as follows: "1004.2.3 NFiPA 13D Systems. A sprinkler system in accordance with NFiPA 13D listed in Appendix A shall be permitted in the following occupancies:

(a) Two (2) Story Buildings with Basements: In buildings of Use Group R-2 **if** [when] all dwelling units are not more than one (1) story

above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit.

(b) Existing Buildings: R-2 buildings that exceed two (2) stories but have no more than six (6) dwelling units. This **shall** [does] not apply to buildings constructed after the effective date of this code."

(c) R-1 occupancies complying with Section 1002.8.

(4) Amend subsection 1015.1, Fire Hydrants, to read as follows:

(a) "1015.1 Private hydrants: Fire hydrants installed on private property as a part of a private fire protection system shall be located as to meet the requirements of National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A. Yard hydrant installation shall be coordinated with the local fire code officials who shall not make recommendations which exceed the requirements of National Fire Protection Association (NFiPA) Pamphlet #24. Yard hydrants shall not be installed on a water main less than six (6) inches in diameter."

(b) Create a new subsection of 1015.2 to read as follows: "1015.2 Public hydrants: Public hydrants not covered by National Fire Protection Association (NFiPA) Pamphlet #24 shall conform to the standards of the administrative authority of the jurisdiction as provided by local ordinance."

(5) Create an additional exception to subsection 1018.3.2, Use Group R-2, to read as follows: "3. In R-2 occupancies **if** [when] all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A, smoke detectors shall not be required in bedrooms."

Section 11. Article 11, Structural Loads. Amend Article 11 by making the following additions, deletions or changes:

(1) Create a new subsection 1100.2 to read as follows: "1100.2 Certificate of compliance: Design compliance with the provisions of this article and Article 12 shall be satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building code official."

(2) Amend subsection 1105.4, Existing Live Load, by changing "Section 103.3" to "Section 106.3".

(3) Amend Figure 1113.1 of Article 11 by adding the following list of 120 Kentucky counties to further explain the map which shows the assigned earthquake risk zone for each.

Earthquake Risk Zone #1

Adair	Elliott	Laurel	Oldham
Allen	Estill	Lawrence	Owen
Anderson	Fayette	Lee	Owsley
Barren	Fleming	Leslie	Pendleton
Bath	Floyd	Lewis	Perry
Boone	Franklin	Lincoln	Pike
Bourbon	Gallatin	Logan	Powell
Boyd	Garrard	Madison	Pulaski
Boyle	Grant	Magoffin	Robertson
Bracken	Grayson	Marion	Rockcastle
Breathitt	Green	Martin	Rowan
Breckinridge	Greenup	Mason	Russell
Bullitt	Hancock	Meade	Scott
Butler	Hardin	Menifee	Shelby
Campbell	Harrison	Mercer	Simpson
Carroll	Hart	Metcalfe	Spencer
Carter	Henry	Monroe	Taylor
Casey	Jackson	Montgomery	Todd
Christian	Jefferson	Morgan	Trimble
Clark	Jessamine	Muhlenberg	Warren
Clay	Johnson	McCreary	Washington
Clinton	Kenton	McLean	Wayne
Cumberland	Knott	Nelson	Whitley
Daviess	Knox	Nicholas	Wolfe
Edmonson	Larue	Ohio	Woodford

Earthquake Risk Zone #2

Bell
Caldwell
Calloway
Crittenden
Harlan
Henderson
Hopkins
Letcher
Lyon
Trigg
Union
Webster

Earthquake Risk Zone #3

Ballard
Carlisle
Fulton
Graves
Hickman
Livingston
Marshall
McCracken

(4) Amend subsection 1113.1.1 by creating the following exception: "Exception: In Zone 1, additions that increase the height of an existing building shall not be required to conform to the provisions of this subsection."

Section 12. Article 12, Foundation Systems and Retaining Walls. Amend Article 12 by making the following additions, deletions or changes: Amend Subsection 1205.1 to read as follows: "Except when erected upon solid rock or otherwise protected from frost, foundation walls, piers and other permanent supports of all buildings and structures larger than 100 square feet (9.30 m^2) in area or ten (10) feet (3048 mm) in height shall extend below the frost line of the locality, to a minimum depth of twenty-four (24) inches, or whichever is deeper, and spread footings of adequate size shall be provided **if** [when] necessary to distribute properly the load within the allowable bearing value of the soil. Alternatively, the structures shall be supported on piles **if** [when] solid earth to rock is not available. Footings shall not be founded on frozen soils unless such frozen condition is of a permanent character."

Section 13. Article 13, Materials and Tests. Amend Article 13 by making the following additions, deletions or changes:

(1) Delete subsection 1301.3 in its entirety.

(2) Delete subsections 1308.1 through 1308.8 in their entirety.

Section 14. Article 14, Masonry, is hereby adopted in its entirety.

Section 15. Article 15, Concrete, is hereby adopted in its entirety.

Section 16. Article 16, Gypsum and Plaster, is hereby adopted in its entirety.

Section 17. Article 17, Wood, is hereby adopted in its entirety.

Section 18. Article 18, Steel, is hereby adopted in its entirety.

Section 19. Article 19, Lightweight Metal Alloys, is hereby adopted in its entirety.

Section 20. Article 20, Plastic, is hereby adopted in its entirety.

Section 21. Article 21, Exterior Walls. Amend Article 21 by making the following additions, deletions or changes: Create a new subsection to read a follows: "2100.2 Plans showing compliance with Section 2101.6.1 through 2106.6.11.3 shall be submitted to the Kentucky Division of Water pursuant to KRS 151.250 and 260. Approval of plans by or through that agency together with their final approval of construction shall constitute compliance with these sections."

Section 22. Article 22, Vertical and Sloped Glass and Glazing. Amend Article 22 by making the following additions, deletions or changes:

(1) Create a new subsection 2201.1.1 to read as follows: "2201.1.1 Labeling requirements: Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in such a location within the Commonwealth of Kentucky shall be permanently labeled by such means as etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of American National Standards Institute, Inc. (ANSI) Standard Z-97.1 and Z-97.1a listed in Appendix A and such further requirements as may be adopted by the Department of Housing, Buildings and Construction. The label shall be legible and visible after installation. Safety glazing labeling shall not be used on materials other than safety glazing materials."

(2) Amend Paragraph 7 of subsection 2203.2, Specific Hazardous Locations, to read as follows: "Glazing in fixed panels having a glazed area in excess of nine (9) square feet (0.84 m^2) with the lowest edge less than eighteen (18) inches (457 mm) above the finish floor level or walking surface within thirty-six (36) inches (914 mm) of the glazing, and the finish floor or walking surface are extended on both sides of said glazing. In lieu of safety glazing, glazed panels may be protected with a horizontal member not less than one and one-half (1 1/2) inches (38 mm) in width when located between twenty-four (24) inches (610 mm) and thirty-six (36) inches (914 mm) above the walking surface."

Section 23. Article 23, Roofs and Roof Coverings, is hereby adopted in its entirety except subsection 2308.2 is amended to read as follows: "2308.2 Structural and construction loads: The roof covering system and the material and equipment loads that **shall** [will] be encountered during installation of the roof covering system shall not exceed the capacity of the structural roof components."

Section 24. Article 24, Masonry Fireplaces, is hereby adopted in its entirety.

Section 25. Article 25, Mechanical Equipment and Systems. Amend Article 25 by making the following additions, deletions or changes:

(1) Amend subsection 2500.2 to read as follows: "2500.2 Boilers: All boilers and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(2) Create a new subsection 2500.3 to read as follows: "2500.3 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1983 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, American National Standards Institute, Inc./American Society of Mechanical Engineers (ANSI/ASME) BPV-VIII-1, as required by Kentucky boiler regulation set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(3) Create a new subsection 2500.4 to read as follows: "2500.4 Mechanical Code: All mechanical equipment and systems not covered by 2500.2 or 2500.3 but which are required by other provisions of this code to be installed in accordance with the mechanical code listed in Appendix A, shall be constructed, installed and maintained in conformity with the BOCA National Mechanical Code/1990 including all applicable standards listed within Appendix A."

(4) Create a new Section 2511.0 entitled "Rangehoods" to read as follows: "2511.1 Rangehoods: Rangehoods in kitchen exhaust systems shall comply with the requirements of the Mechanical Code listed in Appendix A. The bottom edge of the hood shall be located at a height of not more than four (4) feet above the cooking surface."

Section 26. Article 26, Elevator, Dumbwaiter, and Conveyor Equipment, Installation and Maintenance. Amend Article 26 by making the following additions, deletions or changes:

(1) Amend subsection 2602.4.1 to read as follows: "2602.4.1 Periodic inspection intervals: Periodic inspections shall be made at intervals of not more than twelve (12) months for all passenger elevators, manlifts and escalators."

(2) Amend subsection 2603.4 to read as follows: "2603.4 Posting certificates of compliance: The owner or lessee shall post the last issued certificate of compliance in a conspicuous place on the elevator, available to the building official."

(3) Create a new subsection 2607.4.1 to read as follows: "2607.4.1 Mechanical ventilation: Mechanical ventilation **shall be** [is] allowed in buildings other than Use Groups R-1, R-2, I-1, I-2 and similar uses with overnight sleeping quarters **if** [when] outside exposure for the required vents is not possible. The mechanical ventilation shall conform to the mechanical code listed in Appendix A."

(4) Amend subsection 2607.5 to read as follows: "2607.5 Area of vents: Except as provided for herein, the area of the vents shall not be less than three and one-half (3 1/2) percent of the area of the hoistway nor less than three (3) square feet (0.28 m^2) for each elevator car, and not less than three and one-half (3 1/2) percent nor less than one-half (1/2) square foot (0.047 m^2) for each dumbwaiter car in the hoistway, whichever is greater. Of the total required vent area, not

less than one-third (1/3) shall be of the permanently open type unless all vents activate upon detection of smoke from any of the elevator lobby smoke detectors. Where mechanical ventilation conforming to the mechanical code listed in Appendix A provides equivalent venting, the required vent area shall be reduced if compliance with subsection 2607.4.1 is met."

(5) Amend subsection 2610.1 to read as follows: "2610.1 General: The construction of machine rooms and related construction for passenger and freight elevators and dumbwaiters shall be protected from the weather, and shall be enclosed with fire resistive enclosures. Enclosures and access doors thereto shall have a fire endurance at least equal to that required for the hoistway enclosure in Table 401."

(6) Create a new Section 2612.0 entitled "Vertical Chairlifts and Wheelchair Lifts: to read as follows: "2612.1 General: Except as herein provided, inclined stairway chairlifts and inclined and vertical wheelchair lifts shall conform to the requirements of ASME A17.1 listed in Appendix A. Exception: Vertical wheelchair lifts may have a travel distance not to exceed 23 feet and penetrate a floor subject to the following additional requirements.

1. The platform shall be fully enclosed on the top and any side which is not used as an exit or entrance. Enclosures shall conform to the requirements of ASME A17.1 listed in Appendix A.
2. The runway shall be fully enclosed from the floor to the ceiling on all floors conforming with the requirements of Section 2608.0.
3. All runway entrances shall be protected by a door of unperforated construction conforming to the requirements of Section 2611.0.
4. All runway entrance doors shall be equipped with approved interlocks conforming to the requirements of ASME A17.1 listed in Appendix A."

Section 27. Article 27, Electric Wiring, Equipment and Systems. Amend Article 27 by making the following additions, deletions or changes:

(1) Amend subsection 2700.1, Scope, by adding the following sentence: "Tentative Interim Amendments issued to NFiPA 70 and accepted by the department shall be permitted to be used for interpretations of NFiPA 70."

(2) Create a new subsection 2700.5 to read as follows: "2700.5 Electrical Inspections: Inspections conducted to determine compliance with the National Electrical Code shall be conducted by a certified electrical inspector in accordance with Kentucky Administrative Regulation 815 KAR 35:015."

(3) In subsections 2702.1, 2702.3, 2703.1, 2704.1, 2705.1 and 2705.2 delete the words "code official" and insert in lieu thereof the words "certified electrical inspector."

(4) Delete subsections 2701.3, 2704.3, and 2704.4 in their entirety.

Section 28. Article 28, Plumbing Systems. Amend Article 28 by deleting sections 2800.1 through 2807.1 in their entirety and insert in lieu thereof the following: "2800.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of Chapter 318 of the Kentucky Revised Statutes and the Kentucky State Plumbing Code as set out in Title 815, Chapter 20, Kentucky Administrative Regulations. Copies are available from the Kentucky Division of Plumbing, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601."

Section 29. Article 29, Signs, is deleted in its entirety.

Section 30. Article 30, Precautions During Building Operations. Amend subsection 3005.2 by deleting the words, "Section 2805.4" and insert in lieu thereof the words, "Article 28, 815 KAR 20:090."

Section 31. Article 31, Energy Conservation, is hereby adopted in its entirety.

Section 32. Article 32, Repair, Alteration, Addition to and Change of Use of Existing Buildings. Amend Article 32 by making the following additions, deletions or changes:

(2) Amend subsection 3202.1 to read as follows: "3202.1 General: The provisions in the following Section 3202.1.1 through 3202.1.5 shall apply to existing buildings that will continue to be, or are proposed to be, in Use Groups A, B, E, F, M, R and S. These provisions shall not apply to historic buildings as provided for in Section 102.5."

(2) Amend subsection 3202.1.5 to read as follows: "3202.1.5 Handicapped requirements: All portions of the buildings proposed for change in use shall conform to the provisions of Article 33 as required by Section 3302.1."

Section 33. Appendix A, Referenced Standards. Amend Appendix A by making the following additions, deletions or changes:

(1) Amend the reference to the BOCA National Fire Prevention Code 1990 listed in Appendix A by adding the following language: "The Kentucky Standards of Safety (815 KAR 10:040 - Fire Prevention Code) as amended by the Kentucky Department of Housing, Buildings and Construction."

(2) Elevators. Amend the reference to Safety Code for Elevators and Escalators to read "A17.1-1990" with the exception of rules 102.2(c)(4) and 700.4b, 700.5, 700.7b, 700.10b, and 704.4."

(3) Add the following language and list of National Fire Protection Association (NFiPA) Pamphlets to Appendix A:

"These National Fire Protection Association (NFiPA) Paphlets are listed for use in fire suppression design and installation only **if** [when specifically] referenced **in a specific code required by Articles 2 through 32 of** [by] this code.

Aircraft Hangars	#409
Pyroxylin Plastics	#40C
Flammable Liquids	#30
Laboratories	#45
Fireworks	#1124
L.P. Gas Storage	#58
High Piled Storage in Excess of 12 ft. in height	#231
Rubber Tire Storage	#231D
Baled Cotton Storage	#231E
Rolled Paper Storage	#231F
Rangehoods	#96
Computer Rooms	#75
Archives and Record Centers	#232AM
L.P. Gas Storage and Handling	#59A
Explosion Prevention Systems	#69

Code for the Manufacture and Storage of Aerosol Products	#30B
Installation of Closed-head Foam Water Sprinkler Systems	#16A
Fur Storage	#81
Cooling Towers	#214
Marinas and Boatyards	#303"

(4) Amend Appendix A by changing the edition date to "1990" for the following National Fire Protection Association (NFiPA) Pamphlets: #10, #12B, #14, #15, #17, #30, #32, #43A, #50, #72E, #80, #82, #99, #418, #495 and #704.

(5) Amend Appendix A by removing the reference to "NFiPA Pamphlets #72A, #72C, #72D, [#72E,] #72F" and in its place list NFiPA Pamphlet #72-90."

(6) Amend Appendix A by adding reference to "NFiPA Pamphlet Number 13D Sprinkler Systems for 1 & 2 Family Dwellings and Mobile Homes, 1989 Edition."

Section 34. 815 KAR 7:020 is hereby repealed.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: June 28, 1990
FILED WITH LRC: July 12, 1990 at 11 a.m.

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

902 KAR 10:040. Kentucky youth camps.

RELATES TO: KRS 211.180
STATUTORY AUTHORITY: KRS 194.050, 211.090(3)
NECESSITY AND FUNCTION: KRS 211.180 authorizes the Cabinet for Human Resources to regulate certain public health matters including the sanitation of public and semipublic recreational areas; the detection, prevention and control of communicable disease and health hazards; and to provide for the protection and improvement of the health of school age children. This regulation establishes uniform standards for youth camps [and includes the issuance, suspension, and revocation of permits to operate; submission of plans for construction and equipment layout; plumbing; lighting; ventilation; water supply; sewage disposal; solid waste disposal; sanitary standards for operation; inspections; and other matters] necessary to insure a safe and sanitary environment [in order] to protect the health and safety of children [who] attending camps in this state.

[Section 1. Citation of Regulation. This regulation may be cited as "The Kentucky Youth Camp Regulation."]

Section 1. [2.] Definitions. As used in this regulation the following definitions shall apply: [in the interpretation and enforcement of this regulation.]

(1) "Approved" means that which is acceptable to the cabinet.

(2) "Cabinet" means the Cabinet for Human Resources and its agents.

(3) [(1)] "Camp" or "youth camp" means any area, parcel, or tract of land, under the control of any person on which facilities are established, maintained or operated for recreational, educational, or vacation purposes for five (5) or more children [youths under eighteen (18) years of age], either free of charge, or for payment of a fee[; provided, however, that individual or family camp units are excluded from the requirements of this regulation].

(a) This definition includes the following types of camps:

1. [(a)] "Day camp" means a camp operated for all or part of the day, but does not include overnight lodging of campers [less than twenty-four (24) hours a day during one (1) or more seasons of the year];

2. [(b)] "Primitive or outpost camp" means a portion of the residential [permanent] camp premises or other site under control of the [youth] camp operator [at] which is intended only for occasional use as an overnight tent camping site, and has no permanent structures or facilities [the basic needs for camp operation, such as places of abode, water supply system, and permanent toilet and cooking facilities are not usually provided]; and

3. [(c)] "Residential camp" means a camp operated [ing] on a permanent campsite with [and providing] overnight lodging facilities.

(b) This definition shall not include the following:

1. Developed or primitive camps or campsites open to the general public on public lands, except that use of these sites or areas for operation of a youth camp shall be included in this definition;

2. Camps, campsites, or camping sessions operated solely for family or adult camping;

3. Privately owned camps or campsites intended for the sole use of the owner, their family and invited guests;

4. Day care or similar facilities which are operated with the intent to provide child care on a routine basis for infant, toddler, preschool, or school age groups individually or collectively, during parents' working hours, before or after school or during school vacation periods;

5. Weekend or similar overnight troop or trip camping activities conducted by organized youth troops or associations of less than seventy-two (72) hours duration, and not a part of an established youth camp operating session.

(4) [(2)] "Camper" means any child under eighteen (18) years of age living apart from, or with the intention of living apart from, his relatives, parents, or legal guardians, while attending a youth camp.

(5) [(3)] "Camp director" means the individual agent of the camp operator on the premises of any youth camp who has the primary responsibility for the administration, operation and supervision of the camp and its staff [of program operations and supportive services for such camp and the supervision of the youth camp staff of such camp].

(6) [(4)] "Camp operator" means the [any private or public agency, organization, or] person that owns, [and any individual, who operates, or otherwise controls [or supervises] a youth camp, whether the [such] camp is operated for profit or not for profit.

[(5) "Cabinet" means the Cabinet for Human Resources and the local health department having jurisdiction and their duly designated representatives.]

[(6) "Natural bathing place" means a swimming

place, together with shores, buildings, equipment, and appurtenances if any, and the water and the land areas used in connection therewith, at a lake, stream, or other body of fresh water.]

(7) "Permanent structure" means any building and appurtenances owned or [and] operated by the camp management for living, dining, kitchen, sleeping, toilet, bathing, shelter, tool shed, storage, assembly, infirmary, or stabling purposes, [stable, so] constructed [as] to be immobile and permanent.

(8) "Permit" means a written document issued by the cabinet giving a designated person permission to operate a specific camp.

(9) "Person" means any individual, firm, partnership, company, corporation, organization, trustee, association, or any public or private entity.

(10) "Semipermanent structure" means any building, tent, structure or trailer and appurtenances owned or [and] operated by the camp management for sleeping, living, dining, toilet, bathing, kitchen, tool shed, storage, assembly, infirmary, or animal sheltering purposes, [so] constructed [as] to be movable, may be easily disassembled, and not permanent in nature.

[(11) "Swimming crib" means a pool structure partly submerged in a stream, river or lake to utilize the water thereof, and used as an enclosure for swimming.]

Section 2. [3.] Permits. No person shall operate a youth camp within the Commonwealth of Kentucky without [who does not] possession of a valid permit issued [to him without fee] by the cabinet. Only a person who complies with the requirements of this regulation shall be entitled to receive and retain [such] a permit. Permits shall not be transferable from one person to another person or place. The permit shall be posted or readily available at every camp. Each permit shall expire on December 31 next following its date of issuance.

Section 3. [4.] Application for a Permit. (1) Any person desiring to operate a camp shall make written application on form **DFS-233 - Application to Operate,** provided by the cabinet. The application shall include:

(a) Applicant's full name and address and indicate whether the applicant is an individual, firm or corporation;

(b) If a partnership, the names of the partners, and their addresses;

(c) The location of the camp;

(d) The type of camp; and

(e) The signature of the applicant or applicants.

(2) Upon receipt of [such] an application, the cabinet shall make an inspection of the camp to determine compliance with the provisions of this regulation. If [When] inspection discloses that the applicable requirements of this regulation have been met, a permit shall be issued to the applicant by the cabinet.

Section 4. [5.] Camp Site. The camp site shall be located on land that provides good natural drainage. The area on which the tents, buildings, or structures are erected, together with [such] other areas frequently used for camp activities, shall be well drained and not located in a swamp or similar place in which mosquitoes may breed.

Section 5. [6.] Camp [Lodging] Facilities. (1) All camp structures [places] used for human occupancy or assembly, and all electrical, heating, ventilating, air conditioning, plumbing and lighting systems in those structures [habitation in a camp] shall be designed and constructed pursuant to the State Building Code, except for tents, which shall meet federal flammability standards [provided with adequate artificial or natural lighting and ventilation and shall be maintained in a safe and sanitary condition; provided, however, that artificial lighting shall not be required in tents].

(2) All camp food preparation and service facilities shall comply with the provisions of KRS 219.011 to 219.081 and 219.991 and the State Food Service Code. If food for campers and staff is not prepared by the camp, food shall be obtained from a commercial food service establishment holding a valid permit from the cabinet.

(3) [(2)] Floors, walls, [and] ceilings, and attached or freestanding appurtenances, fixtures and equipment in all permanent and semipermanent structures [used for living and sleeping purposes] shall be kept clean and in good repair. [Tent material shall be flame retardant.]

(4) [(3)] All gas or oil burning heating and cooking facilities used [provided] in any camp shall meet applicable state fire codes for installation, operation and maintenance. [be properly vented and maintained. No open-faced gas or oil burning heaters shall be allowed under any circumstances.]

Section 6. [7.] Sleeping Facilities. (1) A minimum of [(4) The number of sleepers per permanent structure of any camp shall be such that each sleeper may be provided with at least] thirty (30) square feet of floor space shall be provided for each camper in all structures used for sleeping purposes.

(2) All [Permanent] structures used as sleeping quarters shall be designed to provide a minimum of two (2) feet separation between beds, cots, or sleeping bags on all sides [when arranged side by side]. Beds, cots, or sleeping bags shall be placed so that the heads of campers [sleepers] are at least six (6) feet apart, and if double decked beds are used, there shall be not less than twenty-seven (27) inches of separation between the lower mattress and the bottom of the upper bed. [If semipermanent structures at a residential camp are used for sleeping purposes, the provisions of this subsection shall apply.]

(3) [(5)] Mattresses shall be covered in materials which are water repellent, easily cleanable and meet federal flammability standards, or shall be encased in a separate mattress cover which meets these requirements. Each occupied bed or cot [flame retardant and provided with covers. Sleeping surfaces] shall be provided with one (1) sheet, one (1) pillow, one (1) pillowcase, and one (1) blanket either by the camp, or by the individual camper; except that [at least one (1) sheet or mattress cover; provided, however,] this requirement shall not apply if a [the] camper provides his own sleeping bag.

(4) [(6)] All articles of bedding provided by the camp shall be kept clean and in good repair.

Linen shall be changed at least once weekly and more often if necessary, or if [when] there is a new camper occupying the bed or cot.

Section 7. [8.] Personal Hygiene [7. Water Closets, Privies, Lavatory and Shower] Facilities. (1) Each residential or [and] day camp [site] shall provide personal hygiene facilities consisting of [be provided with] water closets, hand-washing and shower facilities for each sex accommodated, pursuant to the design, construction and sanitary fixture requirements of the State Plumbing Code. [as shown in the following tables; provided, however, that day camps shall not be required to provide shower facilities.]

[Persons of Each Sex to be Served | Boys Water Closets | Urinals* | Girls Water Closets | Boys or Girls Lava-tories | Girls Show-ers

1-18	1	1	2	1	1
19-33	2	1	2	2	2
34-48	2	2	3	2	3
49-63	3	2	4	3	4
64-79	3	3	5	3	5
80-95	4	3	6	4	6

*Water closets can be substituted for urinals when facilities may be used by both sexes.]

[For camps having more than ninety-five (95) residents there shall be provided: one (1) additional water closet and lavatory for each twenty-five (25) residents; one (1) additional shower for each twenty (20) residents; and one (1) urinal per fifty (50) male residents.]

(2) Personal hygiene facilities [Toilets and bathhouses containing water closets, lavatories and showers] shall [be adequately ventilated,] have natural and [or] artificial lighting of at least twenty (20) foot-candles[, the floors shall be of concrete or other impervious material];

(3) Personal hygiene facilaities [Toilets] shall be [so] located no more than 500 feet from any permanent or semipermanent structure or tent used for human occupancy or assembly. [and distributed that no habitable permanent or semipermanent structure or tent will be more than 500 feet from such facilities.]

(4) [(3)] Hot and cold or tempered water service shall be provided to [at] all lavatories and showers, and approved temperature limited devices meeting State Plumbing Code requirements shall be used to prevent delivery of water at a temperature that could scald a camper; except that [at the campsites where overnight facilities are furnished; provided, however,] existing camps will not be required to furnish hot or tempered water at existing lavatories or showers.

(5) [(4)] Lavatories or hand-washing facilities shall be conveniently located to all toilet facilities. Water, hand-cleansing soap, and approved sanitary towels or other approved hand-drying device shall be provided at all lavatories and hand-washing facilities.

(6) [(5)] All personal hygiene [toilets, lavatories and bathing] facilities shall be maintained in good repair and shall be kept clean at all times.

[(6) When flush type toilets are not provided, other types of toilet facilities such as earth pit privies or chemical type may be used if so constructed and maintained as to prevent fly breeding, nuisances and contamination of any water supply. Privies shall be provided at the ratio of one (1) pit opening for every ten (10) campers. Privies shall not be located within 100 feet of any kitchen or other place where food is prepared or served, and shall be located apart from any building used for bathing or lodging.]

(7) Adequate toilet tissue shall be provided at each toilet facility.

(8) Flame retardant, easily cleanable refuse containers shall be provided in all toilet facilities and shall be covered in toilets for females.

[(9) All plumbing shall comply with the State Plumbing Code.]

Section 8. [9.] [8.] Sewage and Waste Water Disposal. All sewage and waste water [matter] shall be disposed of into a public sewer[age] system, if available. In the event a public sewer[age] system is not available, disposal shall be made into a private sewage disposal system designed, constructed and operated pursuant to [in accordance with] the requirements of the cabinet or the Natural Resources and Environmental Protection Cabinet [and the Department of Housing, Buildings and Construction]; [provided, however,] if a public sewer[age] system subsequently becomes available, connections shall be made [there]to it and the camp sewer[age] system shall be discontinued.

Section 9. [10.] [9.] Water Supply System. (1) The water supply shall be potable, adequate and from an approved public supply of a municipality or water district, if available. If [In the event] a public water supply of a municipality or water district is not available, the supply for the camp shall be developed and approved pursuant to [in accordance with] applicable requirements of the Natural Resources and Environmental Protection Cabinet; [provided, however,] if a public water supply of a municipality or water district subsequently becomes available, connections shall be made [there]to it and the camp supply shall be discontinued.

(2) Adequate drinking fountains meeting State Plumbing Code requirements or portable drinking water containers [coolers] of an approved type shall be used [provided] within the camp. Common drinking cups, glasses or vessels are prohibited.

(3) If [Where] portable drinking water containers are used, they shall be of easily cleanable construction, kept securely closed and [so] designed so that water may be withdrawn from the container only by water tap or faucet and shall be maintained in a sanitary condition.

(4) All ice used shall be from an approved source and shall be handled and stored in [such] a manner [as] to prevent contamination. If ice is made on the premises of any camp, the ice-making machine shall be of approved construction and the water shall be of the same bacteriological quality as approved drinking water.

Section 10. [11.] [10.] Refuse Handling. (1) The storage, collection and disposal of refuse shall be [so] conducted [as not] to not create a health hazard, rodent harborage, insect breeding area, accident or fire hazard, or air pollution violation and shall conform to all

other requirements of the Natural Resources and Environmental Protection Cabinet.

(2) All refuse shall be stored in flytight, watertight, rodent proof containers and containers shall be emptied and cleaned at a [such] frequency necessary [so as] to prevent a nuisance. [; provided, however, plastic bags containing food waste may be used if disposed of on a daily basis or if used as liners in rodent proof containers, or if used for non food refuse.]

(3) Approved container storage [location] shall be provided and shall be [so] designed and maintained [as not] to not create a nuisance.

(4) All refuse containing garbage shall be collected at least once per week or more often if deemed necessary.

Section 11. [12.] [11.] Maintenance of Animal Facilities. (1) Barns, stables, corrals or other structures used to house horses and other animals shall be located at least 500 feet from any sleeping, eating or food preparation area. Tie-rails, or hitching posts shall not be located within 200 feet of any dining hall, kitchen or other place where food is prepared, cooked or served.

(2) Barns, stables and corrals shall be located on a well-drained sloping area and [so] situated [as] to prevent contamination of any water supply.

(3) Manure shall be removed from barns, stalls, and corrals as often as necessary to prevent a fly problem. Fly repellents or other precautions shall be used to prevent these [such] shelters from becoming an attractant for or breeding place for flies. Manure disposal shall be handled in a manner which does not create a nuisance or contaminate surface or groundwater.

Section 12. [13.] [12.] Swimming Facilities and Recreational Water Activities. (1) All swimming pools, beaches, and natural bathing places [and swimming cribs] shall comply with 902 KAR 10:120, the Kentucky public swimming and bathing facility regulation [applicable regulations of the Natural Resources and Environmental Protection Cabinet and with applicable local regulations].

(2) All small craft and boating activities shall be conducted in compliance with applicable rules and regulations of the Natural Resources and Environmental Protection Cabinet, Division of Water Patrol.

(3) All swimming and small craft and boating activities shall be under the supervision of a person holding a current American Red Cross Senior Life Saving Certificate or its equivalent at all times. [All necessary life saving devices shall be provided.]

[(4) A method of checking swimmers recognized by the American Red Cross Life Saving and Water Safety Standards shall be enforced.]

[(5) Epidemiological investigation, sanitary survey and other factors shall indicate that the area is safe for swimming.]

Section 13. [14.] [13.] Insect, Rodent and Pest Control. (1) Grounds, buildings, and structures shall be maintained free of insect and rodent harborage and infestations. Extermination methods and other measures to control insects and rodents shall be pursuant to [in accordance with] applicable state laws and regulations.

(2) Camps shall be maintained free of accumulations of debris which may provide rodent harborage or breeding places for flies, mosquitoes or other pests.

(3) Storage areas shall be [so] maintained [as] to prevent rodent harborage. Lumber, pipe and other building materials shall be stored at least one (1) foot above the ground.

Section 14. [15.] [14.] Camp Director, Records and Reports, Medical Supervision and First Aid. (1) The camp operator shall assure that a camp director or an authorized agent [representative] is available within the camp boundaries at all times while the camp is in operation.

(2) Records or personal data, including a medical history, shall be kept on each person attending a camp. Minimum records shall include the name, date of birth, and address of each person in camp; the name, address and telephone number of parents or guardians; and the medical history, and dates of admission and discharge of each camper.

(3) Residential camps shall have facilities for isolation of persons suspected of having a communicable disease. Other camps shall provide for the immediate isolation of campers suspected of having a communicable disease.

(4) Adequate first aid supplies and equipment as designated by the physician on call shall be located within the camp. Residential camps shall have a person holding an American Red Cross Standard First Aid and Personal Safety Certificate or its equivalent on site twenty-four (24) hours a day while the camp is in session. All other camps shall have a person holding, as a minimum, a First Aid Course Certificate from the American Red Cross or its equivalent on site while camp is in session. The certificates shall be made available for examination upon request of an authorized agent of the cabinet.

(5) All prescription drugs shall be kept in a locked cabinet or container.

(6) A nearby physician or emergency room shall be available or on call for medical emergencies and the camp shall have access to a telephone, with emergency telephone numbers posted. Transportation shall be available at all times in the event of an emergency.

(7) All serious illnesses and accidents resulting in death or injury, other than minor injuries which require only first aid treatment and which do not involve medical treatment, shall be reported to the cabinet at the end of the camping season, but not [in no event] later than December 31 of each year, on form DFS-309 - KY Youth Camp Accident/Illness Report provided by the cabinet.

Section 15. [16.] [15.] Safety and Accident Prevention. (1) All camps shall comply with applicable rules and regulations of the State Fire Marshal and applicable local fire codes pertaining to fire safety, fuel supply and fuel connections.

(2) In every camp with an electrical system, the wiring, fixtures, and equipment shall be installed and maintained pursuant to [in accordance with] applicable codes and regulations.

(3) Protection; natural hazards.

(a) Natural hazards within the boundaries of

the camp shall be plainly marked [as such] and [such] measures and procedures [as] approved by the cabinet shall be followed [complied with] to insure the safety of the campers.

(b) Poison plants such as poison sumac and poison ivy shall be subject to control and elimination from areas where their presence is hazardous to campers.

(4) Elimination of artificial hazards.

(a) All buildings, grounds and equipment shall be maintained in [such] a manner [as] to eliminate or minimize the danger from holes, glass, splinters, sharp projections and other hazardous conditions [so as] to protect the safety of all persons residing in or using the facilities at the camp site.

(b) All insecticides, pesticides and chemical poisons shall be plainly labeled and stored in a safe place.

(c) Gasoline and other highly flammable fluids shall be plainly marked and stored in a locked container or building not occupied by residents of the camp and at a safe distance from sleeping quarters or buildings where people congregate.

Section 16. [17.] [16.] Plan Review for [of] Future Construction. (1) Any person [or persons] contemplating construction, alteration, addition to or change in the construction of any permanent camp shall, prior to the initiation of any such construction, submit plans in triplicate [to the cabinet], through the local health department concerned, of any proposed camp, additions, alterations, or change in construction which shall show:

(a) Name and address of owner or operator of camp;

(b) Area and dimension of the site;

(c) Property lines;

(d) A separate floor plan of all buildings and other improvements constructed or to be constructed including location and number of personal hygiene facilities [sanitary conveniences], including water closets, urinals, showers, hand-washing facilities and including a plumbing riser diagram;

(e) Detail drawings of sewage disposal facilities including written specifications [of sewage plant disposal facilities];

(f) Detail drawings of water supply if source is other than public; and

(g) The location and size of water and sewer lines within the camp.

(2) If [In camps where] central food preparation and food service buildings are to be provided, plans and specifications shall be submitted showing the kitchen floor plan, layout and type of equipment, storage area, restrooms, and dining area pursuant to [all in accordance with] 902 KAR 45:005, the state food service code.

(3) If [In camps where] artificially constructed swimming pools or beaches are contemplated, plans and specifications shall be submitted to the [Natural Resources and Environmental Protection] cabinet for review and approval prior to construction.

Section 17. [18.] [17.] Inspection of Camp. (1) Each camping season an inspection shall be made by the cabinet on each camp at least once prior to the opening of the camp and at least once while the camp is in actual operation. The cabinet shall make as many additional inspections and reinspections as are necessary for the enforcement of this regulation.

(2) If [Whenever] an agent of the cabinet makes an inspection of a camp he shall record his findings on an official cabinet inspection report form **DFS-308 - Youth Camp Inspection** and provide the permit holder or operator with a copy. The inspection report shall:

(a) Set forth any violation(s) if found;

(b) Establish a specific and reasonable period of time for the correction of the violations(s) found; and

(c) State that failure to comply with any notice issued pursuant to [in accordance with] the provisions of this regulation may result in suspension or revocation of the permit.

Section 18. [19.] [18.] Suspension of Permit. (1) If [Whenever] the cabinet has reason to believe that an imminent public health hazard exists, or if [whenever] the permit holder has interfered with the authorized agents of the cabinet in the performance of their duties, the permit may be suspended immediately upon notice to the permit holder without a hearing **on form DFS-212 - Request for Hearing**. [In such event] The permit holder may request a hearing which shall be granted as soon as practicable.

(2) In all other instances of violation of the provisions of this regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violation(s) in question and afford the holder a reasonable opportunity to correct them [same]. If [Whenever] a permit holder or operator has failed to comply with any written notice issued under the provisions of this regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of five (5) days following service of the [such] notice, unless a written request for a hearing is filed with the cabinet, by the permit holder, within the [such] five (5) day period.

(3) The hearings provided for in this regulation shall be conducted by the cabinet at a time and place designated by it. At the conclusion of the hearing, the cabinet shall make a finding of fact and conclusion of the law. A transcript of the hearing need not be made unless the interested party assumes the cost [thereof] and a request is made [therefor] at the time a hearing is requested.

Section 19. [20.] [19.] Reinstatement of Suspended Permits. Any person whose permit has been suspended may, at any time, make application for a reinspection **on form DFS-215 - Application for Reinstatement of Suspended Permits** for the purpose of reinstatement of the permit. Within five (5) days following receipt of written request, including a statement signed by the applicant that in his opinion the conditions causing the suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is found to be in compliance with the requirements of this regulation, the permit shall be reinstated.

Section 20. [21.] [20.] Revocation of Permits. For serious or repeated violations of any of the requirements of this regulation or for interference with the agents of the cabinet in the performance of their duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify

the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the [such] notice, unless a request for a hearing is filed with the cabinet by the permit holder, within the [such] ten (10) day period.

Section 21. [22.] Existing Facilities and Equipment. Notwithstanding the other provisions of this regulation, facilities and equipment being used by existing youth camps holding valid permits on the effective date of this regulation, which do not fully meet the design and construction requirements of the regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, and create no health or safety hazard.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 14, 1990
FILED WITH LRC: June 19, 1990 at 11 a.m.

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

902 KAR 10:120. Kentucky public swimming and bathing facilities regulation.

RELATES TO: KRS 211.180, 211.990(2)
STATUTORY AUTHORITY: KRS 194.050, 211.090(3), HB 492 (1988 Acts) [Executive Order 86-978]
NECESSITY AND FUNCTION: HB 492 (1988 Acts) [Executive Order 86-978] directs the Cabinet for Human Resources to regulate the design and construction of water distribution and treatment systems for swimming pools. KRS 211.180 directs the Cabinet for Human Resources to adopt regulations relating to public facilities, and their operation and maintenance in a safe, sanitary manner to protect public health and prevent health hazards. This regulation establishes uniform standards for public swimming pools and other swimming or bathing facilities. The function of this regulation is to assure the proper design and construction of new facilities as related to water distribution and treatment systems, and the proper operation and maintenance of all such facilities in a manner which will protect the public health.

Section 1. Citation of Regulation. This regulation may be cited as the "Kentucky Public Swimming and Bathing Facilities Regulation."

Section 2. Definitions. As used in this regulation the following terms shall have the meanings set forth below:

(1) "Accessible" means, if [when] applied to a fixture, connection, appliance or equipment, having access to it [thereto], but may require the removal of an access panel, door or similar obstruction. "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor or other device, and the flood level rim of the receptacle.

(4) "Air induction system" means a system whereby a volume of air (only) is induced into hollow ducting built into a spa floor, bench, or other location. The air induction system is activated by a separate air power unit (blower).

(5) "Alkalinity or total alkalinity" means the amount of carbonates or bicarbonate present in water solution as expressed in parts per million (p.p.m.).

(6) "Approved" means accepted or acceptable under the applicable specifications stated or cited in the regulation or accepted as suitable for the proposed use by the State Building Code.

(7) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and[/or] filter aid and remove them from the filter tank.

(8) "Backwash cycle" means the time required to backwash the filter system thoroughly.

(9) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed un U.S. gallons per minute per square foot (liters per minute per square meter) of effective filter area.

(10) "Bather" means any person using a public swimming and bathing facility, and adjoining deck or beach area for the purpose of therapy, relaxation, recreation, competitive water sports or events, or related activities.

(11) "Bather load" means the maximum number of persons which may use the swimming and bathing facility as defined in the State Building Code.

(12) "Body feed" means the continuous addition of controlled amounts of filter aid during the operation of a diatomite type filter to maintain a permeable filter cake. If added as a slurry, this may be referred to as a slurry feed.

(13) "Cabinet" means the Cabinet for Human Resources and its authorized agents.

(14) "Cartridge" means a replaceable porous filter element which can be the depth type or the surface type:

(a) "Depth type cartridge" means a filter cartridge with media not less than three-fourths (3/4) inch (.18 cm) thick which relies on penetration of particulates into the media to achieve their removal and to provide adequate holding capacity for the cartridge; and

(b) "Surface type cartridge" means a filter cartridge with media less than three-fourths (3/4) inch (.18 cm) thick which relies on retention of particulates on the surface of the cartridge to achieve their removal.

(15) "Chemical feeder output rate" means the weight or volume of active ingredients delivered by a chemical feeder expressed in units of time.

(16) "Chemical feed rate indicator" means a mechanism which will produce reproducible results expressed in units of weight or volume of chemical per unit of time, or per unit of volume of water; the [said] mechanism may be a direct reading instrument, or may require the use of a reference chart.

(17) "Circulation piping system" means the piping between the facility structure and the mechanical equipment.

(18) "Corrosion resistant" means capable of maintaining original surface characteristics under the prolonged influence of the environment in which it is used.

(19) "Design head" means the total head

requirement of the circulation system at the design rate of flow.

(20) "Design rate of flow (design filter rate)" means the rate of flow in a system which is used for design calculation. (The volume of the facility in gallons divided by the number of minutes in the turnover time.)

(21) "Diving pool" means a pool designed and intended for use exclusively by divers.

(22) "Effective filter area" means:

(a) "Permanent media type" - the effective filter area is the cross-section area of the filter surface that is perpendicular to the flow direction;

(b) "Diatomaceous earth type" - the effective filter area of the septum is that part of the septum which will accept the full thickness of precoat and through which the design filter flow will be maintained during filtration; and

(c) "Cartridge filter" - the total effective filter area is that cartridge area which is exposed to the direct flow of water. This excludes cartridge ends, seals, supports, and other areas where flow is impaired.

(23) "Factor of safety" means the ultimate load divided by the safe load or the ultimate strength divided by the allowable stress.

(24) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance (a filter media or element):

(a) "Permanent media filter" means a filter that utilizes a media that can be backwashed and reused;

(b) "Diatomaceous earth filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that must be periodically replaced; and

(c) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.

(25) "Filter aid" refers to any means used to enhance the efficiency of the filter media. Alum, as used on the bed of a sand filter, is also referred to as a filter aid.

(26) "Filter cycle" means the operating time between cleaning or replacing the filter media [and/]or backwash cycles.

(27) "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit. Filter elements usually consist of a septum and septum support:

(a) "Permanent filter media" means finely graded material (such as sand, anthracite, etc.) which removes suspended filterable particles from the water.

(b) "Non permanent filter media" means any type of finely graded media used to coat a septum type filter usually diatomaceous earth, processed perlite or similar material for the purpose of removing fine particulates from the water.

(28) "Filter waste discharge piping" means piping that conducts wastewater from a filter to a drainage system. Connection to drainage system is made through an air gap or other approved method.

(29) "Filtration rate" means the rate of water flow through a filter while in operation, expressed in U.S. gallons per minute per square foot (liters per minute per square meter) of effective filter area.

(30) "Flow balance valve" means a device to regulate the effluent from the skimmer housing of each of a combination of two (2) or more surface skimmers.

(31) "Flume" means an inclined channel which conveys the water and the bather from the top of the slide to the plunge pool of a water slide.

(32) "Friction loss" means the pressure drop expressed in feet (meters) of water or psi (pascals) caused by liquid flowing through the piping and fittings.

(33) "Handicap pool" means a swimming pool which is designed specifically for the use of persons who are physically or mentally disabled [and/]or impaired, and is equipped with devices, appliances, ramps and other means of assisted access to the pool.

(34) "Head loss" means the total pressure drop in psi (kilopascals) or feet (meters) or head between the inlet and the outlet of a component.

(35) "Hydrojet booster pump system" means a system whereby one (1) or more hydrojets are activated by the use of a pump which is completely independent of the filtration and heating system of a spa.

(36) "Hydrojets" means a fitting which blends air and water creating a high velocity, turbulent stream of air enriched water.

(37) "Indirect waste pipe" means a pipe that does not connect directly with the drainage system, but conveys liquid wastes by discharging into a plumbing fixture, interceptor, or receptacle which is directly connected to the drainage system.

(38) "Inlet fitting" means a fitting or fixture through which filtered water enters a pool or spa.

(39) "Listed" means equipment or materials included in a list published by a listing agency that maintains periodic inspection on current production of listed equipment or materials, and whose listing states either that the equipment or material complies with approved standards or has been tested and found suitable for use in a specified manner.

(40) "Main outlet" means the outlet fitting(s) at the bottom of a facility through which passes water to a recirculating pump. It is often referred to as a "main drain."

(41) "Multiport valve" means a valve for various recirculation related operations, which combines in one (1) unit the function of two (2) or more single direct flow valves.

(42) "National Sanitation Foundation (NSF)" is based at 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106. It publishes a list of manufacturers and their equipment which has been approved as having satisfied NSF standards.

(43) "Perimeter overflow systems" means a channel at normal water level which normally extends completely around the pool perimeter. Also, known as an overflow or scum gutter.

(44) "Person" means any individual, firm, association, club, organization, partnership, business trust, corporation, company, or any state or local governmental agency.

(45) "Precoat" means the process of depositing a layer of diatomaceous earth on filter septa at the start of a filter cycle.

(46) "Public swimming and bathing facilities" or "facility" means any natural or artificial body or basin of water which is modified, improved, constructed, or installed for the purpose of public swimming or bathing under the control of any person and includes, but is not limited to, the following:

(a) Beaches;

(b) Swimming pools, wading pools, wave pools;

(c) Competition swimming pools and diving pools;
(d) Water slides and spray pools; and
(e) Spas, therapeutic pools, hydrotherapy pools, and whirlpools.

It includes those operated [used] by communities, subdivisions, apartment complexes, condominiums, clubs, camps, schools, institutions, parks, mobile home parks, hotels, recreational areas, or similar public facilities [etc]. It does not include any of the above facilities which are at private single family residences intended only for the use of the owner and guests.

(47) "Public swimming and bathing facilities operator" means any "person" as defined above [and/]or any employees of that person who are delegated responsibility for the proper operation and maintenance of the facility.

(48) "Pump discharge pressure" means the actual gauge reading measured in psi taken at the discharge outlet of a pump.

(49) "Receptor" means an approved plumbing fixture or device of [such] material, shape, and capacity [as] to adequately receive the discharge from indirect waste piping, [so] constructed and located [as] to be readily cleaned.

(50) "Recirculation system" means the interconnected system traversed by the recirculated water from the pool until it is returned to the pool.

(51) "Residual chlorine" shall mean the amount of measurable chlorine remaining in water following chlorination and is composed of the following components:

(a) Free available residual chlorine shall mean the amount of chlorine which is available to inactivate microorganisms and which has not reacted with ammonia, nitrogenous material, and other material in swimming pool water;

(b) Combined residual chlorine (also called "chloramine") shall mean the amount of chlorine which has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds;

(c) Total residual chlorine shall mean the arithmetic sum of free available residual chlorine and combined residual chlorine; and

(d) The word "disinfectant" may be substituted for "chlorine" in the above.

(52) "Return piping" means that part of the piping between the filter and the facility through which passes the filtered water.

(53) "Separation tank" means a device used to clarify filter rinse or wastewater.

(54) "Septum" means that part of the filter element consisting of cloth, or closely woven fabric or other porous material on which the filter cake is deposited.

(55) "Spa" [shall] means a special facility designed for recreational and therapeutic use, and which is not drained, cleaned, or refilled after each individual use. It may include, but not be limited to, units designed for hydrojet circulation, hot water, cold water, mineral bath, air induction bubbles, or any combination thereof. Common terminology for a spa includes, but is not limited to, "therapeutic pool," "hydrotherapy pool," "whirlpool," "hot spa."

(56) "Static suction lift" means the vertical distance in feet (meters) from the center line of the pump impeller to the level of water in the pool.

(57) "Spray pool" means an artificially constructed area over which water is sprayed but is not allowed to pool. Sprayed water flows to waste and is not recirculated.

(58) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(59) "Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of the pump and usually includes the following: main outlet piping, skimmer or [/] gutter piping, vacuum piping, and surge tank piping.

(60) "Superchlorinate" means the addition to facility water of an amount of chlorine sufficient to produce a free available residual which is at least equal to ten (10) times the amount of combined residual chlorine plus the required minimum level of free available residual chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.

(61) "Surface skimmer" means a device designed to continuously remove surface film and water (and return it through the filter) as part of the recirculation system, usually incorporating a self-adjusting floating weir, strainer basket, a collection tank, and a means to prevent air lock of the pump. It is sometimes referred to as a "recirculating overflow," a "mechanical" or an "automatic skimmer."

(62) "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.

(63) "Total discharge head" means the value in feet (meters) of water that a pump will raise water above its center line.

(64) "Total suction head" means the value in feet (meters) of water that a pump will lift by suction.

(65) "Total dynamic suction lift (TDSL)" means the arithmetical total of static suction lift, friction head loss, and velocity head loss working on the suction side of the pump.

(66) "Trimmer valve" means a flow adjusting device which is used to proportion flow among multiple skimmers on a single line.

(67) "Turnover time" means the time in hours or minutes, required for the circulation system to filter and recirculate a volume of water equal to the facility volume.

(68) "Vacuum piping" means the piping from the suction side of a pump connected to a vacuum fitting located at the facility and below the water level to which underwater cleaning equipment may be attached.

(69) "Velocity" means a measurement of the motion of liquids expressed in feet per second.

(70) "Wading pool" means a pool intended only for small children. The maximum depth is less than twenty-four (24) inches.

(71) "Water slide" means a slide which consists of one (1) or more flumes, a plunge pool, a pump reservoir, and water treatment facilities, where water is pumped to the top of the slide and allowed to flow down the flume to the plunge pool.

(72) "Wave pool" means a swimming pool designed for the purpose of producing wave action in the water.

(73) "Working pressure" means the normal operating pressure recommended by the manufacturer.

Section 3. Submission of Plans and Specifications for Approval. (1) No person shall begin construction, or construct, or substantially change, alter or reconstruct any public swimming and bathing facility until plans and specifications, with [additional] [such] supporting design data as [may be] required **in this regulation** for the proposed review of the plans, have first been submitted in quintuplicate (five (5) sets) to the cabinet through the Department of Housing, Buildings and Construction and have been approved in writing by all state or local agencies having jurisdiction. All construction shall be in accordance with approved plans. The front page of the plans shall contain the name of the swimming and bathing facility, location by city and county, name of its owner and name of the engineer, architect, or person preparing the plans. Plans submitted by an engineer or architect shall bear his seal. Plans and specifications on public swimming and bathing facilities constructed by the state or political subdivision [thereof], or on facilities designed for a bather load of 100 or more, shall be prepared by an engineer or architect registered in the State of Kentucky and comply with the provisions of KRS 322.010 and 323.010. Plans and specifications, reports and other information shall be submitted in [such] form and content as may be specified by the cabinet.

(2) The plans shall be drawn to scale and accompanied by proper specifications [so as] to permit a comprehensive engineering review of the plans including the piping and hydraulic details and shall include:

(a) A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

(b) A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

(c) The specifications shall contain details on all treatment equipment, including performance ranges of pumps, chlorinators, chemical feeders, filters, strainers, lights, skimmers, inlet and outlet fittings, diving boards, safety equipment and other related equipment;

(d) A statement of the design, bather load expected to use the facility at any given time; and

(e) Drawing of equipment room showing placement of equipment.

(3) Owners shall keep one (1) set of approved plans available for inspection at the job site in the possession of the actual builder of the facility.

(4) Upon completion of the recirculation [enough] piping system and prior to such piping being covered with dirt [and/]or concrete, the owner or [/] builder shall contact affected agencies for inspection.

(5) Upon completion of the swimming and bathing facility, a notarized statement certifying completion of the facility in accordance with the approved plans and specifications and this regulation shall be submitted to the cabinet by the engineer, architect, or person who prepared plans, and shall be accompanied by a request for inspection prior to occupancy. The facility shall not be used until final inspection by affected agencies demonstrates compliance with this regulation.

(6) Unless construction is begun within one (1) year from date of approval, the approval shall expire. Extension of approval may be granted upon written request to the cabinet.

(7) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet and all other agencies having jurisdiction.

Section 4. Water Supplies. (1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these [In the event such] supplies are not available, a potable water supply meeting the approval of the Natural Resources and Environmental Protection Cabinet shall be provided.

(2) The water supply shall be capable of providing sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility, and be capable of providing enough water to raise the water level in swimming, diving, or wave pools, and water slide plunge pools at least one (1) inch in three (3) hours.

Section 5. Water Quality and Sanitary Requirements for Bathing Beaches. (1) Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the bathing beach area and the watershed.

(2) Physical quality. The following characteristics shall not be present in the beach area or watershed:

(a) Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; and

(b) Hazardous substances being discharged into bathing beach water or watershed.

(3) Bacteriological quality. The bacteriological quality of water at bathing beaches shall comply with the following criteria:

(a) It shall meet the requirements of 401 KAR 5:031, Section 6, recreational waters, as adopted by the Natural Resources and Environmental Protection Cabinet. Bacterial levels exceeding those standards [Coliform bacteria counts of 1,000 per 100 ml or fecal coliform bacteria counts of 100 per 100 ml in any two (2) consecutive samples] shall be considered sufficient grounds to require additional investigation, survey, special analyses, and correction of any problems determined to be causing the high counts. Subsequent evaluation and satisfactory bacteriological results shall [must] be obtained before approval for construction will be issued; and

(b) There shall be no sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the bathing beach area or immediate watershed.

(4) Chemical quality. There shall be no discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.

Section 6. Sewage and Wastewater Disposal. (1) Sewage [and/]or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary

sewer. If [Where] a public sanitary sewer is not available, [such] sewage [and/]or wastewater shall be discharged to a system which complies with 902 KAR 10:085, [the cabinet's] on-site sewage disposal systems regulation.

(a) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. Such drainage shall not result in nuisance conditions, which create an offensive odor, or which produce a stagnant wet area, or which produce an environment for the breeding of insects;

(b) Wash or backwash water from sand filters or diatomaceous earth filters shall be discharged to public sanitary sewers, or if unavailable to a system approved by the cabinet. [; and]

[(c) Diatomaceous earth filter wash or backwash water shall be discharged to one of the above, or by a disposal method approved by the cabinet.]

Section 7. Refuse Disposal. (1) All refuse at a public swimming and bathing facility shall be disposed of [at a facility] in a manner approved by the Natural Resources and Environmental Protection Cabinet.

(2) Refuse containers of approved design and construction, with tight fitting lids, adequate in number, shall be provided at readily accessible locations at all public swimming and bathing facilities. These [Such] containers shall be mounted upon an approved rack or holder in all outdoor locations, and shall be maintained [so as] to prevent the creation of a health or safety hazard.

(3) Refuse containers in rest rooms or bather preparation and dressing areas may be of open-top or swing-lid design, except in women's rest rooms where swing-lid or other covered top containers shall be required.

(4) Bulk refuse storage areas shall be designed, constructed, drained, and maintained [so as] to prevent rodent and vermin harborage, breeding sites, or insanitary conditions. Bulk refuse containers shall be of approved design and construction, with tight fitting lids, adequate in number, and shall be placed upon an impervious surface within a suitable enclosure to prevent access by animals.

(5) If [When] the facility is not in use after seasonal operation or for any other reason, the facility shall not be allowed to accumulate debris, give off objectional odors, become a breeding site for insects, or create any other nuisance situation.

Section 8. Facility Design and Construction. (1) All public swimming and bathing facilities and attendant structures such as bathhouses, dressing rooms, or rest rooms, [etc.,] except for beach areas at bathing beaches, shall meet the design, materials, fixture, and construction requirements of [the latest edition of] the Kentucky State Building Code and the State Plumbing Code of the Department of Housing, Buildings, and Construction, Public Protection and Regulation Cabinet.

(2) The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed. Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet. Within such limits of safe swimming there shall be no boating, underwater obstructions, or other hazards which may be dangerous or cause injury to swimmers. Signs shall be provided on the beach describing these [such] markers and stating that they indicate the limits of safe bathing. The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.

(3) If [Where] diving facilities are provided at beaches, the design and layout of the facilities and associated unobstructed water depths shall be in accordance with the State Building Code requirements for swimming and diving pools. The water surrounding any floats where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.

(4) Depth markings and lane lines.

(a) On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility if [where] possible and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:

1. At the points of maximum and minimum depths;
2. At the point of change of slope between deep and shallow portions (transition point);
3. At intermediate two (2) feet increments of water depth; and
4. If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.

(b) Depth markers shall be [so] spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet or seven and five-tenths (7.5) m as [when] measured peripherally.

(c) Depth markers shall be in arabic numerals at least four (4) inches (ten (10) cm) high and of a color contrasting with the background. If [Where] depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that [provided said] markings shall be visible plainly to persons in the facility.

(d) Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.

(e) A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet). The line shall be placed one (1) foot toward the shallow end from where the break occurs.

Section 9. Facility Water Treatment Systems. (1) A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance and disinfect the water for all swimming and bathing facilities except bathing beaches. All system components shall [meet the latest requirements of Standard 50 of the National Sanitation Foundation (NSF) and] bear the [their] seal of approval of the National Sanitation Foundation (NSF). (Pumps greater than seven and five-tenths (7.5) HP which are not required to meet NSF testing standards shall be considered on a case-by-case basis.)

(2) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table [chart] below [of this section]. A valve for flow control shall be provided in the recirculation pump discharge piping.

Turnover Rate. The turnover rate shall be as shown in the following table:

Type of Facility	Turnover Required
Diving Pools	8 hours or less
Wading Pools, Spas	30 minutes or less
Water Slides, Handicap Pools	2 hours or less
All Other Pools	6 hours or less

Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute.

(b) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems. The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;
2. Seventy (70) feet for pressure sand or cartridge filters; or
3. Eighty (80) feet for pressure diatomaceous earth filters.

(c) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(d) If [Where] vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(e) A compound vacuum-pressure gauge shall be installed on the pump suction line. A vacuum gauge may be used for pumps with suction lift. A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(f) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(g) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are located downstream of the filter.

(3) Water heaters shall be installed at all indoor swimming and bathing facilities. If [Where] a water heater is installed, the following shall apply:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

(d) An automatic temperature limiting device with thermostatic control, which will prevent the introduction of water in excess of 100° Fahrenheit to swimming and diving pools and in excess of 104° Fahrenheit for spas shall be provided, and be accessible only to the facility operator;

(e) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;

(f) Venting of gas or other fuel burning water heaters shall be provided in accordance with the applicable State Building Codes;

(g) Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer's recommendations or the State Building Code;

(i) Heaters for indoor swimming and diving pools shall be sized on a basis of 150 BTU's/hour input per square foot of pool water surface area; and

(j) All heaters shall meet the latest standards of applicable recognized testing agencies.

(4) A flow meter shall be located so that the rate of recirculation may be easily read. Flow meters shall be installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence.

(5) Vacuum cleaning system.

(a) A vacuum cleaning system shall be provided for all facilities except beaches, and small indoor spas designed for six (6) or less bathers. A vacuum cleaning system capable of reaching all parts of the facility bottom shall be provided;

(b) A vacuum system may be provided which utilizes the attachment of a vacuum hose to the suction piping through the skimmer. Vacuumed water must pass through the skimmer's strainer basket;

(c) If [When] the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting(s) shall be provided eight (8) to twelve (12) inches below the normal water level and be provided with a cap or plug. Piping from this connection shall be to the suction side of the pump ahead of the hair and lint strainer, shall be at least one and one-half (1 1/2) inches in diameter and be equipped with a control valve near the junction with the pump suction line. The size of the vacuum hose shall be at least one and one-half (1 1/2) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning;

(d) Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom; and

(e) Vacuum systems are to be used only when the facility is closed to bathers.

(6) Piping, skimmer and overflow system.

(a) Piping shall comply [be in accordance] with the material specifications listed in the Kentucky State Plumbing Code for potable water. All piping, valves, or fittings[, etc.,] shall be color coded or suitably labeled, or marked to denote its purpose within the facility water treatment system.

(b) The piping shall be designed to carry the required quantities of water at velocities not

exceeding five (5) feet per second in suction piping, and ten (10) feet per second in pressure piping. Gravity piping shall be sized so that the head loss in piping, fittings, and valves[, etc.,] does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.

(c) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:

1. Main outlet bypass or other connections to waste;
2. Surge tank drain and overflow lines;
3. Pump discharge to waste lines; and
4. Gutter bypass to waste lines.

(7) Inlets.

(a) Each inlet shall be flow adjustable.

(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except in facilities equipped with skimmers it shall be in the range of ten (10) to twenty (20) feet per second.

(c) Inlets shall be located and permanently directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots. Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat. Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.

(d) Inlets for swimming and diving pools, wave pools, large spas, and water slide plunge pools shall be spaced as follows:

1. Inlets shall be placed completely around the pool, each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool; and

2. If inlets are to be placed on the bottom of the pool, the number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15), any fraction thereof would represent one (1) additional inlet.

(e) Inlets for wading pools, and small spas for six (6) or less bathers, shall be at least two (2) in number, and placed so as to meet the requirements of paragraph (c) of this subsection.

(f) At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.

(g) A continuous flume, tubing, or other arrangement near the pool water surface which serves as inlet supply piping and employs multiple "jet" inlets is approved provided the individual components of the system meet the requirements of paragraphs (a), (b) and (c) of this subsection and subsections (9)(a), (b) and (10) of this section.

(h) Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.

(8) Outlets.

(a) All facilities shall be provided with a main outlet at the deepest point to permit the facility to be completely and easily drained. Openings shall [must] be covered by a proper grating which is not removable by bathers without the use of tools, and which cannot entrap their fingers. Openings of the grating shall be at least four (4) times the area of the main outlet pipe and have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1 1/2) feet per second at maximum flow. The maximum width of grate openings shall be one-fourth (1/4) inch;

(b) Multiple outlets shall be provided in all facilities where the width of the facility is more than thirty (30) feet. In these [such] cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series. All spas and wading pools shall have at least two (2) outlets;

(c) A hydrostatic relief valve may be provided for in-ground swimming and diving pools, wave pools, and water slide plunge pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer; and

(d) Main outlet piping shall be sized for removal of the water through it at a rate of at least 100 percent of the design recirculation flow rate at velocities specified in subsection (6)(b) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.

(9) Perimeter overflow systems.

(a) Swimming and bathing facilities other than pools designed and used exclusively for diving, having a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system. Swimming and bathing facilities less then 1,600 square feet in area and thirty (30) feet or less in width may use surface skimmers.

(b) A perimeter overflow system shall:

1. Extend completely around the facility;
2. Permit inspection, cleaning, and repair;
3. Be designed so that no ponding or retention of water occurs within any portion of the system; or the passage of small children into an enclosed chamber;
4. Be designed to prevent the entrapment of bather's arms, legs, and feet;
5. Have an overflow lip which is rounded, provides a good handhold, and is level within two-tenths (0.2) inch;
6. Provide for the rapid removal of all water and debris skimmed from the pool's surface;
7. Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate. If [When] the surge volume is to be stored in the perimeter overflow system, the system shall have the capacity to carry 100 percent of the design flow while maintaining the surge storage capacity;
8. Discharge to the recirculation system;
9. Be provided with sufficient drains and piping which will not allow the overflow channel to become "flooded" when the facility is in normal use; and
10. Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe.

(10) All facilities which have perimeter overflow systems shall be provided with a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, in the perimeter overflow system, in a surge tank, or a combination of these. Valving shall be provided where necessary, to automatically retain water during periods of facility use and to discharge water during the

periods of nonuse so [such] that the proper operating water level in the facility is maintained at all times.

(11) Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If [Where] skimmers are used [provided], the following shall be met:

(a) At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof; with a minimum of two (2) skimmers provided, except for small spas, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.

(b) Skimmers shall be [so] located [as] to minimize interference with each other;

(c) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate;

(d) The surface skimmer piping shall have both a trimmer valve and a separate valve in the equipment room to permit adjustment of flow;

(e) Each skimmer shall be provided with an equalizer line at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve;

(f) A basket which can be removed without the use of tools and through which all overflow water must pass, shall be provided; and

(g) Skimmer equipped swimming and diving pools, wave pools, water slide plunge pools, and large spas shall have a smoothly contoured handhold [consisting of a bull-nosed] coping not over two and one-half (2 /12) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.

(12) All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to [in accordance with] the following:

(a) Discharge through an air gap of at least six (6) inches to the facility to a surge tank, or a vacuum filter tank. If [When] make-up water is added directly to the facility, the fill-spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If [When] added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and

(b) Through piping with vacuum breaker, antisiphon or other protection as specified by the State Plumbing Code.

(13) Filtration.

(a) Filters shall comply with the following:

1. Pressure filters shall have pressure gauges;

2. Pressure filters shall have an observable free fall, or a sight glass shall be installed on the backwash discharge line;

3. Pressure filters shall have a manual air-relief valve at the the high point;

4. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;

5. All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer;

6. Filter media shall meet NSF specifications;

7. Each facility shall have separate filtration and treatment systems;

8. Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day except if [when] the facility is closed for repairs or at the end of the swimming season; and

9. Individual filters shall be designed with necessary valves and piping to permit isolation of individual filters for repairs while other units are in service.

(b) Rapid sand or gravity sand filters:

1. Rapid sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover. Open gravity type filters shall be designed for a filter rate not exceeding two (2) gallons per square foot per minute.

2. Filtering media shall consist of at least twenty (20) inches of graded, sharp filter sand with an effective size between four-tenths (0.4) and 0.55 mm and a uniformity coefficient not exceeding one and 1.75, supported by at least ten (10) inches of graded filter gravel. Anthracite with effective size of six-tenths (0.6) to eight-tenths (0.8) mm with a uniformity coefficient of not greater than one and eight-tenths (1.8) may be used in lieu of the sand. A reduction in gravel depth or an elimination of gravel may be permitted where equivalent performance and service are demonstrated.

3. At least twelve (12) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains which serve as overflows during backwashing.

4. The filter system shall be designed with necessary valves and piping to permit:

a. Filtering to pool; and

b. Individual backwashing of filters to waste at a rate of not less than fifteen (15) gallons per minute per square foot of filter area. A backwash rate of eight (8) gallons per square foot per minute shall be provided for anthracite filters;

5. Each filter shall be provided with an access opening of not less than a standard eleven (11) inch by fifteen (15) inch manhole and cover.

6. The filter tank and its integral parts shall be constructed of substantial material capable of withstanding continuous anticipated usage and shall be designed for a pressure safety factor of four (4) based on the maximum shutoff head of the pump. This shutoff head for design purposes shall in no case be considered less than fifty (50) pounds per square inch.

(c) High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.

(d) Diatomaceous earth filters.

1. The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per

square foot of filter area if [when] continuous feeding of diatomaceous earth is employed;

2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoating;

3. If [Where] equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the [such] equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;

4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water; and

5. All filters shall be equipped for cleaning by one (1) or more of the following methods: backwashing; air-pump assist backwashing; spray wash; water pressure to wash vacuum filter; or agitation.

(e) Vacuum sand filters.

1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and

2. Overflow piping shall be provided in order to drain overflow water.

(f) Cartridge filters.

1. Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;

2. Cartridge filters shall only be used on indoor pools;

3. The design filtration rate shall not exceed 0.15 gallons per minute per square foot of filter surface area; and

4. [Duplicate cartridges.] A clean duplicate set of cartridges shall be maintained at the facility.

(14) Disinfectant and chemical feeders.

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control, except as stated in paragraph (e) of this subsection.

(b) Equipment capacity.

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity [so that it is possible] to feed the chlorine at a rate of eight (8) p.p.m. (two and seven-tenths (2.7) lbs/day chlorine gas or its equivalent for each 10,000 gallons of pool volume) for outdoor facilities and [a] three (3) p.p.m. (one (1) lbs/day for chlorine gas or its equivalent for each 10,000 gallons of pool volume) for indoor facilities based on the flow rates specified in subsection (2)(a) of this section;

2. The equipment for supplying chlorine shall not be controlled by a day-date clock;

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter;

4. Pot feeders for supplying bromo-chlorodimethylhydantoin sticks shall contain at least 0.50 pounds of bromo-chlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment;

5. Ozone may be used as a supplement to chlorination or bromination as required in subparagraph 1 or 4 of this paragraph. Ozonation equipment will be considered by the cabinet on a case-by-case basis for experimental use; and

6. No more than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than .05 p.p.m. at all times either in the vicinity of the ozonator or at the pool water surface.

(c) If [Where] positive displacement pumps (hypochlorinators) are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) Gas chlorinators.

1. The chlorine supply and gas feeding equipment shall be housed in a separate, relatively airtight room. The room shall be provided with an exhaust system which takes its suction not more than eight (8) inches from the floor and discharges out-of-doors in a direction to minimize exposure to toxic fumes. The fan shall [run continuously and] be capable of producing one (1) air change per minute. Means for introducing a fresh air supply to the enclosure through appropriate openings such as filters, grill openings, or other similar openings [etc.], at a high point opposite the exhaust fan intake shall be provided. The room shall have a window at least eighteen (18) inches square, and shall have artificial lighting. Electrical switches for lighting and ventilation shall be outside and adjacent to the door. Scales for weighing chlorine cylinders in service shall be provided. Automatic changeover chlorinators may be substituted for scales.

2. Chlorine cylinders either full or empty shall be anchored, or chained in a vertical position. The valve protection hoods shall be kept in place, except when the cylinders are connected. Chlorine feed devices should be located directly on the tank if [wherever] practical;

3. The chlorine feeding device shall be designed so that during interruptions of the flow of the water supply, gas feed is automatically terminated. In addition, the release of chlorine shall be terminated if [when] the recirculation pump is shut off. If [Where] other than facility recirculated water is used, the supply line shall be equipped with an electric shut off valve wired to the recirculation pump and shall be equipped with an approved backflow preventer. If [Where] two (2) or more cylinders are in use, an automatic changeover valve shall be used;

4. Chlorinator vent lines shall be conducted to the out-of-doors similar to the chlorinator room exhaust system;

5. The gas chlorinator shall be the solution feed type capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere;

6. The water supply for the gas feeding equipment shall produce the flow rate and pressure required according to the manufacturer's specifications for proper

operation of the equipment;

7. A self-contained breathing apparatus (SCBA) designed for use in a chlorine atmosphere and of a type approved by the Mine Safety and Health Administration (MSHA) [and/]or the National Institute for Occupational Safety and Health (NIOSH), shall be provided. This SCBA shall have sufficient capacity for the purpose intended. In addition a written respirator program shall be provided and employees shall be trained in the use and maintenance of such equipment to insure operability and safety. The SCBA shall be kept in a closed cabinet, accessible without a key, and located outside of the chlorine room. Installation of chlorinator equipment, and its operation [thereof], shall be carried on by and under the supervision of personnel experienced with installation and operation of such equipment. A chlorine valve shut off wrench shall be kept on the cylinder valve stem that is in use; and

8. In the event of a chlorine leak, the fire department or an agency trained in the handling of chlorine spills shall [, must] be immediately contacted. The phone numbers of the fire department or above agency shall [must] be posted on the outside of the chlorine room door.

(e) pH control feeders. At facilities with a volume greater than 100,000 gallons, or at facilities utilizing gas chlorine as a disinfectant, a chemical feeder of positive displacement type shall be installed for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of at least forty (40) gallons capacity shall be provided.

(f) Erosion type chlorine feeders shall be prohibited.

(15) Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of at least the following:

(a) A DPD (Diethyl-P-Phenylene Diamine) colorimetric test kit shall be provided, which will determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents are not acceptable;

(b) There shall be at least five (5) chlorine color standards and at least five (5) pH color standards. Chlorine standards shall range from one-tenth (0.1) to three (3.0) p.p.m. and pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4), as a minimum. Both tests shall be accurate to within two-tenths (0.2) units; and

(c) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 p.p.m.

Section 10. Operational Water Quality Standards. (1) Disinfectant residuals for swimming and diving pools, wading pools, water slides, and wave pools:

(a) Chlorine residual shall be maintained between one (1.0) p.p.m. and two and five-tenths (2.5) p.p.m. as free available chlorine.

(b) Bromine residual shall be maintained between one (1.0) p.p.m. and two and five-tenths (2.5) p.p.m. as free available disinfectant.

(c) Pools stabilized with cyanuric acid shall meet the following criteria:

1. Be an outdoor facility;

2. Maintain one and five-tenths (1.5) to two and five-tenths (2.5) p.p.m. free available chlorine residual; and

3. Cyanuric acid concentration twenty-five (25) p.p.m. to fifty (50) p.p.m.

(d) If [When] the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) p.p.m.

(2) Disinfectant residuals for spas:

(a) Chlorine residual shall be maintained between two (2.0) p.p.m. and three (3.0) p.p.m. as free available chlorine;

(b) Bromine residual shall be maintained between two (2.0) p.p.m. and three (3.0) p.p.m. as free available disinfectant; and

(c) If [When] the level of chloramines exceeds two-tenths (0.2) p.p.m., superchlorination is required. During the superchlorination process and until such time as free chlorine levels return to three (3) p.p.m. or less, the facility shall be closed.

(3) pH. The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(4) Turbidity. Facility water shall have sufficient clarity at all times to meet one (1) of the following:

(a) A black disc, six (6) inches in diameter, is readily visible when placed on a white field at the deepest point of the pool;

(b) The openings of the main outlet grate are clearly visible by an observer on the deck; and

(c) For wading pools the bottom of the pool shall [should] be clearly visible.

(5) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 p.p.m., as determined by suitable test kits.

(6) Temperature. The water temperature for indoor swimming and bathing facilities other than spas shall not be less than seventy-six (76) degrees Fahrenheit nor more than eighty-four (84) degrees Fahrenheit. The cabinet may allow variances from the above temperature limits for special use purposes [such] as competition, physical therapy, or instruction of children. Variances may be approved if [provided] proof is presented showing that a variance from the temperature requirements is necessary for the special uses stated, and that the variance will not jeopardize public health. Air temperature at an indoor facility shall be higher than the water temperature, except for spas. In no instance will water temperatures for any facility including spas be permitted to exceed 104 degrees Fahrenheit. All facilities with heated water shall be provided with at least one (1) breakproof thermometer located within the facility water in a conspicuous location. The [Such] thermometer shall be securely mounted to prevent tampering by bathers.

(7) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual and pH shall be checked at least three (3) times daily with a

greater frequency if [when] bather load or climatic conditions warrant.

(b) Turbidity - daily, or more often as needed.

(c) Alkalinity, cyanuric acid (if used) - weekly, or more often as needed.

(d) Temperature:

1. Spas - daily, or more often as needed; and

2. All other indoor facilities - daily.

(8) All spas shall be completely drained, thoroughly cleaned, and refilled with potable water at least once per week. Cleaners used shall be compatible with facility wall and bottom finishes.

Section 11. General Facility Operation and Maintenance. (1) Facility and facility area.

(a) All facilities shall be maintained free from sediment, lint, dirt, and hair. Cracks and other defects in the facility shall be repaired. The walls, ceilings, floors, and equipment shall be painted as often as necessary so that they are protected from deterioration. The bottom and sides of the facility shall be maintained so that they are free from deterioration;

(b) Decks shall be rinsed as necessary to be kept clean. Indoor decks shall be disinfected at least weekly. The walk areas, overflow gutters, counters, lockers, equipment, furniture, interior partitions, and walls shall be kept in good repair, clean, and sanitary; and

(c) [Food and/or drinks.] Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Perimeter overflow and skimmers. The perimeter overflow system or automatic surface skimmers shall be clean and free of leaves or other obstacles which would restrict flow. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so [such] that the majority of flow is returned through the perimeter overflow or skimmer system.

(3) Inlet fittings. Inlets shall be checked frequently to insure that the rate of flow through each inlet is correct so [such] that a uniform distribution pattern is established.

(4) Bather preparation facilities.

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily; and

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair. Floors shall be maintained in a nonslip condition. Soap dispensers shall be filled and operable. Adequate supplies of toilet tissue, disposable hand drying towels, roll type cloth towels, or suitable hand drying devices shall be maintained.

(5) Street attire. Street shoes shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(6) Safety. All public swimming facilities shall have adequate enclosures that meet the specifications of Department of Housing, Buildings and Construction. [Security.] Doors or gates in the facility enclosure shall be kept closed and locked if [when] the facility is closed.

(7) Electrical systems. Repairs to any electrical system shall be made by an electrician. All [Such] repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical inspector.

(8) Diving equipment, ladders, hand rails, and other similar equipment [etc.], shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(9) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility;

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day; and

(c) Recirculation pumps. The pump shall not be throttled on the suction side (except the bottom drain line valve) during normal operation, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(10) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened as necessary, to remove air which collects in the filter, and following each backwash; and

2. The filter shall be backwashed if [when] the design flow rate can no longer be achieved, or as [when] specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if [when] the design flow rate can no longer be achieved or as [when] specified by the filter manufacturer, whichever occurs first. If [Whenever] the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoated before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if [when] the design flow rate can no longer be achieved or as [when] specified by the filter manufacturer, whichever occurs first;

2. Following the precoating operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If [When] continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) - one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.

(11) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(12) Flow meters. Flow meters shall be

maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(13) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(14) Gas chlorinators.

(a) Gas chlorinators shall be repaired only by a person trained in servicing these units. The facility operator shall [should] determine the appropriate emergency personnel to contact in the event of a chlorine gas emergency and have the telephone number of said personnel conspicuously posted;

(b) Chlorine cylinders shall be stored indoors in the area designed for that purpose and away from a direct source of heat. Cylinders shall not be moved unless the protection cap is secured over the valve; and

(c) Chlorinator, gas line, injector, and cylinders shall be checked daily for leaks. Chlorine will produce a white smoke in the presence of ammonia. In case of a chlorine leak, corrective measures shall be undertaken only by trained persons wearing proper safety equipment. All other persons shall leave the dangerous area until conditions are again safe.

(15) Self-contained breathing apparatus (SCBA).

(a) A record shall be kept of SCBA usage to insure that the unit will be serviceable when needed. The SCBA shall be kept in a closed cabinet, accessible without a key, located outside of the room in which the chlorinator is located, and preferably outside the entrance to the equipment room; and

(b) The SCBA shall be serviced regularly as per manufacturer's recommendations.

(16) Positive displacement feeders.

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(17) Chlorinated cyanurates. The use of chlorinated cyanurates is prohibited.

(18) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH;

(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If [When] caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical;

(c) Sodium bisulfate or muriatic acid may be used to lower pool water pH;

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical; and

(e) The cabinet shall be consulted in the event of unusual pH problems including corrosion or scaling or wide fluctuations in pH.

(19) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose, and removed by the suction cleaner and filtration system.

(20) Miscellaneous chemicals.

(a) Chemicals other than disinfectants shall be used only with the advice and under the supervision of the cabinet;

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat and in a clean, dry, and well-ventilated place which prevents unauthorized access to the chemicals;

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions; and

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) p.p.m.

(21) Equipment rooms.

(a) Equipment necessary for facility operation shall be housed in a lighted, ventilated room which affords protection from the weather, prevents unauthorized access, and is of sufficient size for operation and inspection;

(b) The equipment room floor shall slope toward drains and shall have a nonslip finish;

(c) A hose bib with a vacuum breaker shall be installed in the equipment room;

(d) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access; and

(e) The equipment room and all other storage areas mentioned above shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

(22) Maintenance of bathing beaches.

(a) Beach areas shall be maintained free of litter and waterborne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.

(b) A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas, and shall extend beneath the water of all wading and swimming areas; and

(c) Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis, and immediately after high water conditions for floating or sunken debris, and obstructions at diving areas and high water turbidity which may present safety hazards to bathers.

Section 12. Facility Records. (1) The operator of each facility shall keep a daily record of information regarding operation including disinfectant residuals, pH, maintenance procedures, and recirculation, together with other data as may be required on form DFS-352 - Swimming Pool Log Sheet furnished by the cabinet. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records, which include the following shall be kept showing daily or weekly results as applicable:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level (if [where] applicable); and
(c) Malfunctioning of equipment.
(2) If [Where] two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

Section 13. Personnel. (1) Operator. A facility operator shall be responsible for the operation and maintenance of all swimming and bathing facilities. The operator shall be available at all times when the facility is open for use.
(2) Lifeguards.
(a) A lifeguard or lifeguards shall be provided at all facilities which allow bathers sixteen (16) years of age or under to enter the facility area without a responsible person seventeen (17) years of age or older present.
(b) All facilities which do not provide a lifeguard must post and enforce the following rule: "No person may enter the facility area alone or swim alone."
(c) If [Where] lifeguards are required, lifeguards shall comply with the following:
1. Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross, YMCA, or equivalent shall [will] satisfy this requirement. The certificate of [such] competency shall be prominently posted;
2. More than one (1) lifeguard shall be on duty at large facilities [and/]or facilities with a large number of bathers. Lifeguards shall be provided at a ratio of one (1) per 200 bathers or one (1) per 2,000 square feet of water surface area, whichever is less;
3. Lifeguards shall be dressed in swimming attire; and
4. Lifeguards assigned to the supervision of the facility shall not be subject to duties that would distract their attention from proper observation of persons in the facility area, or that would prevent immediate assistance to persons in distress in the water.

Section 14. Safety Equipment. (1) Facilities other than beaches having an area of more than 2,000 square feet of water surface area shall be provided with an elevated lifeguard chair. An additional lifeguard chair shall be provided for each additional 2,000 square feet of water surface area or major fraction more than half thereof. They shall be located to provide a clear view of the facility bottom in the area under surveillance.
(2) Beaches shall be provided with an elevated lifeguard chair for each 100 linear feet of beach front, with an additional lifeguard chair for each additional 100 linear feet of beach front or fraction thereof. The [Such] chairs shall be located on the beach [so as] to provide a clear view of all areas under surveillance and to provide the quickest response time.
(3) The following lifesaving equipment shall be provided:
(a) A U.S. Coast Guard approved ring buoy not more than fifteen (15) inches in diameter to which shall be attached a three-sixteenths (3/16) inch rope of length one and one-half (1 1/2) times the maximum pool width;
(b) A life pole or shepherd's crook type of pole having blunted ends with a minimum length of twelve (12) feet; and
(c) One (1) plywood backboard with straps, made to the specifications of the American Red Cross for back and neck injuries.
(4) The equipment listed in subsection (3) of this section shall be considered as one (1) unit (except paragraph (c)) and shall be considered as adequate for 2,000 square feet of facility water surface area. An additional unit shall be provided for each additional 2,000 square feet or major fraction thereof.
(5) Facilities limited to small spas, of less than 144 square feet of water surface area, shall not be required to provide the equipment listed in subsection (3) of this section, but shall meet the requirements of subsections (7), (10), and (11) of this section.
(6) Bathing beach facilities shall provide the following lifesaving equipment in addition to that listed in subsection (3) of this section:
(a) Paddle board or surfboard;
(b) At least one (1) lifeboat, containing one (1) unit of lifesaving equipment and outfitted to meet state water safety regulations; and
(c) A torpedo shaped buoy.
(7) All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent, which shall be kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction thereof.
(8) Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this [such] equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove such equipment from its established location. This [Such] equipment at beaches shall be located at each lifeguard chair, with the lifeboat mentioned in subsection (6)(b) of this section being located at the most centrally stationed lifeguard chair.
(9) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.
(10) All facilities shall have a nonpay telephone on the premises which is readily accessible and conspicuously located; for isolated facilities two (2) way radio communication systems to a manned telephone system may be substituted. The telephone number of a police, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.
(11) All drownings and injuries requiring hospitalization shall be immediately reported to the cabinet.

Section 15. Spectator and Bather Regulations. (1) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and shall be enforced by the facility operator. [Such] Posting of rules and other instructions shall provide that:
(a) Admission to the facility is refused to all persons having any contagious disease, infectious conditions [such] as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition which has the appearance of being infectious. Persons with

excessive sunburn, abrasions which have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind are not [to be] permitted. A person under the influence of alcohol or exhibiting erratic behavior shall not be permitted in the facility area;

(b) No food, drink, gum, or tobacco will be allowed in other than specially designated and controlled sections of the facility area;

(c) Personal conduct within the facility shall assure [must be such] that the safety of self and others is not jeopardized. No running and no boisterous or rough play (except supervised water sports) are permitted;

(d) People in street shoes and other spectators are not allowed in the facility, on the deck, and in the "wet" areas of the bathhouse, except those engaged in official duties;

(e) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the facility water is not permitted;

(f) Glass, soap, or other material which might create hazardous conditions or interfere with efficient operation of the facility shall not be permitted in the facility or on the deck;

(g) All apparel worn in the facility shall be clean;

(h) Diving in shallow water is not permitted;

(i) Caution shall be exercised in the use of diving boards; and

(j) Animals shall be excluded from the facility area.

(2) Due to the nature of bathing beaches, subsection (1)(c), (d), and (g) of this section shall not apply. Subsection (1)(a) and (b) of this section shall be enforced at the discretion of the facility operator, except for parts dealing with those persons with excessive sunburn or those under the influence of alcohol or exhibiting erratic behavior, which shall be enforced at all facilities.

(3) In addition to the requirements of subsection (1) of this section, a caution sign shall be mounted adjacent to all spas which contain the following warnings:

CAUTION

Pregnant women, elderly persons, and persons suffering from any heart condition or disease, diabetes, or high/low blood pressure should not enter the spa without prior medical consultation and permission from their doctor.

Do not use the spa while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness, or that raise or lower blood pressure.

Do not use at water temperatures greater than 104 degrees Fahrenheit.

Do not use alone.

Unsupervised use by children is prohibited.

Enter and exit slowly.

Observe reasonable time limits (that is, ten (10) to fifteen (15) minutes), then leave the water and cool down before returning for another brief stay.

Long exposure may result in nausea, dizziness, fainting, or death.

Keep all breakable objects out of the area.

Shower before entering the spa.

(4) A sign shall be posted in the immediate vicinity of the spa stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location.

Section 16. Swimming Suits and Towels Furnished by Management. All swimming suits and towels used by swimmers and maintained for public use shall be cleaned after each use. These items shall be handled in a sanitary manner.

Section 17. Facility Inspection. (1) Seasonal facilities.

(a) All owners [and/]or operators of seasonal facilities, prior to opening to the public, shall certify to the cabinet, in writing, that the facility is in compliance with the requirements of this regulation except in instances where the cabinet has made an inspection prior to its opening. For seasonal facilities, the cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet, at its discretion, may require one (1) of the full facility inspections to be performed prior to a facility's opening; and

(b) The facility owner [and/]or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation (indoor) facilities shall receive a full facility inspection by the cabinet at least once each six (6) months.

(3) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner [and/]or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(4) Facilities other than beaches shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of the following:

(a) Disinfectant residual testing (free available residual) and combined disinfectant in p.p.m.;

(b) pH testing;

(c) Total alkalinity testing;

(d) Cyanuric acid testing (if cyanuric acid stabilizers are used);

(e) Turbidity assessment;

(f) Temperature testing (if heated water facility);

(g) Review of operator's daily log;

(h) Visual scanning for algae or debris; and

(i) Other checks as necessary.

(5) Beaches shall receive monitoring inspections once each month or anytime immediately after periods of heavy rainfall. [Such] Monitoring inspections for beaches shall include general sanitation and safety checks as necessary.

(6) The cabinet may make as many additional inspections and reinspections as are necessary for the enforcement of this regulation.

(7) If [Whenever] an agent of the cabinet makes an inspection of a public swimming and bathing facility, he shall record his findings on an official cabinet inspection report form DFS-349 - Public Swimming and Bathing Facilities Inspection or DFS-350 - Public Swimming and Bathing Facilities Beach Inspection Report and provide the facility owner or the operator with a copy. The inspection report

shall:
(a) Set forth any violation(s) if found;
(b) Establish a specific and reasonable period of time for the correction of the violation(s) found; and
(c) State that failure to comply with any notice issued pursuant to [in accordance with] the provisions of this regulation may result in closure of the facility.

Section 18. Water Sampling and Testing. (1) A water sample may be collected from facilities if [when] inspections or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak, and shall be submitted to the Health Services Laboratory or other [approved] laboratory **licensed by the Natural Resources and Environmental Protection Cabinet** for analysis. Samples shall be collected in approved containers and by approved sampling procedures.
(2) Samples shall be collected and analyzed [according to the procedures outlined in "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association (APHA)] for any of the following or other contaminants:
(a) Total coliform;
(b) Fecal coliform; and
(c) Pseudomonad organisms.
(3) Multiple samples may be collected at bathing beaches to assure adequate representation of the entire facility water area.
(4) Need for additional samples at other times shall be triggered by the results of monitoring inspections, reported disease outbreaks associated with the facility, or failure of previous samples to meet the standards outlined in Sections 5 and 19 of this regulation. If [Where] a sample shows a positive test for contaminants as specified in subsection (2)(a), (b), and (c) of this section, the sample shall be repeated within one (1) to seven (7) days.

Section 19. Bacteriological Quality of Facility Water. (1) For facilities other than bathing beaches, no more than two (2) consecutive samples shall contain either:
(a) More than 200 bacteria per milliliter, as determined by the standard (thirty-five (35) degrees Centigrade) agar plate count;
(b) Show a positive test (confirmed test) for coliform organisms in any of the five (5) ten (10) milliliter portions of a sample or more than two (2.0) coliform organism per 100 ml when the membrane filter test is used;
(c) Show a positive test (confirmed test) for pseudomonas organisms; or
(d) Show a positive test for fecal coliform organisms.
(2) Bathing beaches shall comply with the standards set forth in Section 5(3)(a) of this regulation.

Section 20. Conditions requiring Closure of a Facility and Enforcement Provisions. (1) If [Whenever] the cabinet finds any of the following conditions [hereinafter set forth], it may immediately order by written notice the owner [and/]or operator to close the facility and to prohibit any person from using the facility:
(a) If conditions at a facility and appurtenances, including bathhouse facilities, upon inspection and investigation by a representative of the cabinet, create an immediate danger to health or safety;
(b) If [When] the cabinet upon review of results of bacteriological analyses of water samples collected from a facility, finds that the [such] water does not conform to the bacteriological standards promulgated by the cabinet for proper swimming and bathing water quality;
(c) If [When] an environmental survey of an area shows evidence of sewage or other pollutional or toxic materials being discharged to waters tributary to a beach creating an immediate danger to health or safety;
(d) If [When] turbidity levels of facility water do not meet the requirements of Section 10(4) of this regulation;
(e) If [When] in such cases as it is required, the presence of a satisfactory disinfectant residual, prescribed [by rule as promulgated] by the cabinet is absent;
(f) In any instance where the owner, operator, or any other employee or representative of the owner interferes with duly authorized agents of the cabinet, bearing proper identification, in the performance of their duties;
(g) If [When] recirculation system(s), filtration system(s), or disinfectant system(s) are not in operation (with exceptions for maintenance, and seasonal shut down); or
(h) If [When] serious or repeated violations of any of the requirements of the regulations are found.
(2) The notice shall state the reasons prompting the closing of the facility and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.
(3) Any owner or operator affected by [such] an order is entitled, upon written request **on form DFS-212 - Request for Hearing** to the cabinet, to a hearing as provided in this regulation.
(4) If the [When such] conditions are abated or if [when] the results of analyses of water samples collected from the facility, in the opinion of the cabinet, comply with the cabinet's bacteriological standards for acceptable water quality, or if [when] the turbidity decreases to the permissible limit, or if [when] the disinfectant residual reaches a satisfactory level as prescribed by regulation, the cabinet may authorize reopening the facility. If [When] sources of sewage, pollution, or toxic materials discovered as a result of an environmental survey are eliminated, the cabinet may authorize reopening of such beach.
(5) In all other instances of violation of the provisions of this regulation, including nonpayment of fees, the cabinet shall serve upon the owner or operator a written notice specifying the violation(s) in question and afford a reasonable opportunity to correct same. If [Whenever] an owner or operator has failed to comply with any written notice issued under the provisions of this regulation, the owner or operator shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the owner or operator, within such ten (10) day period.
(6) The hearings provided for in this section shall be conducted by the cabinet at a time and place designated by it. At the conclusion of the

hearing, the cabinet shall make a finding of fact and conclusion of the law. A transcript of the hearing shall not be made unless the interested party assumes the costs thereof and a request is made therefor at the time a hearing is requested.

(7) Any person whose facility has been closed may, at any time make application for a reinspection on form DFS-215 - Application for Reinstatement of Suspended Permits for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this regulation, the facility shall be reopened.

(8) For serious or repeated violations of any of the requirements of this regulation or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a hearing has been provided by the cabinet. Prior to the [such] action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the [such] notice unless a request for a hearing is filed with the cabinet by the owner or operator, within such ten (10) day period.

Section 21. Existing Facilities and Equipment. (1) Notwithstanding the other provisions of this regulation, existing facilities and equipment being used prior to the effective date of this regulation, which do not fully meet the design, construction, and materials requirements of this regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, meet facility water quality standards, and create no health or safety hazard.

(2) If [Whenever] existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the [such] replacement equipment, components, piping, or fittings shall meet the requirements of this regulation. If [Whenever such] replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.

Section 22. Effect on Local Regulations. Compliance with this regulation does not relieve any person from compliance with any other state or local laws, dealing with pool operation and maintenance matters, or zoning requirements which may also be applicable.

Section 23. Variances. (1) All facilities shall be constructed or remodeled in compliance with the provisions of these regulations, except that an applicant may request and the cabinet may grant a variance in those cases where it is determined that the variance would not affect seriously the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require adequate proof from the applicant that the requested variance will comply with the basic intent of these regulations and that no safety or health hazard would be created if the variance is granted.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 14, 1990
FILED WITH LRC: June 19, 1990 at 11 a.m.

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

902 KAR 15:010. Mobile homes.

RELATES TO: KRS 219.310 to 219.410, 219.991(2)
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: KRS 219.310 to 219.410 and 219.991(2) directs the Cabinet for Human Resources to regulate mobile home parks in Kentucky. This regulation establishes standards for park construction and layout; [site planning; lot size; water supply; sewage disposal; lighting; refuse handling; insect and rodent control; inspections; hearings; issuance, suspension and revocation of permits;] sanitary standards for operation and other matters necessary to insure a safe and sanitary mobile home park operation.

Section 1. Definitions. In addition to the definitions set forth in KRS 219.320, the following definitions [terms] shall apply [have the meanings set forth below]:

[(1) "Cabinet" means the Cabinet for Human Resources and the local health department having jurisdiction and their duly designated representatives.]

(1) [(2)] "Mobile home stand" means that part of a mobile home lot which has been reserved for the placement of a mobile home and appurtenant structures or additions.

(2) [(3)] "Park driveway" means a private driveway which affords principal means of access between the park street and individual mobile home lots.

(3) [(4)] "Park street" means the paved portion of a roadway between curbs or, if not paved, the surfaced area separating lots.

(4) [(5)] "Sewer connection" means the connection consisting of all pipes, fittings and appurtenances from the drain outlet of the mobile home to the inlet of the corresponding sewer riser pipe of the sewer[age] system serving the mobile home park.

(5) [(6)] "Water connection" means the connection consisting of all pipes, fittings and appurtenances from the water riser pipe to the water inlet pipe of the distribution system within the mobile home.

Section 2. Application for Construction Permit. Application for a permit to construct or alter a mobile home park shall be made in writing on form DFS-317 - Application for a Permit to Construct or Alter a Mobile Home Park or Recreational Vehicle Park to the cabinet and shall contain:

(1) The name and address of the applicant;
(2) The name and location of the park;
(3) The number and size of all mobile home lots;
(4) The number of lights and wattage;
(5) The source of water supply;
(6) The type of sewage disposal;

(7) The method of solid waste disposal;
(8) The source of electrical service;
(9) Evidence of compliance with local zoning laws; and
(10) Be accompanied by a fee established by 902 KAR 45:120, Inspection fees; permit fees; food service establishments, hotels, mobile home and recreational vehicle parks. [the cabinet] [of twenty-five (25) dollars.]

Section 3. Submission of Construction Plan. Each application for a permit to construct or alter a mobile home park shall be accompanied by a complete plan, drawn to scale, submitted in triplicate, of the proposed park or alteration. The plan shall show all existing and proposed facilities including:
(1) The area and dimensions of the tract of land being developed;
(2) The number, location and size of all mobile home lots;
(3) The area within each mobile home lot intended for location of a mobile home and setback distances;
(4) A detailed drawing of the foundation for the placement of the mobile home stand within the mobile home lot;
(5) The location and width of roadways, driveways and walkways;
(6) The number, location and size of all off-street automobile parking spaces;
(7) The location of park street lighting and electrical system;
(8) A detailed drawing of the water supply, if source is other than public;
(9) A detailed drawing of the sewage disposal facilities, including specifications [of the sewage plant];
(10) A detailed drawing of the refuse storage facilities;
(11) The location and size of water and sewer lines, [vents] and riser pipes;
(12) The size and location of any playground areas within the park, if provided; and
(13) A separate floor plan of all buildings and other improvements constructed or to be constructed within the mobile home park including a plumbing riser diagram.

Section 4. Location and General Layout Standards. (1) Every mobile home and mobile home park shall be located on a well-drained area, not subject to reoccurring flooding, and the premises shall be properly graded [so as] to prevent the accumulation of storm or other waters.
(2) Each mobile home or lot shall be numbered and displayed in some systematic order.
(3) Each mobile home lot shall contain a minimum of 4,000 (approximately forty (40) x 100 feet recommended) square feet.
(4) Mobile homes shall be separated from each other and from other buildings and structures by at least fifteen (15) feet. An accessory structure which has a horizontal area exceeding twenty-five (25) square feet, if attached to a mobile home or located within less than fifteen (15) [ten (10)] feet of the mobile home [its window, and has an opaque top or roof that is higher than the nearest window] shall, for purposes of all separation requirements, be considered to be part of the mobile home.
(5) All mobile homes shall be located at least twenty-five (25) feet from any park property boundary line abutting upon a public street or highway and at least ten (10) feet from other park property boundary lines.
(6) There shall be a minimum distance of twenty (20) feet between an individual mobile home and adjoining pavement of a park street, or common parking area or other common areas.
(7) If a park provides a playground area, it shall be easily accessible to all park residents and fenced or otherwise rendered free of traffic hazards.
(8) All lots shall abut upon a park street. For a two (2) way park street the minimum width shall be eighteen (18) feet and, if parking is permitted, the width shall be at least twenty-seven (27) feet for one (1) side parking and thirty-six (36) feet for both side parking. For a one (1) way park street the minimum width shall be fourteen (14) feet and, if parking is permitted, the width shall be at least twenty-three (23) feet for one (1) side parking and thirty-two (32) feet for both side parking.
(9) Park streets, driveways and walkways shall be all weather construction, maintained in good condition, have natural drainage, relatively free of dust and shall be maintained free of holes.
(10) The area of the mobile home stand shall be improved to provide an adequate foundation for the placement of the mobile home. The mobile home stand shall not heave, shift or settle unevenly under the weight of the mobile home due to frost action, inadequate drainage, vibration or other forces acting on the superstructure.

Section 5. Lighting within Park. A minimum equivalent to a 175 watt mercury vapor type light shall be provided at park entrances, intersections and at intervals of 200 feet within the park.

Section 6. Park Water Supply. (1) The water supply shall be potable, adequate and from an approved public supply of a municipality or water district, if available. If [In the event] a public water supply of a municipality or a water district is not available, the supply for the park shall be developed and approved pursuant to [in accordance with] applicable requirements of the Natural Resources and Environmental Protection Cabinet; except [provided, however], if a public water supply of a municipality or water district subsequently becomes available, connections shall be made [there]to it and the park supply shall be discontinued.
(2) The water supply shall be capable of supplying a minimum of 150 gallons per day per mobile home lot.
(3) No physical connection shall be made between an approved public water supply and unapproved water supply.
(4) Water distribution lines and connections shall comply with the state plumbing code.

Section 7. Park Sewage and Waste Disposal. (1) All sewage and waste matter shall be disposed of into a public sewer[age] system, if available. If [In the event] a public sewer[age] system is not available, disposal shall be made into a private sewage disposal system designed, constructed and operated in accordance with the requirements of the cabinet or the Natural Resources and Environmental Protection Cabinet; except [provided, however,] if a public sewer[age] system subsequently becomes

available, connections shall be made [there]to it and the park sewer[age] system shall be discontinued.

(2) The sewer service connection between the mobile home and the sewer riser opening shall have a nominal inside diameter of at least three (3) inches with a slope of at least one-fourth (1/4) inch per foot. All joints shall be watertight.

[(3) All materials used for sewer connections shall be semirigid, corrosive resistant, nonabsorbent and durable. The inner surface shall be smooth.]

(3) [(4)] The sewer outlet shall be capped when not in use.

(4) [(5)] Mobile home park sewer [waste] systems and connections shall comply with the state plumbing code.

Section 8. Storage, Collection and Disposal of Park Refuse. (1) The permit holder shall be responsible for storage and disposal of refuse.

(2) The storage, collection and disposal of refuse in the park area shall be [so] conducted [as not] to not create a health, safety or fire hazard, rodent harborage, insect breeding area or cause air pollution.

(3) All refuse shall be stored in flytight, watertight, rodent proof containers, which shall be conveniently located near each mobile home lot. Containers shall be provided in sufficient number and capacity to properly store all refuse.

(4) Approved container storage location shall be provided and shall be [so] designed and maintained [as] to not create a nuisance.

(5) All refuse containing garbage shall be collected at least once a week or more often, if necessary. If [Where] suitable collection service is not available from municipal or private agencies, the owner or operator of the park shall provide this [such] service. All refuse shall be collected and transported in covered, leak-proof containers or vehicles.

(6) All refuse and waste collected at a park shall be disposed [of] in a safe and sanitary manner approved by the Natural Resources and Environmental Protection Cabinet. [In the event a permitted site or facility approved by the Natural Resources and Environmental Protection Cabinet is available, disposal shall be at such site or facility.]

Section 9. Insect and Rodent Control within the Park. (1) Grounds, buildings and structures shall be maintained free of insect and rodent harborage and infestation. Approved extermination methods and other measures to control insects and rodents shall be used.

(2) Parks shall be maintained free of accumulations of debris which may provide rodent harborage or breeding places for flies, mosquitoes and other pests.

(3) Storage areas shall be [so] maintained [as] to prevent rodent harborage: lumber, pipe and other building materials shall be stored at least one (1) foot above the ground.

(4) If [Where] the potential for insect and rodent infestation exists, all exterior openings in or beneath any structure shall be appropriately screened with wire mesh or other suitable materials.

(5) Parks shall be [so] maintained [as] to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health. Parks shall be maintained free of heavy vegetative growth of any description.

Section 10. Park Electrical Distribution Systems. [(1)] Every park shall contain an electrical system consisting of wiring, fixtures, equipment and appurtenances installed and maintained pursuant to the requirements of the Public Protection and Regulation Cabinet [in accordance with applicable codes and regulations].

[(2) Main power lines not located underground shall be suspended at least eighteen (18) feet above the ground. There shall be a minimum horizontal clearance of three (3) feet between overhead wiring and any mobile home, service building or other structure.]

[(3) All direct burial conductors or cables shall be buried at least eighteen (18) inches below the ground surface and shall be insulated and specially designed for such purpose. Conductors shall be located not less than one (1) foot radial distance from water, sewer, gas or communication lines.]

[(4) Electric service connection between the meter box and the mobile home shall be suspended above ground in a nonhazardous manner or buried.]

Section 11. Park Fire Protection. All parks shall comply with applicable [rules and] regulations of the State Fire Marshal and applicable local fire codes pertaining to fire safety, fuel supply storage and fuel connections.

Section 12. Park Maintenance and Registration of Occupants. (1) The person to whom a permit to operate a park is issued shall at all times operate in compliance with this regulation. The permittee shall maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.

(2) The permittee shall notify park occupants of all applicable provisions of this regulation and of their duties and responsibilities under this regulation.

(3) The permittee shall be responsible for the proper placement of each mobile home on its mobile home stand and for securing its stability and installing all utility connections.

(4) The permittee shall maintain a register containing the names of all park occupants. Such register shall be available to any authorized person inspecting the park.

[(5) The permittee shall notify the cabinet immediately of any suspected communicable or contagious disease within the park.]

Section 13. Parks Constructed prior to January 12, 1973. All mobile home parks in existence and holding a valid construction or operating permit on January 12, 1973 [(the effective date of former Regulation MRP-1)] may be eligible for a permit to operate notwithstanding the [such] parks do not fully meet the design and construction requirements of this regulation if [provided] the park facilities are capable of being maintained in a safe and sanitary manner pursuant to [in accordance with] the operational requirements of this regulation; and[, provided further,] that no public health nuisance [shall be allowed to] exists.

Section 14. Inspection of Parks. (1) At least once every twelve (12) months, the cabinet shall inspect each park and shall make as many

additional inspections and reinspections as are necessary for the enforcement of this regulation.

(2) If [Whenever] an agent of the cabinet makes an inspection of a park, he shall record his findings on an official cabinet inspection report form **DFS-318 - Mobile Home and Recreational Vehicle Park Inspection Report** and provide the permit holder or operator with a copy. The inspection report shall:

(a) Set forth the specific violations if found;

(b) Establish a specific and reasonable period of time for the correction of the violations found; and

(c) State that failure to comply with any notice issued pursuant to [in accordance with] the provisions of this regulation may result in suspension or revocation of the permit.

Section 15. Suspension of Permits. (1) If [Whenever] the cabinet has reason to believe that an imminent public health hazard exists, or if [whenever] the permit holder has interfered with the cabinet [concerned] in the performance of its [their] duties, the permit may be suspended immediately upon notice to the permit holder without a hearing **on form DFS-212 - Request for Hearing**. [In such event] The permit holder may request a hearing which shall be granted as soon as practicable.

(2) In all other instances of violation of the provisions of this regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violation(s) in question and afford the holder a reasonable opportunity to correct them [same]. If [Whenever] a permit holder or operator has failed to comply with any written notice issued under the provisions of this regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of the [such] notice, unless a written request for a hearing is filed with the cabinet, by the permit holder, within the [such] ten (10) day period.

(3) The hearings provided for in this section shall be conducted by the cabinet at a time and place designated by it. At the conclusion of the hearing, the cabinet shall make a finding of fact and conclusion of the law. A transcript of the hearing shall not be made unless the interested party assumes the costs [thereof] and a request is made [therefor] at the time a hearing is requested.

Section 16. Reinstatement of Suspended Permits. Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit **on form DFS-215 - Application for Reinstatement of Suspended Permits**. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is found to be in compliance with the requirements of this regulation, the permit shall be reinstated.

Section 17. Revocation of Permits. For serious or repeated violations of any of the requirements of this regulation or for interference with the agents of the cabinet in the performance of their duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to the [such] action, the cabinet shall notify the permit holder, in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the [such] notice unless a request for a hearing is filed with the cabinet by the permit holder, within the [such] ten (10) day period.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 14, 1990
FILED WITH LRC: June 19, 1990 at 11 a.m.

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

902 KAR 45:005. Retail food [service] code.

RELATES TO: KRS 219.011 to 219.081, 219.991(1)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 219.031
NECESSITY AND FUNCTION: Senate Bill 30 of the 1990 General Assembly combines food service requirements of KRS 219.011 to 219.081 with KRS 217.005 to 217.215 and 217.992(4), the Kentucky Food, Drug and Cosmetic Act. This act [KRS 219.011 to 219.081 and 219.991(1), the Kentucky Hotel and Food Service Establishment Act,] authorizes the Cabinet for Human Resources to regulate food service establishments and retail food stores in Kentucky. [KRS 219.041(2) directs the cabinet to adopt a State Food Service Code.] The function of this regulation is to establish a uniform [State Food Service] code for the regulation of all food service establishments and retail food stores within the Commonwealth of Kentucky for the purpose of protecting the public health.

[Section 1. Citation of Regulation. This regulation may be cited as the "State Food Service Code."]

Section 1. [2.] Definitions. As used in this regulation:

(1) "Adulterated food and food products" means any food or food product adulterated as provided by KRS 217.025 of the Kentucky Food, Drug and Cosmetic Act.

(2) "Approved" means acceptable to the cabinet based on determination as to conformance with appropriate standards and good public health practices.

[(3) "Cabinet" means the Cabinet for Human Resources, the Department for Health Services, the local health department having jurisdiction and their duly designated representatives.]

(3) [(4)] "Chemical preservative" means any chemical that, when added to a food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.

(4) [(5)] "Closed" means without openings large enough for the entrance of insects. An opening of one-sixteenth (1/16) inch or less is closed.

(5) [(6)] "Corrosion-resistant material" means

those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions and other conditions of the use environment.

(6) [(7)] "Easily cleanable" means that surfaces are readily accessible and made of such material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

(7) [(8)] "Employee" means the permit holder, individuals having supervisory or management duties and any other person working in a food handling establishment.

(8) [(9)] "Equipment" means stoves, ranges, hoods, ovens (including microwave), cookers, bins, conveyor belts, refrigerators, freezers, mixers, grinders, saws, sinks, tables, display cases, meat blocks, wrapping machines, scales, check-out counters, vehicles and similar items.

(9) [(10)] "Food contact surfaces" means those surfaces with which food may come in contact, and those surfaces that drain onto surfaces that may come in contact with food.

(10) "Hermetically sealed container" means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

(11) "Kitchenware" means all multiuse utensils other than tableware used in the storage, preparation, conveying or serving of food.

(12) "Liquid waste" means the discarded fluid discharge from any fixture, appliance, area or appurtenance.

(13) [(12)] "Misbranded food and food products" means any food or food product misbranded as provided by KRS 217.035 of the Kentucky Food, Drug and Cosmetic Act.

(14) [(13)] "Mobile food unit" means a food service establishment that is designed to be readily movable.

(15) [(14)] "Packaged" means bottled, canned, cartoned, or securely wrapped at a food processing establishment.

(16) [(15)] "Package" means any container or wrapping in which any food is enclosed for use in the delivery or display to retail purchasers, but does not include: shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; containers used for tray pack displays in retail establishments; transparent wrappers or containers which do not bear written, printed, or graphic matter obscuring the label information, and any other exemption granted pursuant to the Federal Food, Drug and Cosmetic Act.

(17) [(16)] "Perishable food" means food of such type or in such condition or physical state that it may spoil or otherwise become unfit for human consumption.

(18) [(17)] "Pesticides" includes pesticides, insecticides, fungicides, herbicides, and rodenticides as defined in KRS 217B.040(2)[, (3), (4), (5), and (9) and any other toxic substance or compound designated by the cabinet [department].]

[(18) "Potentially hazardous food" means any food which consists in whole or in part of milk or milk products, eggs or egg products, meat or meat products, poultry or poultry products, fish or fish products, shellfish (oysters, clams, mussels and edible crustacea) or shellfish products, cooked rice, or other ingredients including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. This term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of four and six tenths (4.6) or below or a water activity (aw) value of 0.85 or less, nor does it include hard-boiled, peeled eggs, commercially prepared, packaged and properly labeled.]

(19) "Potentially hazardous food" means any food or ingredient, natural or synthetic:

(a) [.] In a form capable of supporting the:

1. [(a) The] Rapid and progressive growth of infectious or toxigenic microorganisms; or

2. [(b) The] Slower growth of Clostridium botulinium.

(b) [Included is any food] Of animal origin, either raw or heat treated; and

(c) [any food] Of plant origin which:

1. Has been treated; or

2. [which] Is raw seed sprouts.

(d) The following are excluded [are the following]:

1. Air dried hard boiled eggs with shells intact;

2. Food with water activity (aw) value of 0.85 or less;

3. Food with a hydrogren ion concentration (pH) level of four and six-tenths (4.6) or below;

4. Food in unopened hermetically sealed containers that [which] have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and

5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinium cannot occur.

(20) [(19)] "Pushcart" means a nonself-propelled vehicle limited to serving nonpotentially hazardous foods or commissary-wrapped food maintained at safe temperatures or limited to the preparation and serving of frankfurters.

(21) [(20)] "Reconstituted" means dehydrated food products combined with water or other liquids.

(22) [(21)] "Safe temperature" means, when considering potentially hazardous food, food temperature of forty-five (45) degrees Fahrenheit or below and 140 degrees Fahrenheit or above, except for frozen food, which should be stored at zero degrees Fahrenheit, or less.

(23) [(22)] "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

(24) [(23)] "Sealed" means free of cracks or other openings which permit the entry or passage of moisture.

(25) "Shellfish" means clams, mussels, or oysters.

(26) "Sewage" means liquid waste containing fecal material or organic material from garbage grinders.

(27) [(24)] "Single-service articles" means cups, containers, lids, closures, plates,

knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping material including bags, toothpicks and similar articles which are designed for one-time, one-person use and then discarded.

(28) [(25)] "Tableware" means all multiuse eating and drinking utensils.

(29) "Utensil" means any food-contact implement used in the storage, preparation, transportation, dispensing, service or sale of food.

(30) "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils such as kitchenware and tableware.

[(26) "Temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days.]

[(27) "Utensil" means any implement used in the preparation, storage, transportation or service of food.]

(31) [(28)] "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

Section 2. [3.] Applicability. The requirements of this regulation are applicable to all food service establishments, retail food stores, or a combination of both within the same establishment, as defined by KRS 217.015, [219.011(3)] located within the Commonwealth of Kentucky.

Section 3. [4.] Application for Permit to Operate [a Food Service Establishment]. Any person desiring to operate a food service establishment or a retail food store shall make written application for a permit on form DFS-208 provided by the cabinet. If the application is for a retail food store and food service combined operation in one (1) establishment under one (1) ownership, the application shall designate: "retail food and food service combination". Such application shall include the name and address of the applicant, the location and type of the proposed food service establishment, and the signature of the applicant. If the application is for a temporary food service establishment, it shall also include the dates of the proposed operation. Prior to approval of an application for permit, the cabinet shall inspect the proposed food service establishment to determine compliance with the provisions of this regulation. The cabinet shall issue a permit to the applicant if the inspection reveals that the proposed food service establishment complies with the requirements of this regulation.

Section 4. [5.] Food Supplies. (1) Food shall be wholesome and free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all applicable federal and state laws relating to food and food labeling. The use of food and food products canned, prepared or processed in the home is prohibited.

(2) Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the Grade A quality standards as established by law and regulation. Dry milk and milk products shall be made from pasteurized milk and milk products.

(3) All shellfish, fresh or frozen shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, mussels, clams [and edible crustacea]) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and the interstate certification number issued by the state or foreign shellfish control agency and shall comply with applicable cabinet regulations [relating thereto]. Shellstock source information shall be maintained on the container until it is empty and then shall be kept on file at the establishment for ninety (90) days.

(4) Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquid or pasteurized dry egg or egg products shall be used; except that hard-boiled peeled eggs, commercially prepared and packaged, may be used.

(5) All meat and meat products, poultry and poultry products shall have been inspected and passed for wholesomeness under an official governmental regulatory program.

(6) All fish and fish products shall be from approved sources that comply with all applicable federal and state laws relating to food and food labeling.

Section 5. [6.] Food Protection. (1) Food shall be protected while being stored, prepared, displayed, served, or transported from potential contamination including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage or condensation. The temperature of potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below or 140 degrees Fahrenheit or above at all times, except during necessary periods of preparation and service. Shell eggs shall be stored at sixty (60) degrees Fahrenheit or below.

(2) Precluding unsafe additives. Food shall be protected against contamination resulting from the addition of unsafe or unapproved food or color additives other than those specified in the Code of Federal Regualtions, Title 21, Food and Drug Administration Subchapter B, Part 170 - Food Additives.

(3) Spoiled, damaged, returned or detained food items shall be segregated from other foods pending final disposition. A designated area shall be established for temporarily holding returned and damaged food items awaiting disposition. The area shall be marked or identified as, "Not for sale or consumption".

(4) [(2)] In the event of fire, flood, power outage, water cutoff, or similar catastrophic event that might result in the contamination of food, or that might prevent potentially hazardous foods from being held at required temperatures, the person in charge shall immediately contact the cabinet. Upon receiving notice of this occurrence, the cabinet shall take whatever action that it deems appropriate to protect the public health.

Section 6. [7.] Food Storage. (1) Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean covered container

except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.

(2) Containers of food shall be stored a minimum of six (6) inches above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:

(a) Metal pressurized beverage containers, and cased food packaged in cans, glass or other waterproof containers need not be elevated when the food container is not exposed to floor moisture;

(b) Containers may be stored on dollies, racks or pallets, provided such equipment is easily movable.

(3) Food or containers of food shall not be stored under exposed sewer or nonpotable water lines, except for automatic fire protection sprinkler heads. Food shall not be stored in toilet rooms or toilet room vestibules.

(4) Food not subject to further washing or cooking before serving shall be stored in a way that protects it against contamination from food requiring washing or cooking. Food shall be stored in such a way that protects it from cross-contamination.

(5) Packaged food shall not be stored in contact with water or undrained ice. Wrapped sandwiches shall not be stored in direct contact with ice or water.

(6) Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar, flour, meal and similar products, not stored in the container or package in which it was obtained shall be stored in a container identifying the food by common name.

(7) Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potentially hazardous food at the required temperature of forty-five (45) degrees Fahrenheit or below during storage. Each mechanically refrigerated facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer, accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers accurate to plus or minus three (3) degrees Fahrenheit may be used in lieu of indicating thermometers. [Cold potentially hazardous foods shall be maintained at forty-five (45) degrees Fahrenheit or below during transportation.]

(8) The temperature of potentially hazardous foods requiring refrigeration shall be forty-five (45) degrees Fahrenheit or below except during necessary periods of preparation.

(9) Frozen foods shall be kept frozen and should be stored at a temperature of zero degrees Fahrenheit or below.

(10) Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers, or food utensils, except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head, provided: tubes, cold plates and etc., are kept clean, in good repair, and are constructed from approved materials. Ice used for cooling and maintaining cold temperatures of stored food and food containers shall not be used for human consumption.

(11) Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of potentially hazardous food at the required temperature of 140 degrees Fahrenheit or above during storage. Each hot food facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the coolest part of the facility and located to be easily readable. Recording thermometers, accurate to plus or minus three (3) degrees Fahrenheit, may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bainmaries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer accurate to within plus or minus three (3) degrees Fahrenheit shall be readily available and used by the establishment personnel to check internal food temperatures.

(12) The internal temperature of potentially hazardous foods requiring hot storage shall be 140 degrees Fahrenheit or above except during necessary periods of preparation and such hot potentially hazardous foods to be transported shall be held at an internal temperature of 140 degrees Fahrenheit at all times during transportation.

Section 7. [8.] Food Preparation. (1) Food shall be prepared with the least possible manual contact, using suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination.

(2) Raw fruits and raw vegetables shall be washed thoroughly before being cooked or served; [provided, however, that] this requirement shall not apply to whole, uncut fruits and raw vegetables for sale in retail food stores.

(3) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140 degrees Fahrenheit prior to being placed in steam tables or other hot storage facilities except that:

(a) Poultry, poultry stuffings, and stuffed meats shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process.

(b) Raw pork and products containing raw pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit.

(c) Rare roast beef shall be cooked to an internal temperature of at least 130 degrees Fahrenheit, and rare beef steak shall be cooked to a temperature of 130 degrees Fahrenheit unless otherwise ordered by the immediate customer.

(4) Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes.

(5) Liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.

(6) Potentially hazardous foods that were cooked and then refrigerated shall be reheated rapidly to 165 degrees Fahrenheit or higher

throughout before being served or before being placed in a hot food storage facility. Steam tables, bainmaries, warmers, and other hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.

(7) Nondairy creaming, whitening, or whipping agents may be reconstituted on the premises only when they will be stored in sanitized, covered containers not exceeding one (1) gallon in capacity and cooled to forty-five (45) degrees Fahrenheit or below.

(8) Metal stem-type numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided and used to assure attainment of proper internal cooking temperatures of all potentially hazardous foods.

(9) Potentially hazardous foods shall be thawed:

(a) In refrigerated units in a way that the temperature of the food does not exceed forty-five (45) degrees Fahrenheit; or

(b) Under potable running water of a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or

(c) In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process.

Section 8. [9.] Food Display and Service. (1) Potentially hazardous foods shall be kept at a temperature of forty-five (45) degrees Fahrenheit or lower or at a temperature of 140 degrees Fahrenheit or higher during display and service.

(2) Food, except raw fruits and vegetables, on display shall be protected from consumer contamination by the use of package overwrapping; counter service line or salad bar food guards; display cases; or other effective means [easily cleanable counter-protector devices, display cases and similar equipment in addition to other means of protection].

(3) Reuse of soiled tableware by self-service consumers returning to the service area for additional food is prohibited. Beverage cups and glasses are exempt from this requirement if the refilling process is contamination free. Clean tableware shall be made available and a sign shall be posted in self-service food area to inform customers of this requirement.

(4) Suitable utensils shall be used by employees or provided for consumers self-service to avoid unnecessary contact with food. Between uses during service, utensils shall be:

(a) Stored in food containers with the food they are being used to serve; or

(b) Stored clean and dry; or

(c) Stored in running water; or

(d) In the case of dispensing utensils and malt collars used in serving frozen desserts, stored either in a running water dipper well, or clean and dry.

(5) Ice for consumer use shall be dispensed only with scoops, tongs, or other ice-dispensing utensils by either employees or self-service or through automatic self-service ice-dispensing equipment. Between uses during service, ice-dispensing utensils and ice receptacles shall be stored in a way that protects them from contamination.

(6) Sugar, condiments, seasonings, and dressings for self-service use shall be provided only in individual packages or from dispensers or containers that protect their contents.

(7) Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding one (1) pint in capacity, or served from an approved bulk milk dispenser. When a bulk dispenser for milk or milk products is not available and portions of less than one-half (1/2) pint are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container of not more than one-half (1/2) gallon capacity.

(8) Cream, half and half, or nondairy creamers or whitening agents shall be provided in an individual service container, protected pour-type pitcher or drawn from a refrigerated dispenser designed for such service; [provided, however, that unopened commercially filled containers of] milk, cream, half-and-half or nondairy creamers **in unopened commercially filled containers** may be sold without restriction as to container size in retail food stores.

(9) Once served to a consumer, individual portions of food shall not be served again. Packaged food, other than potentially hazardous food, that is still packaged and is still wholesome, may be re-served.

Section 9. [10.] Food Transportation. During transportation, food and food utensils shall be in covered containers or completely wrapped or packaged so as to be protected from contamination. During transportation, including transportation to another location for service or catering operations, food shall meet the requirements of this regulation relating to protection and storage of food. Cold, potentially hazardous foods shall be maintained at forty-five (45) degrees Fahrenheit or below during transportation.

Section 10. [11.] Employee Health. No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a food service establishment, except as noted in Section 38 [39] of this regulation.

Section 11. [12.] (1) Personal Cleanliness. Employees shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking or using the toilet. Employees shall keep their fingernails clean and trimmed.

(2) Handwashing shall take place at a handwashing lavatory or designated service sink and not at food preparation sink or at a warewashing sink.

Section 12. [13.] Clothing. (1) The outer clothing of all employees shall be clean and suitable for the task to be performed.

(2) Hairnets, hats, scarfs, or similar hair

coverings that effectively restrain head and facial hair shall be required for all employees working in food preparation areas. Employees working in other areas of establishments shall arrange their hair to prevent the contamination of food, equipment and utensils.

Section 13. [14.] Employee Practices. (1) Employees shall eat [consume] food, drink, or use tobacco only in designated [dining] areas. Such an area shall not be designated [as a dining area] if consuming food there might result in contamination of other food, equipment, utensils, or other items needing protection.

[(2) Employees shall not use tobacco in any form while engaged in food preparation or service, nor while in equipment or utensil-washing or food preparation areas. Employees shall use tobacco in any form only in designated areas. An area shall not be designated for that purpose if the use of tobacco there might result in contamination of food, equipment, utensils, or other items needing protection.]

(2) [(3)] Employees shall handle soiled tableware in a way that minimizes contamination of their hands.

(3) [(4)] Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices.

(4) [(5)] Employees shall remove all insecure jewelry, and during periods when food is manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

Section 14. [15.] Equipment and Utensils Materials. (1) Multiuse equipment and utensils shall be made and repaired with safe materials, including finishing materials; shall be corrosion resistant and shall be nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils and single-service articles shall not impart odors, color or taste, nor contribute to the contamination of food.

(2) If soft solder or hard solder (silver solder) is used, it shall be composed of safe materials and be corrosion resistant.

(3) Hard maple or equivalently nonabsorbent materials that meet the general requirements set forth in subsection (1) of this section may be used for cutting blocks, cutting boards, salad bowls, [and] bakers' tables, and wooden paddles in confectionary operations for pressure scraping kettles when manually preparing confections at a process temperature of 230 degrees Fahrenheit or above. The use of wood as a food-contact surface under other circumstances is prohibited, except in the case of single service articles such as chopsticks, coffee stirrers, ice cream spoons and similar articles.

(4) Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in subsection (1) of this section are permitted for repeated use. The use of equipment and utensils made of materials not meeting the requirements of this section is prohibited.

(5) Mollusk and crustacea shells may be used only once as a serving container. Further reuse of such shells for food service is prohibited.

Section 15. [16.] Equipment and Utensils Design and Fabrication. (1) All equipment and utensils, including plastic ware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult to clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills and skillets. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited, except that in equipment, such as ice makers or hot oil cooking equipment and hot oil filtering systems, the use of such threads shall be minimized.

(2) Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.

(3) Sinks, dish tables, and drain boards shall be self-draining.

(4) Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

(a) Without being disassembled; or

(b) By disassembling without the use of tools; or

(c) By easy disassembling with the use of only simple tools kept available near the equipment, such as a mallet, a screwdriver, or an open-end wrench.

(5) Pipes, tubes, valves, and lines contacting food and intended for in-place cleaning shall be so designed and fabricated that:

(a) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and

(b) Cleaning and sanitizing solutions will contact all interior food-contact surfaces; and

(c) The system is self-draining or capable of being completely evacuated.

(6) Thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled, and accurate to plus or minus three (3) degrees Fahrenheit.

(7) Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated so as to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

(8) Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto food-contact surfaces. Filters where used, shall be readily removable for cleaning and replacement.

Section 16. [17.] Equipment Installation and Location. (1) Equipment, including ice makers and ice storage equipment, shall not be located under exposed sewer lines, nonpotable water lines, stairwells or other sources of contamination. This prohibition does not apply to automatic fire protection sprinkler heads.

(2) Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or mounted on legs at least four (4) inches high and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

(3) Equipment is portable within the meaning of subsection (2) of this section if:

(a) It is small and light enough to be moved easily by one (1) person; and

(b) It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

(4) Floor mounted equipment, unless readily movable, shall be:

(a) Sealed to the floor; or

(b) Installed on raised platforms of concrete or other smooth masonry in a way that prevents liquids or debris from seeping or settling underneath, between, or behind the equipment in spaces that are not fully open for cleaning and inspection; or

(c) Elevated on legs at least six (6) inches off the floor, except that vertically mounted floor mixers may be elevated as little as four (4) inches off the floor if no part of the floor under the mixer is more than six (6) inches from cleaning access. Unless sufficient space is provided for easy cleaning between and behind each unit of floor mounted equipment, the space between it and adjoining equipment units and between it and adjacent walls shall be closed or, if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls.

(5) Aisles and working spaces between units of equipment and between equipment and walls should be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.

(6) Equipment which was installed prior to the effective date of this regulation and which does not meet fully all of the requirements of this section, shall be deemed acceptable, if it is in good repair, capable of being maintained in a sanitary condition and the food-contact surfaces are nontoxic. Such equipment shall be so located and installed as to enable reasonable compliance with the requirements of this section.

Section 17. [18.] Equipment and Utensil Cleaning and Sanitization. (1) Tableware shall be cleaned and sanitized after each use.

(2) Kitchenware and food-contact surfaces of equipment used in the preparation, service, display or storage of potentially hazardous foods shall be cleaned and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

(3) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food-contact surfaces of equipment shall be cleaned and sanitized at intervals throughout the day on a schedule based on food temperature, type of food, and amount of food particle accumulation.

(4) The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day, except that this shall not apply to hot oil cooking and filtering devices and systems. Food-contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.

(5) Nonfood contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

(6) Cloths used during service for wiping food spills on food-contact surfaces shall be clean, dry, and used for no other purpose. Moist cloths used for wiping food-contact surfaces of equipment shall be clean and rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section. Moist cloths, or sponges, used for cleaning nonfood-contact surfaces shall be clean and used for no other purpose. These cloths shall be rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section.

(7) When manual cleaning and sanitizing is used, sinks shall be cleaned prior to use. Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil. Equipment and utensils shall be thoroughly washed in a hot detergent solution at a temperature of at least ninety-five (95) degrees Fahrenheit in the first compartment, rinsed in the second compartment and shall be sanitized in the third compartment according to one (1) of the methods included in paragraph (a)1 through 4 of this subsection.

(a) All tableware and the food-contact surfaces of all other equipment and utensils shall be sanitized by:

1. Immersion for at least one-half (1/2) minute in clean, hot water of a temperature of at least 170 degrees Fahrenheit; or

2. Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite and having a temperature of at least seventy-five (75) degrees Fahrenheit; or

3. Immersion for at least one (1) minute in a clean solution containing at least twelve and five-tenths (12.5) parts per million of available iodine and having a pH not higher than five (5.0) and having a temperature of at least seventy-five (75) degrees Fahrenheit; or

4. Immersion in a clean solution containing other chemical sanitizing agents approved by the department that will provide the equivalent bactericidal effect of a solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite at a temperature of at least seventy-five (75) degrees Fahrenheit for one (1) minute; or

5. Treatment with steam free from harmful materials or additives in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

6. Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under subsection (7)(a)4 of this section when used for immersion

sanitization in the case of equipment too large to sanitize by immersion.

(b) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart "B", Substances Utilized to Control the Growth of Microorganisms, Section 178.1010 Sanitizing Solutions, and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

(c) A three (3) compartment sink shall be used if cleaning and sanitization of equipment or utensils is done manually; [provided, that] retail food establishments that were operating with a valid and effective permit prior to the effective date of this regulation [existing establishments] not having a three (3) compartment sink that can demonstrate an acceptable procedure for cleaning and sanitizing equipment and utensils may be exempt from this requirement by the cabinet [department]. Sinks shall be large enough to permit the complete immersion of the equipment and utensils and each compartment of the sink shall be supplied with hot and cold potable running water. Suitable equipment shall be made available if cleaning and sanitizing cannot be accomplished by immersion. Those retail food stores that do not cut, process or package any foods, but purchase and offer for sale only prepackaged foods shall not be required to provide a three (3) compartment sink.

(d) Dish tables or drain boards of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the warewashing [dishwashing] facilities.

(e) When hot water is used for sanitizing, the following facilities shall be provided and used:

1. An integral heating device or fixture installed in or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170 degrees Fahrenheit; and

2. A numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit convenient to the sink that can be used for frequent checks of water temperature; and

3. Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(8) When mechanical cleaning and sanitizing is used, cleaning and sanitizing may be done by spray-type or immersion warewashing [dishwashing] machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. Such machines and devices shall be properly installed and maintained in good repair. Automatic detergent dispensers and wetting agent dispensers, if any, shall be properly installed and maintained.

(a) The pressure of water supplied to spray-type warewashing [dishwashing] machines shall be not less than fifteen (15) or more than twenty-five (25) pounds per square inch measured in the water line immediately adjacent to the machine. A suitable gauge cock shall be provided immediately upstream from the final rinse sprays to permit checking the flow pressure of the final rinse water.

(b) Easily readable numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided that indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(c) Rinse water tanks shall be so protected by baffles or other effective means as to minimize the entry of wash water into the rinse water. Conveyors in warewashing [dishwashing] machines shall be accurately timed to assure proper exposure times in wash and rinse cycles as determined by specifications attached to the machines.

(d) Drain boards shall be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the warewashing [dishwashing] facilities.

(e) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to their being cleaned in a warewashing [dishwashing] machine. After flushing, scraping, or soaking, equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are subject to the unobstructed application of detergent wash and clean rinse waters and that permits free draining. Clean rinse water shall remove particulate matter and detergent residues. All warewashing [dishwashing] machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

(9) When chemicals are used for sanitization, they shall be automatically dispensed in such concentration and for such a period of time as to provide effective bactericidal treatment of equipment and utensils. Wash water shall be kept clean. In machines using chemicals for sanitization (single-tank, stationary-rack, door-type machines, and spray-type glass washers), the temperature of the wash water shall be not less than 120 degrees Fahrenheit. The sanitizing rinse water shall be not less than seventy-five (75) degrees Fahrenheit nor less than the temperature specified by the machine manufacturer.

(10) Where machines using hot water sanitization are used, wash waters and pumped rinse waters shall be kept clean. Water shall be maintained at not less than the temperatures stated in paragraphs (a) to (e) of this subsection; [provided, that] existing machines not fully meeting the requirements of this subsection may be acceptable, if capable of meeting such time and temperature requirements as are acceptable by the cabinet [department]. Wash and pumped rinse temperatures shall be measured in the respective tanks, and final rinse temperatures shall be measured at the manifold.

(a) Single tank, stationary rack, dual temperature machine:

1. Wash temperature: 150 degrees Fahrenheit.

2. Final rinse temperature: 180 degrees Fahrenheit.

(b) Single tank, stationary rack, single temperature machine:

1. Wash temperature: 165 degrees Fahrenheit.

2. Final rinse temperature: 165 degrees

Fahrenheit.
(c) Single tank, conveyor machine:
1. Wash temperature: 160 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.
(d) Multiple tank, conveyor machine:
1. Wash temperature: 150 degrees Fahrenheit.
2. Pumped rinse temperature: 160 degrees Fahrenheit.
3. Final rinse temperature: 180 degrees Fahrenheit.
(e) Single tank, pot, pan, and utensil washer (either stationary or moving rack):
1. Wash temperature: 140 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.
(11) All equipment and utensils shall be air-dried.

Section 18. [19.] Equipment and Utensil Storage. (1) Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, and bowls shall be handled without contact with inside surfaces or with surfaces that contact the user's mouth.
(2) Cleaned and sanitized utensils and movable equipment shall be stored at least six (6) inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust and other means. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer or nonpotable water lines. This requirement does not apply to automatic fire protection sprinkler heads.
(a) Utensils shall be air-dried before being stored or shall be stored in a self-draining position on suitably located racks.
(b) Wherever practical, stored utensils shall be covered or inverted. Facilities for the storage of spoons, knives, and forks shall be provided and shall be designed to present the handle to the employee or consumer.
(3) If presetting is practiced, all unprotected, unused, preset tableware shall be collected for washing and sanitizing after the meal period; and after any place at a table is occupied.
(4) Single-service articles shall be stored at least six (6) inches above the floor in closed cartons or containers which protect them from contamination.
(a) Single-service articles shall be commercially packaged for individual use or shall be available to the consumer from a dispenser in a way that prevents contamination of surfaces that may contact food or the user's mouth. Handling of single-service articles in bulk shall be conducted in a way that protects them from contamination. Storage shall not be in toilet rooms or vestibules of toilet rooms nor under nonpotable water lines or exposed sewer lines.
(b) Single-service articles shall be used only once.

Section 19. [20.] Sanitary Facilities and Controls. (1)(a) The water supply shall be potable, adequate, and from an approved public supply of a municipality or water district, if available.
(b) If [In the event] a public water supply of a municipality or a water district is not available, the supply for the [a food service] establishment shall be developed and approved pursuant to [in accordance with] applicable requirements of the Cabinet for Natural Resources and Environmental Protection. [; provided, however,]
(c) If a public water supply of a municipality or water district [subsequently] becomes available, connections shall be made to it [thereto] and the private supply shall be discontinued. [; and, provided further that]
(d) Retail food stores holding a valid and effective permit prior to the effective date of this regulation shall not be required to have hot and cold running water if:
1. Only prepackaged foods are sold; or
2. [if] Cutting and slicing is limited to ready-to-eat, cold-cut foods, and [provided further, that, such preparation is] performed in a sanitary manner complying with [pursuant to the operational requirements of] this regulation.
(e) Hot and cold running water under pressure shall be provided in all areas where food is prepared, or equipment, utensils or containers are washed.
(f) Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart "D", Specific Usage Additives Section 173.310 Boiler Water Additives.
(2) Bottled and packaged potable water shall be obtained from a source that complies with all applicable laws and regulations and shall be handled and stored in a way that protects it from contamination. Bottled and packaged water shall be dispensed from the original containers.
(3) All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed water system. Both of these systems shall be constructed of approved materials and operated pursuant to [in accordance with] applicable laws and regulations.

Section 20. [21.] Sewage. All sewage[, including liquid waste,] shall be disposed of into a public sewerage system, if available. If [In the event] a public sewerage system is not available[; provided that, nonsewage liquid waste shall be disposed of in a manner that will not create a public health nuisance. In the event a public sewerage system is not available], disposal shall be made into a private system designed, constructed and operated pursuant to [in accordance with] the requirements of the Cabinet for Natural Resources and Environmental Protection and the cabinet; [provided, however,] if a public sewerage system [subsequently] becomes available, connections shall be made thereto and the private sewerage system shall be disconnected. Only nonwater-carried disposal methods which have been approved by the cabinet for temporary use shall be used and operation of such facilities shall be in conformance with applicable state laws and regulations.

Section 21. [22.] Plumbing. (1) All plumbing shall be sized, installed, and maintained

pursuant to [in accordance with] the State Plumbing Code. There shall be no cross-connection between the safe water supply and any unsafe or questionable water supply, or source of pollution through which the safe water supply might become contaminated. All reservoir-type and other produce foggers or [/]misters shall be operated, maintained, and cleaned in a manner consistent with the manufacturer's most recent specifications.

(2) A nonpotable water system is permitted only for purposes such as air-conditioning and fire protection and only if the system is installed pursuant [according] to applicable state laws and regulations and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(3) The potable water system shall be installed to preclude the possibility of backflow. Devices to protect against backflow and backsiphonage shall be installed at all fixtures and equipment wherever backflow or backsiphonage may occur. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(4) If used, grease traps shall be located to be easily accessible for cleaning.

(5) Except for properly trapped open sinks, there shall be no direct connection between the sewage system and any drains originating from equipment in which food, portable equipment or utensils are placed.

Section 22. [23.] Toilet Facilities. (1) In existing food service establishments, adequate toilet facilities shall be provided and shall be so located as to be readily accessible to employees at all times. In new establishments, or establishments that are extensively altered, toilet facilities shall be provided pursuant to [in accordance with] the requirements of the State Plumbing Code.

(2) Toilets and urinals shall be designed to be easily cleanable.

(3) Toilet room doors shall be solid, tight-fitting, and self-closing, and shall be closed except during cleaning or maintenance. Doors may be louvered if installed pursuant to [in accordance with] the State Fire Marshal's regulations.

(4) Toilet facilities, including vestibules, if any, shall be kept clean and in good repair and free of objectionable odors. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials, and the receptacles in toilet rooms used by women shall be covered.

Section 23. [24.] Lavatory Facilities. (1) Lavatories shall be installed pursuant to [in accordance with] the State Plumbing Code and shall be equipped with hot and cold running water or running water tempered by means of a mixing valve or combination faucet. Steam mixing valves are prohibited. Hand cleansing soap or detergent, and approved sanitary towels or other approved hand drying devices are to be conveniently located at each lavatory. If disposable towels are used, waste receptacles shall be located near the lavatory. Common towels are prohibited.

(2) Lavatories shall be located within or immediately adjacent to all toilet rooms. In all new establishments, and establishments which are extensively altered, lavatories shall be conveniently located within the food preparation area and warewashing [dishwashing] area. Sinks used for food preparation or for washing equipment or utensils shall not be used for hand-washing.

(3) Lavatories, soap dispensers, and hand drying devices and all related facilities shall be kept clean and in good repair.

Section 24. [25.] Garbage and Refuse. (1) Garbage and refuse shall be kept in durable insect-proof and rodent-proof containers that are leak-proof and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and may be used for storage inside the food service establishment when protected from insects and rodents.

(2) Containers, compactors, and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered when not in actual use. Drain plugs, where required, shall be in place at all times, except during cleaning.

(3) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

(4) After being emptied, each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food-preparation areas. In new establishments, suitable facilities, including hot water and detergent, shall be provided and used for washing containers.

(5) The garbage and refuse on the premises shall be stored in a place inaccessible to insects and rodents. Outside storage of plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

(6) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent-proof, and shall be large enough to store the garbage and refuse containers that accumulate.

(7) Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

(8) Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(9) Where garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter pursuant to [in accordance with] applicable regulations of the Cabinet for Natural Resources and Environmental Protection. Areas around incineration facilities shall be kept clean and orderly.

(10) Nonsewage liquid waste shall be disposed

of in a manner that will not create a public health nuisance.

Section 25. [26.] Insect and Rodent Control. (1) Effective measures intended to eliminate the presence of rodents and flies, roaches, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

(2) Openings to the outside shall be effectively protected against the entrance of rodents and shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than sixteen (16) mesh to one (1) inch.

Section 26. [27.] Construction and Maintenance of Physical Facilities. (1) The floors of all food preparation, food storage, and utensil-washing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, and toilet rooms and vestibules shall be constructed of smooth, durable materials such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair.

(2) Carpeting, if used, shall be properly installed, easily cleanable and maintained in good repair. Carpeting is prohibited in toilet rooms, food preparation areas, and in warewashing [equipment-washing and utensil-washing] areas where it would be exposed to large amounts of grease and water.

(3) Sawdust, wood shavings, peanut hulls, or similar material on the floors in food processing areas is prohibited.

(4) Properly installed floor drains shall be provided in floors that are water flushed for cleaning or that receive discharge of water or other fluid waste from equipment. Such floors shall be constructed of sealed concrete, terrazzo, ceramic tile, or similar material graded to drain all parts of the floor.

(5) The floor of each walk-in refrigerator shall be graded to drain all parts of the floor to the outside through a waste pipe, doorway, or other opening, or equipped with a floor drain.

(6) Mats and duckboards shall be of nonabsorbent, grease resistant materials and of such size, materials, design, and construction as to facilitate their being easily cleaned. Duckboards shall not be used as storage racks.

(7) In all new establishments utilizing concrete, terrazzo, ceramic tile or similar material, and where water flush cleaning methods are used, junctures of walls with floors shall be coved and sealed. In all other cases, the junctures between the walls and floors shall not present an open seam of more than one thirty-second (1/32) of an inch.

(8) Utility service lines and pipes shall not be unnecessarily exposed on floors in food preparation and warewashing [utensil-washing] areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(9) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

(10) The walls, including nonsupporting partitions, wall coverings, and ceilings of all food preparation and warewashing [utensil-washing] areas and of toilet rooms shall be smooth, nonabsorbent, and easily cleanable. The use of rough or unfinished building materials such as brick, concrete blocks, wooden beams, or shingles is prohibited in those locations except by special plan approval by the cabinet.

(11) Studs, joists, and rafters shall not be exposed in walk-in refrigerators, food preparation areas, warewashing [equipment and utensil-washing] areas and in toilet rooms except by special plan approval by the cabinet.

(12) Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in food preparation and warewashing [utensil-washing] areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(13) Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

(14) Covering material such as sheet metal, linoleum, vinyl, and similar materials shall be easily cleanable and nonabsorbent and shall be attached and sealed to the wall and ceiling surfaces so as to leave no open spaces or cracks.

(15) Concrete or pumice blocks used for interior wall construction shall be finished and sealed to provide an easily cleanable surface.

Section 27. [28.] Cleaning Physical Facilities. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with push brooms. All cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after closing or between meals. In new establishments, or establishments that are extensively altered, readily accessible service sinks or curbed cleaning facilities shall be provided.

Section 28. [29.] Lighting. (1) At least thirty (30) foot-candles of natural or artificial light shall be provided to all working surfaces and to all other surfaces and equipment in food preparation, warewashing [utensil-washing], and hand washing areas, and in toilet rooms. At least twenty (20) foot-candles of light at a distance of thirty (30) inches from the floor shall be provided in all walk-in refrigerators, food storage areas and dining and entry areas, except that this requirement applies to dining areas only during cleaning operations.

(2) Shielding to protect against broken glass falling into food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service and display facilities and facilities where utensils and equipment are cleaned and stored. Shatter proof bulbs may be approved by the cabinet without further shielding. Heat lamps shall be protected by a shield surrounding and extending

beyond the bulb, leaving only the face of the bulb exposed.

Section 29. [30.] Ventilation. (1) All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, smoke and fumes. Ventilation systems shall be installed and operated according to applicable state laws and regulations and, when vented to the outside, shall not create an unsightly, harmful, or unlawful discharge.

(2) Rooms, including toilet room areas, and equipment, from which aerosols, obnoxious odors, or noxious fumes or vapors may originate shall be vented effectively to the outside.

(3) Intake air ducts, if any, shall be designed and maintained to prevent the entrance of dust, dirt, insects and other contaminating materials.

Section 30. [31.] Dressing Areas and Lockers. (1) If employees routinely change clothes within the establishment, areas shall be designated for that purpose. Those areas shall not be located in areas used for food preparation, storage, or service or for warewashing [utensil-washing] or storage, except that a storage room containing only completely packaged food may be so designated.

(2) Enough lockers or other suitable facilities shall be provided and used for the storage of employees' clothing and other belongings. If dressing areas are designated, the lockers or other facilities shall be located within those areas.

Section 31. [32.] Poisonous or Toxic Materials. (1) Only those poisonous or toxic materials required to maintain the establishment in a sanitary condition or required for sanitization of equipment or utensils shall be present in retail food [service] establishments.

(2) Containers of poisonous or toxic materials, including insecticides and rodenticides, shall be prominently and distinctly labeled pursuant to the requirements of applicable law [for easy identification of contents].

[(3) Poisonous or toxic materials consist of the following three (3) categories:]

[(a) Pesticides, which include insecticides, rodenticides, herbicides, and fungicides;]

[(b) Detergents, sanitizers, and related cleaning and drying agents; and]

[(c) Caustics, acids, polishes and other chemicals. Each of these three (3) categories shall be stored and located to be physically separated from each other. All poisonous and toxic materials]

(3) Insecticides and rodenticides shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose. [To preclude potential contamination, poisonous or toxic materials shall not be stored above or with food, food equipment, utensils, or single service articles, except that]

(4) Working containers used for storing cleaners and sanitizers taken from bulk supplies shall be identified with the common name of the material.

(5) Poisonous or toxic materials stored or displayed for retail sale shall be separated by spacing or partitioning from, and not stored above, food, single service articles or single use articles intended for use with food.

(6) Detergents, sanitizers, related cleaning or drying agents, caustics, acids, polishes, lubricants and other chemicals shall not be stored above or intermingled with food equipment, utensils, single service articles, single use articles intended for use with food, except that: this requirement does not prohibit the convenient location and availability of cleaning and sanitizing agents at warewashing facilities. [detergents or sanitizers at utensil or dishwashing stations.]

(7) [(4)] Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces, or in a way that constitutes a hazard to employees or other persons.

(8) [(5)] Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons nor in a way other than in full compliance with the manufacturer's labeling. All pesticides and other materials whose label has a "warning" statement or displays the "skull and crossbones" and any other hazardous product that may be designated by the cabinet shall be handled and bagged separately at checkout counters.

(9) [(6)] Personal medications shall not be stored in food storage, preparation, or service areas.

(10) [(7)] First aid supplies shall be stored in a way that prevents them from contaminating food and food contact surfaces.

Section 32. [33.] Premises. (1) Retail food [service] establishments and all parts of the property used in connection with operation of the establishment shall be kept free of litter.

(2) The walking and driving surfaces of all exterior areas of the [food service] establishment shall be surfaced with concrete or asphalt or with gravel or similar material effectively treated to facilitate maintenance and to minimize dust. These surfaces shall be drained and shall be kept clean.

(3) Only articles necessary to the operation and maintenance of the [food service] establishment shall be stored on the premises.

(4) The traffic of unnecessary persons through the food preparation and warewashing [utensil-washing] areas and the presence in those areas of persons not authorized to be there by the permit holder or person in charge is prohibited.

(5) No operation of a food service establishment shall be conducted in any room used as living or sleeping quarters. A solid self-closing door shall separate food service operations from any living or sleeping area.

(6) No laundry operation shall be conducted, except that linens, uniforms and aprons used in the establishment may be laundered on the premises separate from food preparation and service areas.

(7) Clean cloths and napkins shall be stored in a clean place and protected from contamination until used. Nonabsorbent containers or washable laundry bags shall be provided and damp or soiled linens and cloths shall be kept in them until removed for laundering.

(8) Maintenance and cleaning materials and

equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linen storage.

(9) Live animals, including birds and turtles, shall be excluded from all food service establishments and from areas adjacent to serving areas that are under the control of the permit holder. The exclusion does not apply to edible crustacea, shellfish, or fish, nor to fish in aquariums. Escorted police patrol dogs or guide dogs accompanying blind or other persons with physical limitations shall be permitted in dining areas.

Section 33. [34.] Mobile Food Units or Pushcarts. (1) Mobile units or pushcarts shall comply with the requirements of this regulation, except as otherwise provided in this subsection and in subsection (2) of this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the [food service] establishment as a mobile or pushcart operation, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this regulation relating to physical facilities, except those requirements of subsections (4) and (5) of this section and Sections 34 and 35 [and 36] of this regulation.

(2) A mobile unit or pushcart that serves only food that was prepared, packaged in individual servings, transported, and stored under conditions meeting the requirements of this regulation or beverages that are not potentially hazardous and are dispensed from protected equipment need not comply with requirements of this regulation pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its commissary; however, frankfurters may be prepared and served from these units or pushcarts.

(3) Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

(4) A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitization, and hand-washing, **pursuant to** [in accordance with] the requirements of this regulation. The water inlet shall be located in such a position that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed according to the State Plumbing Code.

(5) If liquid waste results from operation of a mobile food unit it shall be stored in permanently installed retention tanks that are at least 100 [fifty (50)] percent larger than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the food unit. The waste connection shall be located below the water connection to preclude contamination of the potable water system.

Section 34. (1) [35. Commissary.] Mobile food units or pushcarts shall operate from a commissary or other fixed food service establishment that is constructed and operated in compliance with this regulation; [provided, however,] mobile food units equipped with a potable water supply system under pressure, liquid waste system retention tanks, sinks, lavatories, etc., shall not be required to operate from a commissary or other fixed food service establishment.

(2) Mobile retail food stores that sell only prepackaged, commercially prepared, sealed, and protected ready-to-eat foods, shall not be required to operate from a fixed retail food establishment.

Section 35. [36.] Mobile Food Unit or Pushcart Servicing Area and Operations. (1) Potable water servicing equipment shall be stored and handled in a way that protects the water and equipment from contamination.

(2) The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. The flushing and draining area for liquid wastes shall be separate from the area used for loading and unloading of food and related supplies. All sewage and waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated **pursuant to** [in accordance with] the requirements of the Cabinet for Natural Resources and Environmental Protection and the cabinet; [provided, however,] if a public sewerage system [subsequently] becomes available, connection shall be made thereto and the establishment sewerage system shall be disconnected.

Section 36. [37.] Temporary Food Service Establishment. (1) A temporary food service establishment shall comply with the requirements of this regulation, except as otherwise provided in this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this regulation, except those requirements of subsections (2) to (10) of this section.

(2) Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters, which require seasoning and cooking, shall be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish is prohibited. This prohibition does not apply, however, to any potentially hazardous food that is obtained in individual servings, is stored at a temperature of forty-five (45) degrees Fahrenheit or below, or at a temperature of 140 degrees Fahrenheit or above, and is served directly in the unopened container in which it

was packaged.

(3) Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of this regulation. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use food grade plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until used, and when used, it shall be dispensed in a way that protects it from contamination.

(4) Equipment shall be located and installed in a way that facilitates cleaning the establishment and that prevents food contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where necessary to prevent contamination, effective shields for such equipment shall be provided.

(5) Enough potable water shall be available in the establishment for cleaning and sanitizing utensils and equipment and for hand-washing. Enough hot water for these purposes shall be provided.

(6) The storage of packaged food in contact with water or undrained ice is prohibited, except that cans or bottles of nonpotentially hazardous beverages may be so stored when the water contains at least fifty (50) parts per million of available chlorine and is changed often enough to keep both the water and containers clean.

(7) Liquid waste shall be disposed of in such a manner as not to create a public health hazard or nuisance.

(8) A facility shall be provided for employee hand-washing. Where water under pressure is unavailable, such facility shall consist of a pan, warm water, hand cleanser, and individual paper towels.

(9) Floors shall be made of concrete, tight wood, asphalt, or other similar cleanable material, except that dirt or gravel floors may be used if graded to preclude the accumulation of liquids and covered with removable, cleanable platforms or duckboards.

(10) Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Screening material used for walls shall be at least sixteen (16) mesh to the inch. Counter service openings shall not be larger than is necessary for the particular operation conducted. When flies are prevalent, counter-service openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Doors and windows, if any, shall be kept closed, except when food is being served.

Section 37. [38.] Plan Review of Future Construction. When a retail food [service] establishment is hereafter constructed or extensively remodeled, or plumbing relocated, or additional plumbing added, or when an existing structure is converted for use as a retail food [service] establishment, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangements, size, location and type of facilities and a plumbing riser diagram shall be submitted to the cabinet for approval before such work is begun.

Section 38. [39.] Procedure When Infection is Suspected. When the cabinet has reasonable cause to suspect possibility of disease transmission from any food service establishment employee, it may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The cabinet may require any or all of the following measures:

(1) The immediate exclusion of the employee from all food service establishments;

(2) The immediate closing of the food service establishment concerned until, in the opinion of the cabinet, no further danger of disease outbreak exists;

(3) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;

(4) Adequate medical and laboratory examinations of the employee, of other employees, and of the [his and their] body discharges of such employees.

Section 39. [40.] Enforcement Provisions. (1) Whenever the cabinet has substantial reason to believe that an imminent public health hazard exists, or whenever the permit holder or an authorized agent thereof has interfered with the cabinet in the performance of its duties, after its agents have duly and officially identified themselves, or if an inspection of an establishment reveals a rating score of less than sixty (60), the permit shall be suspended immediately upon notice to the permit holder without a hearing. In such event, the permit holder may request a hearing **on form DFS-217. A hearing** [which] shall be granted as soon as practical, or in any event not to exceed seven (7) days.

(2) In all other instances of violation of the provisions of this regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violations and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this regulation, the cabinet may suspend the permit. [provided that] The permit holder or operator **shall be** [is] notified in writing that the permit shall be suspended at the end of ten (10) [five (5)] days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) [five (5)] day period. [and provided further that] Where there is a combination food service and retail food store, permit suspension shall apply only to the operation in violation of requirements.

(3) Any person whose permit has been suspended may, at any time, make application **on form DFS-215** for a reinspection for the purpose of reinstatement of the permit. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the reinspection reveals that the conditions causing suspension of the permit have been corrected, the permit shall be reinstated.

(4) For serious or repeated violations of any

of the requirements of this regulation, or for interference with the cabinet in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) [five (5)] days following service of such notice, unless a request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) [five (5)] day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(5) Notices provided for under this regulation shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder.

(6) The hearings provided for in this regulation shall be conducted by the cabinet at a time and place designated by it. Based upon the record of such hearing, the cabinet shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A transcript of the hearing need not be made unless the interested party assumes the costs thereof and a request is made therefor at the time a hearing is requested.

(7) At least once every six (6) months, the cabinet shall inspect each [food service] establishment and shall make as many additional inspections and reinspections as are necessary for the enforcement of this regulation. [provided, however, that] Retail food stores offering only prepackaged foods for sale shall be inspected at least once each twelve (12) months, with as many additional inspections and reinspections as necessary.

(8) Whenever an inspection is made of an [food service] establishment, the findings shall be recorded on [the] inspection report form DFS-208, provided for that purpose, and shall constitute a written notice to the permit holder. The original of the inspection report shall be furnished to the permit holder or person in charge. The inspection report form shall summarize the requirements of this regulation and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point value for all violations, subtracted from 100.

(9) The inspection report form shall specify a specific and reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, pursuant to [in accordance with] the following provisions:

(a) When the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

(b) When the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, within a period not to exceed thirty (30) days.

(c) Regardless of the rating score of the establishment, all violations of four (4) or five (5) point weighted items shall be corrected within a time specified by the cabinet but in any event, not to exceed ten (10) days.

(d) When the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit. The permit shall be suspended within ten (10) [five (5)] days after receipt of such notice unless a written request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) [five (5)] day period.

(e) In the case of temporary food service establishments, all violations shall be corrected within a specified period of time not to exceed twenty-four (24) hours. If violations are not so corrected, the permit shall be immediately suspended. In such event the permit holder may request a hearing which shall be granted as soon as practical.

(f) The report of inspection shall state that failure to comply with any time limits for corrections may result in suspension of permit and that an opportunity for appeal from any notice or inspection findings will be provided if a written request for hearing is filed within ten (10) [five (5)] days. If a request for hearing is received, a hearing shall be held at a time and place designated by the cabinet.

(g) Whenever a food service establishment is required under the provisions of this regulation to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time, but in no event to exceed seven (7) days.

Section 40. [41.] Examination and Detention of Foods. The cabinet may examine and collect samples of foods as often as necessary for the enforcement of this regulation. The cabinet shall, upon written notice to the permit holder or authorized agent specifying the reason therefor, place under quarantine any food which it has probable cause to believe is adulterated or misbranded within the meaning of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215 and 217.992.

Section 41. The provisions of this regulation shall apply to both food service establishments and retail food stores, unless otherwise specified.

Section 42. 902 KAR 45:045 is hereby repealed.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 14, 1990
FILED WITH LRC: June 19, 1990 at 11 a.m.

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

902 KAR 45:150. School sanitation.

RELATES TO: KRS 211.180, 212.210, 212.990
PURSUANT TO: KRS 194.050, 211.090
NECESSITY AND FUNCTION: KRS 211.180 and

212.210 authorizes the Cabinet for Human Resources to regulate certain public health matters including the detection, prevention, and control of communicable disease and health hazards relating to sanitation and safety in schools. This regulation establishes uniform standards for schools and includes sanitary standards for operation, inspections, and enforcement procedures necessary to insure a safe and sanitary environment.

Section 1. Citation of Regulation. This regulation may be cited as "The Kentucky School Sanitation Regulation."

Section 2. Definitions. As used in this regulation the following definitions shall apply [in the interpretation and enforcement of this regulation]:

(1) "Cabinet" means the Cabinet for Human Resources, [the local health departments having jurisdiction,] and its agents [their duly designated representatives].

(2) "Local Board of Education" [shall] means a duly elected or appointed Board, any private agency, or organization who operates, controls, or supervises a school or system of schools.

(3) "Person" means an individual, firm, partnership, company, corporation, trustee, association, or any public or private entity owning or operating a school.

(4) "School" means any area, parcel, or tract of land on which facilities are established, maintained, or operated for educational purposes, including public, parochial, and private facilities enrolling students in any of the grades kindergarten through the 12th grade including vocational education facilities, but excluding day care facilities, and individuals teaching their own children. Privately operated facilities shall [would] include only those areas used for school purposes.

(5) "Semipermanent school structure" means any school structure that is constructed off-site and transported to the school site and is intended to serve as temporary classroom or other facilities and not made a fixed portion of any existing school structure.

Section 3. Water Supply. (1) The water supply shall be potable and from an approved public supply of a municipality or water district, if available. If [In the event] a public water supply of a municipality or a water district is not available, the supply for the school shall be developed and approved pursuant to [in accordance with] applicable requirements of the Natural Resources and Environmental Protection Cabinet; if a public water supply of a municipality or water district subsequently becomes available, connections shall be made to it and the school supply shall be discontinued.

(2) The water supply shall be of adequate quantity and under sufficient pressure to permit unrestricted use.

(3) All drinking fountain installations shall meet the requirements of the State Plumbing Code and shall be maintained in proper working order with adequate pressure and in a clean sanitary condition. Provision shall be made so that small children can drink with ease. In lieu of water fountains portable drinking water containers [coolers] may be used. If [Where] portable drinking water containers are used, they shall be of easily cleanable construction, kept securely closed and [so] designed so that water may be withdrawn from the container only by water tap or faucet and shall be maintained in a sanitary condition.

If paper drinking cups are used, they shall be stored and dispensed in a sanitary manner and discarded after use. Common drinking cups are prohibited.

Section 4. Sewage and Solid Waste Disposal. (1) All sewage and liquid waste matter shall be disposed of into a public sewer[age] system, if available. If [In the event] a public sewer[age] is not available, disposal shall be made into a private sewage disposal system designed, constructed, and operated pursuant to [in accordance with] the requirements of the cabinet and the Natural Resources and Environmental Protection Cabinet; if a public sewer system subsequently becomes available, connections shall be made to it and the school sewage disposal system shall be discontinued.

(2) All plumbing shall comply with the State Plumbing Code. [and shall be designed and installed to prevent contamination of the water supply through cross-connections and backsiphonage from fixtures.]

(3) All private sewage disposal systems shall be operated in [such] a manner [as] to not create a nuisance or possible hazard to public health.

(4) All waste paper and solid waste shall be disposed of so [in such a manner] as not to create a health or safety hazard and in a manner approved by the Natural Resources and Environmental Protection Cabinet.

(5) Containers shall be provided in all classrooms and hallways for storage of solid waste. All bulk solid waste shall be stored in containers, adequate in number, with tight-fitting lids. All bulk solid waste storage areas shall be [so] constructed and maintained [as] to prevent the entry and harborage of insects, rodents, and other vermin. All solid waste containers shall be of easily cleanable construction, kept clean and in good repair.

Section 5. Restroom Facilities. (1) All schools shall provide restroom facilities pursuant to [in accordance with] the requirements of the State Plumbing Code.

(2) All restrooms, locker rooms, and toilet, shower and hand-washing fixtures shall be maintained in a clean, sanitary condition.

(3) All restroom and locker room floors, walls, toilet partitions, ceilings, windows, and fixtures shall be maintained in good repair. [Floors shall be of impervious construction; however, in dressing room areas only, carpeted floors may be provided if indoor-outdoor type carpeting is used.]

(4) [All restrooms and locker rooms shall be well lighted and ventilated to the outside air.] A minimum of twenty (20) foot-candles of light shall be provided in all restrooms and locker rooms as measured at a height of thirty (30) inches above the floor.

(5) An ample supply of toilet tissue and soap shall be provided. Disposable paper towels, cloth roll-type dispenser towels, or electric hand-drying devices shall be provided. Easily cleanable waste receptacles shall be provided in each restroom and locker room and shall be kept clean and in good repair. Waste receptacles shall be of covered-type design in all restrooms

and locker rooms for female teachers and female students in grades seven (7) and above.

(6) All hand-washing and shower facilities shall be supplied with hot and cold or tempered water under pressure. Temperature and pressure control devices shall be installed on all shower facilities pursuant [in accordance] to the requirements of the State Plumbing Code.

(7) All windows used for room ventilation in restrooms and locker rooms shall be screened to prevent the entry of insects and other vermin. All restrooms and locker rooms in schools without central heating and air-conditioning or other closed-environment type heating, ventilation, and air-conditioning systems shall have self-closing doors. Schools with less than ten (10) students shall not be required to have self-closing doors. In those schools at which [where] closed-environment type HVAC systems are provided, self-closing doors are not required if effective odor and insect entry control is demonstrated. In school restroom and locker room facilities used by small children, any self-closing devices on all doors shall be adjusted to provide closure without presenting a safety hazard to students.

Section 6. Lighting. (1) All school classrooms, study rooms, industrial arts shops, gymnasiums, enclosed swimming pools, auditoriums, stairways, and hallways shall be adequately lighted. All lighting shall be [so] installed so that glare will be eliminated. Illumination levels as listed below shall be provided as measured at a height of thirty (30) inches above the floor:

Task or Area	Foot-candle Levels
Storage rooms	10
Hallways, stairways, auditoriums (during entry and exit)	20
General classrooms, gymnasiums, and enclosed swimming pools	50

In certain areas, [such] as [at] industrial arts work benches, power tool locations, welding, and foundry locations, art work benches, home economics kitchens, and laboratories, additional spot illumination shall be provided if necessary to maintain adequate lighting especially if [where] safety hazards are present.

(2) Windows, shades, and light fixtures shall be kept clean and in good repair at all times the [when] school is in session.

Section 7. Building, Heating and Ventilation. (1) All walls, ceilings, floors, furniture, drapes, curtains, and blinds shall be kept in good repair.

(2) All floors shall be kept clean and free of litter. All walls, ceilings, furniture, drapes, curtains, and blinds shall be kept clean. All floors shall be cleaned using dustless methods. Special attention shall be given to maintain floor areas around drinking fountains and toilet and hand-washing facilities free of water spillage.

(3) School buildings shall be maintained free of insect, or rodent harborage and infestation. Extermination methods and other measures to control insects and rodents shall be pursuant to [in accordance with] applicable state laws and regulations.

(4) Schools with ten (10) or more students shall provide sufficient storage space for outer clothing, play equipment, school supplies, and student's sack lunches[, etc]. This space shall be easily accessible, well lighted, ventilated and be designed, constructed, and maintained to reduce fire hazards.

(5) Adequate storage space shall be provided for the storage of janitorial supplies and combustible or poisonous materials and shall be kept locked at all times when not under direct supervision by maintenance staff or faculty. All janitorial or other supplies of a poisonous, caustic, or combustible nature shall be stored in the original container or, if dispensed from bulk containers, only in properly identified containers designed for that [such] use. All poisonous, caustic, and combustible materials shall be stored in a area separate and apart from food products. The use of soft drink or other food or drink containers for storage of toxic materials is expressly prohibited.

Section 8. Safety. (1) All school buildings shall have approved-type fire extinguishers provided of sufficient number and fire rating type as determined by the State Fire Marshal or local fire departments. All exists shall comply with the requirements of the State Fire Marshal.

(2) Each school building shall have adequate first aid material available and easily accessible and shall be equipped with the following items:

(a) Compresses and bandages.

1. One (1) inch compress on adhesive.

2. Assorted sterile bandage compresses in individual packages.

3. Triangular bandages. (two (2) x two (2)) and (four (4) x four (4))

4. Sterile gauze in individual packages of about one (1) square yard one (1) inch and two (2) inch rolled.

(b) Wire or thin board splints.

(c) Adhesive tape.

(d) Scissors.

(e) Forceps (two (2) inch splinter).

(f) Toothpicks.

(g) Paper cups.

(h) Iodine (mild).

(i) Aromatic spirits of ammonia.

(j) Thermometer.

(k) Soap.

(l) Petroleum jelly [Vaseline].

A current edition of the Red Cross First Aid Manual shall be available. The principal, head teacher, or a designated faculty member shall possess current, valid certification in the Red Cross Multimedia or Standard First Aid courses [so as] to render trained aid in case of injury.

(3) All play areas shall be designed, landscaped, and protected [so as] to provide a safe place for children to play. There shall be no obstructions in the area, and the ground shall be well drained and relatively level. Wells, cisterns, sewage treatment plants, and other open pits shall be fenced, have securely sealed tops, or otherwise be suitably protected to prevent safety hazards to students.

(4) All playground equipment shall be designed and constructed for heavy usage and shall be maintained in good repair and in safe condition. Any playground equipment found to be in defective condition which presents a safety hazard shall be immediately dismantled or

otherwise rendered inaccessible to students until it is repaired or replaced. The electrical system, wiring, fixtures, and equipment shall be designed, constructed, installed, and maintained pursuant to [in accordance with] the National Electrical Code and other applicable codes and regulations. The use of spliced electrical extension cords or other nonapproved electrical wiring, fixtures, or equipment is strictly prohibited. Buildings and equipment shall be maintained [in such a manner as] to eliminate potential danger from holes, glass, splinters, sharp projections, and other hazardous conditions.

(5) All school buses shall be maintained clean, free of litter and dust, and free of sharp projections or other safety hazards in the entrance and interior seating area.

Section 9. Inspection of Schools. (1) At least once each six (6) months, the cabinet shall inspect each school and shall make additional inspections and reinspections as are necessary for the enforcement of this regulation.

(2) If [Whenever] a representative of the cabinet makes an inspection of a school, he shall record his findings on an official cabinet inspection report form **DFS-301 - School Inspection Report** and provide the principal or head teacher with a copy. The inspection report shall:

(a) Set forth the specific violation(s) if found;

(b) Establish a specific and reasonable period of time for the correction of the violation(s) found;

(c) State that failure to comply with any notice issued pursuant to [in accordance with] the provisions of this regulation may result in further action being taken; and

(d) Advise the party inspected of its right to request a hearing **on form DFS-212 - Request for Hearing** before the cabinet [local health department]. The request shall be filed within ten (10) days of the completed inspection.

(3) Following a [timely] request for a hearing before the cabinet [local health department], a hearing shall be conducted by the cabinet [local health department] at a time and place designated by it. At the conclusion [Based upon the record] of the hearing, the cabinet [local health department] shall make a [written] finding of fact and conclusion of the law. [shall sustain, modify, or rescind any official notice or order appealed within thirty (30) days of the conclusion of the hearing. The hearing shall be recorded, but] A transcript of the hearing shall [need] not be made unless the interested party [requesting the transcription] assumes the cost [thereof] and a request is made at the time a [the transcription at the time of the] hearing is requested.

(4) Following inspections of school buildings and premises required by this regulation, [the local health department or] the cabinet shall report suspected noncompliance with applicable requirements of other state agencies to those agencies.

Section 10. Existing Facilities and Equipment. Notwithstanding the other provisions of this regulation, facilities and equipment being used by existing schools on the effective date of this regulation, which do not fully meet the design and construction requirements of this regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, and create no health or safety hazard.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
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CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(As Amended)

904 KAR 2:050. Time and manner of payments.

RELATES TO: KRS 205.220(1), 45 CFR 255.3
STATUTORY AUTHORITY: KRS 194.050, 45 CFR 255.3

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility under the provisions of KRS Chapter 205 to administer money payment programs under Title IV-A and Title IV-F of the Social Security Act and a state funded program of money payments to those aged, blind and disabled individuals disadvantaged by the implementation of the Supplemental Security Income (SSI) Program[, hereinafter referred to as SSI]. In addition KRS 205.245 provides for money payments to certain other aged, blind or disabled individuals. **Effective July 1, 1990, the cabinet shall make payments, described in 904 KAR 2:015, for the mentally ill or mentally retarded (MIMR) supplement program.** [Effective July 1, 1990, the cabinet shall make a supplement payment of fifty (50) cents per diem to licensed personal care homes (PCH) which apply and are certified under 904 KAR 2:015 to receive the mentally ill or mentally retarded (MI/MR) lump sum quarterly benefit payment. PCH participating in the MI/MR supplement program, shall also receive a twenty-five (25) dollar training reimbursement payment for each staff person attending MI/MR training as specified in 904 KAR 2:015.] This regulation sets forth the time and the manner in which payments are made [and the persons to whom payments may be made as required by KRS 205.220(1)].

Section 1. Manner and Time of Payment. (1) **Assistance payments.**

(a) Assistance payments shall be made by check.

(b) Title IV-A and Title IV-F payments shall be made monthly.

(c) The MIMR supplement payments shall be made:

1. Quarterly;

2. By the last day of the month following the month in which the certified quarter ends.

(d) The training reimbursement payment for the MIMR supplement program shall be issued within thirty (30) days of receipt of appropriate documentation, as specified in 904 KAR 2:015.

[All assistance payments are made by check issued monthly, except for the MI/MR supplement, which is issued quarterly. The MI/MR supplement shall be issued by the last day of the month following the month in which the certified quarter ends.]

(2) **Effective date of initial payments.** [The training reimbusement payment for the MI/MR supplement program shall be issued within thirty (30) days of receipt of appropriate

documentation as specified in 904 KAR 2:015.]

(a) [(3)] [(2)] The effective date of initial payment for Aid to Families with Dependent Children (AFDC) approvals shall be the date an application is filed if all eligibility factors are [were] met as of that date.

(b) If all eligibility factors are not met as of the day of application, the approval shall be the date on which all factors are met.

(c) The effective date for State Supplementation Payments (SSP) approvals shall be the first day of the month in which an application is filed if all eligibility factors are [were] met as of that month [(for example [i.e.], on or after the date of application)].

(d) Following the notification of the cabinet by the PCH of their intent to participate, the effective date of the MI/MR supplement shall be the first day of a quarter in which certification requirements contained in 904 KAR 2:015 are met.

(3) Initial payments. [(4) [(3)] Payment for both AFDC and SSP is made for an entire month during any part of which eligibility factors are met, except for the initial month's benefits for AFDC approvals which shall not be made for any period prior to the date of application.]

(a) AFDC approvals shall not be made for any period prior to the date of application.

(b) SSP approvals shall be made for the entire month during any part of which eligibility factors are met.

(c) MIMR approvals shall be made for the entire quarter during any part of which certification factors are met.

(4) Subsequent payments.

(a) SSP payments shall be made for an entire month in which eligibility factors are met as of the first day of the month.

(b) AFDC payments shall be made for an entire month in which technical eligibility factors are met as of the first day of the month.

(c) [(5)] [(4)] For AFDC, payments shall not be made to an individual for any month in which the amount of the benefit payment, prior to any recoupment, would be less than ten (10) dollars. Any individual who is denied a payment for this reason shall be deemed a recipient of AFDC for all other purposes.

(d) MIMR payments shall be made for any months within a quarter in which eligibility factors are met.

(5) Supplemental payments.

(a) [(6) [(5)] For] SSP. Supplemental payments shall be made:

1. If, due to administrative deadlines, changes in circumstances cannot be affected [recognized] in the month such change occurs; and [is reported; or,]

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(b) [For] AFDC, if changes cannot be affected [recognized] in the time frames required in retrospective budgeting.

[(7) [(6)] For SSP, supplemental payments to correct underpayments due to administrative errors shall be made for a period of up to twelve (12) months preceding the month of error correction if the error existed in the preceding months.]

Section 2. Inalienability of Payment. (1) AFDC and SSP [With the exception of payments made under the MI/MR supplement program,] money payments are unconditional and are exempt from any remedy for the collection of debts, liens and encumbrances. [;]

(2) Exception: [However,] The cabinet may initiate recoupment to recover overpayment of [AFDC] benefits.

Section 3. Eligible Payees. Money payments shall be [are] issued in the name of the eligible applicant, except that:

(1) In the Aid to Families with Dependent Children Program, a protective payment may be made to a third party payee when:

(a) A determination has been made that poor money management is contributing to the unsuitability of the home for a needy child; or

(b) The payee has refused, without good cause, to participate in the Work Incentive Program or the Child Support Program.

(2) In the State Supplementation Payments Program, the payee may in appropriate circumstances be:

(a) The legally appointed committee or guardian; or

(b) For individuals receiving other statutory benefits (such as SSI), the same as the representative payee for that benefit program.

(3) For AFDC or SSP, payment for the month of death may be made to the:

(a) Parent or other specified relative of the deceased child; [,] or [the]

(b) Duly appointed administrator of the estate or [other] qualified executor of the will of the deceased.

(4) Payment for the MIMR supplement shall be made to the participating PCH, meeting MIMR certification requirements, for an eligible calendar quarter, as specified in 904 KAR 2:015.

(5) Payment for the MIMR training reimbursement shall be made to the participating PCH.

(6) Supportive services payments for JOBS participants shall be made according to the type of service provided, as follows:

(a) Child care payments shall be issued:

1. On a one (1) month retrospective cycle;

2. Directly to the provider; and

3. Within thirty (30) days of receipt of appropriate verification.

(b) Transportation.

1. Transportation payments shall be made prospectively, not to exceed twenty-four (24) dollars, for anticipated transportation costs in the initial month of participation.

2. After verification of actual cost is received in the following month, retrospective payments shall be made for that month and each subsequent month of participation.

3. Transportation payments shall be made directly to the AFDC recipient.

(c) Other approved supportive service payments shall be made:

1. Directly to the provider; and

2. Within thirty (30) days of receipt of appropriate verification of service delivery and billing.

(d) All required departmental verification forms are incorporated by reference in 904 KAR 2:016, which fully describes the type and availability of JOBS supportive services.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: June 19, 1990
FILED WITH LRC: June 25, 1990 at 11 a.m.

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

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) Effective through **September 30** [August 31], 1990 (but not after that date), 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. Effective with regard to services provided on or after **October** [September] 1, 1990, the cost of drugs provided eligible nursing home patients shall be reimbursed through the pharmacy program using ususal program limits and policies applicable to the pharmacy program except that hyperalimentation shall continue as an ancillary service.

(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 July [April] 1, 1990 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). Trending and indexing factors shall be adjusted downward to remove from the factors amounts which were

included to account for minimum wage updates for which the cabinet has made a separate rate adjustment. 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 for SNFs and ICFs (but not for ICF/MRs), effective with regard to services provided on or after July 1, 1990, 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 7 [4]-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$40.99 [36.99] & below	$.92	$.58
41.00 - 41.99 [37.00-37.99]	$.86	$.50
42.00 - 42.99 [38.00-38.99]	$.78	$.41
43.00 - 43.99 [39.00-39.99]	$.70	$.32
44.00 - 44.99 [40.00-40.99]	$.61	$.21
45.00 - 45.99 [41.00-41.99]	$.51	$.09
46.00 - Maximum Payment* [42.00]	$.35	-

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

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

(Effective 7 [4]-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$ 96.99 [86.99] & below	$1.38	$.87
97.00 - 102.99 [87.00 - 92.99]	$1.29	$.75
103.00 - 108.99 [93.00 - 98.99]	$1.18	$.62
109.00 - 114.99 [99.00-104.99]	$1.06	$.47
115.00 - 120.99 [105.00 - 110.99]	$ .92	$.31
121.00 - 126.99 [111.00 - 116.99]	$ .76	$.13
127.00 - 133.49 [117.00 Maximum Payment*]	$ .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 7 [4]-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$59.99 [49.99] & below	$.92	$.58
60.00 - 61.99 [50.00 - 51.99]	.86	.50
62.00 - 63.99 [52.00 - 53.99]	.78	.41
64.00 - 65.99 [54.00 - 55.99]	.70	.32

66.00 - 67.99 [56.00 - 57.99]	.61	.21
68.00 - 69.99 [58.00 - 59.99]	.51	.09
70.00 [60.00] - Maximum Payment for Freestanding Facilities*	.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.

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

(Effective 7 [4]-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$68.99 [56.99] & below	$1.38	$.87
69.00 - 71.99 [57.00 - 59.99]	1.29	.75
72.00 - 74.99 [60.00 - 62.99]	1.18	.62
75.00 - 77.99 [63.00 - 65.99]	1.06	.47
78.00 - 80.99 [66.00 - 68.99]	.92	.31
81.00 - 83.99 [69.00 - 71.99]	.76	.13
84.00 - Maximum Payment* [72.00]	.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.

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

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

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

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

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

ROY BUTLER,, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 30, 1990
FILED WITH LRC: July 5, 1990 at 3 p.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING

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

401 KAR 6:320. Certification of water well drillers

RELATES TO: KRS 223.100 [223.400] through 223.460, 223.991, Chapter 224
STATUTORY AUTHORITY: KRS 223.420, 223.425, 224.020, 1990 Acts, c. 209, c. 471 [SB 194 (1990), HB 830 (1990)]
NECESSITY AND FUNCTION: This regulation provides for the certification of water well drillers, including the requirements for applications, examinations, and a fee schedule. These fees will partially reimburse the Cabinet's expenses for this program. The implementation of this fee schedule is required by HB 830 (1990).

Section 1. Examinations. (1) The water well drillers certification examination shall consist of three (3) parts:
(a) The National Water Well Association's Drillers Certification examination;
(b) The Kentucky Water Well Drillers Certification examination, which covers Kentucky's water well construction regulations or for monitoring well drillers the National Water Well Association's monitoring well construction examination; and
(c) One (1) or more of the following National Water Well Association's specialty examinations, covering the type of drilling for which the applicant wishes to be certified:
1. Cabel tool drilling in rock;
2. Cable tool drilling in unconsolidated material;
3. Air rotary drilling in rock;
4. Air rotary drilling in unconsolidated material;
5. Mud rotary drilling in rock;
6. Mud rotary drilling in unconsolidated material;
7. Reverse rotary drilling in unconsolidated material;
8. Jetting and driving wells in unconsolidated material; and
9. Boring and augering wells in unconsolidated material[; and]
[10. Monitoring well construction].
(2) The cabinet will administer examinations only to a qualified applicant who has:
(a) Submitted an approved complete application; and
(b) Has met all requirements of KRS 223.425.
(3) The cabinet will certify only those applicants who pass the applicable examinations. All listed applicants shall take the examination in subsection (1)(c) of this section for each type of drilling for which they seek certification. [Monitoring well drillers shall pass the examination for each type of drilling for which they seek certification listed in subsection (1)(c) of this section and the examinations for monitoring well construction listed in subsection (1)(c)10 of this section.] In addition prior to certification each driller shall pass the examinations listed in subsections (1)(a) and (b) of this section. A score of seventy (70) percent or better on each examination shall be required to pass. Each examination may be repeated as often as necessary.
(4) Those persons having two (2) years of experience drilling and installing monitoring wells as of July 1, 1991, shall be deemed exempt from the examination requirements of this regulation and shall apply for and obtain a certificate by July 1, 1992.
(5) No person shall construct a monitoring well after July [January] 1, 1991 without an approved certification. No person shall construct any other type of water wells without an approved certificate.
(6) [(5)] The cabinet will schedule examinations as necessary.

Section 2. Fees. (1) An application fee of twenty-five (25) dollars shall be submitted with each application.
(2) An examination fee of forty (40) dollars shall be submitted prior to examination.
(3) The certification fee shall be $100.
(4) The certification renewal fee shall be $100.
(5) Fees shall be paid by a check or money order made payable to the Kentucky State Treasurer.

Section 3. Expiration and Renewal of Certificates. (1) Certificates are valid from date of issuance until the following June 30. Certificates shall be renewed on July 1 of each year.
(2) If the certificate renewal fee is not received within sixty (60) days of the renewal date of July 1, certification shall expire. Expired certificates may be renewed without examination within two (2) years, if the renewal fee is paid and all other statutory and regulatory requirements have been met.
(3) Certified water well drillers or monitoring well drillers shall complete three (3) hours of training for certificate renewal. Such training may include, but is not limited to, correspondence courses, short courses, trade association meetings, and on-the-job training courses. An applicant for certificate renewal shall submit documentation of training with the renewal application.

Section 4. Wall Certificates and Wallet Cards. (1) The cabinet will provide certified drillers with wall certificates and wallet cards. Wallet cards shall be carried by the driller while at the job site.
(2) The cabinet will provide wallet cards for rig operators for use during a certified driller's absence from the job site upon submission of a complete application by the certified driller. These cards shall be carried by the rig operators while at the job site.

Section 5. Repeal. 401 KAR 6:300, entitled Water well drillers certification; examination; fees, is hereby repealed.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: September 5, 1990
FILED WITH LRC: September 5, 1990 at 4 p.m.

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

401 KAR 8:010. Definitions.

RELATES TO: KRS Chapters 223, 224, 40 CFR 141.2
STATUTORY AUTHORITY: KRS Chapter 223, 224.032, 224.033; Public Law 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, Public Law 100-572; 42 U.S.C.A. 300f, 300g, 300j.
NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. The purpose of this regulation is to define terms used by the cabinet in regulation of public and semipublic drinking water supplies pursuant to KRS Chapter 224 and Public Law 93-523, as amended, as well as to regulate certification of public water system operators pursuant to KRS chapter 223. This regulation repeals and replaces 401 KAR 6:015, Section 1; 401 KAR 6:040, Section 1; and 401 KAR 6:060, Section 1.

Section 1. The following definitions shall apply to 401 KAR Chapter 8:
(1) "Approved source" means the source(s) of the water whether it be from a spring, well, public water system, or any other source that has been sampled and the water analyzed, and found to be of a safe and sanitary quality and quantity in accordance with 401 KAR 8:010 through 401 KAR 8:700, inclusive.
(2) "Auxiliary intake" means any piping connection or other device whereby raw water may be secured for treatment from a location or source other than the intake which is normally used.
(3) "Best Available Technology" or "BAT" means the best technology, treatment techniques, or other means which the cabinet finds, after examination for efficacy under field conditions, and not solely under laboratory conditions, are available to the public water system (taking cost into consideration). For the purposes of setting maximum contaminant levels for synthetic organic chemicals, any BAT shall be at least as effective as granular activated carbon.
(4) "Blood lead level or PbB level" means the concentration of lead in the blood as measured in micrograms of lead per deciliter of blood (mg/dl).
(5) "Board" means the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators.
(6) "Boil water advisory" or "consumer advisory" means a notice to the consuming public through radio, television, direct mail, posting, newspaper or other media to convey to the consuming public in the quickest manner possible information that water provided by a system may cause adverse human health effects if consumed. Such advisory shall include information concerning all actions which should be taken by the affected public.
(7) "Boil water notice" means a notice to the consuming public through radio, television, direct mail, posting, newspaper or other media to convey to said consuming public in the quickest manner possible information that water provided by a system is unfit for human consumption unless first boiled for two minutes at a rolling boil.
(8) "Bottled water" means water that is from an approved bottled water treatment plant and is placed in a sealed container or package and is offered for human consumption or other consumer uses.
(9) "Bottled water system" means a water system which provides bottled drinking water. The term includes, but is not limited to, the sources of water, and treatment, storage, bottling, manufacturing, or distribution facilities. The term excludes a public water system which provides only a source of water supply for a bottled water system and excludes an entity providing only transportation, distribution or sale of bottled water in sealed bottles or other sealed containers. Bottled water systems shall be designated as community public water systems.
(10) "Bottled water treatment plant" means a facility which provides the product water used for bottled water by processing water from an approved source.
(11) "Bypass" means a physical arrangement whereby water may be diverted around any feature of the purification process of a public or semipublic water supply.
(12) "Cabinet" means the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, or its successor.
(13) "Certificate" means a certificate of competency issued by the secretary or his designated agent stating that the operator has met all requirements for the specified operator classification as set by these regulations.
(14) "Certified laboratory" means a laboratory where the physical, instrumental, procedural, and personnel capabilities have been approved by either the U.S. Environmental Protection Agency or the cabinet. A laboratory may be certified for any one (1) or more types of the contaminants listed in these regulations or for any of the specific constituents or combinations of constituents therein.
(15) "Check samples" means samples taken subsequent to a routine compliance sample and at the same location to determine if results of the routine sample are valid.
(16) "Contaminant" means any physical, chemical, biological, or radiological substance or other matter found in water.
(17) "Contaminant group" means all of the constituent members that collectively comprise the individual bacteriological, inorganic chemical, organic chemical, radiological, volatile organic chemical, synthetic organic chemical, and secondary contaminant groups regulated under these regulations.
(18) "Corrosion" means the dissolution or

erosion of pipe or other plumbing material by water.

(19) "Corrosivity" means the tendency of water to form or dissolve calcium carbonate as a film or scale.

(20) "Cross connection" means any physical connection or arrangement between two (2) otherwise separate systems, one (1) of which contains potable water and the other being either water of unknown or questionable safety, or steam, gas or chemicals, whereby there may be flow from one (1) system to the other, the direction of flow depending on the pressure differential between the two (2) systems.

(21) "Department" means the Kentucky Department for Environmental Protection.

(22) "Direct responsible charge" means personal, first hand responsibility, control or supervision of the operation of a public water system.

(23) [(22)] "Disinfection" means the process of destroying disease-causing organisms, usually through the use of chlorine or other disinfectants approved by the cabinet.

(24) [(23)] "Distributed water" means water leaving the water treatment facility and entering the distribution system.

(25) [(24)] "Division" means the Division of Water.

(26) [(25)] "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(27) [(26)] "Fee" means a monetary charge to be assessed by the cabinet.

(28) "Free flowing tap or outlet" means any tap or outlet when turned on is flowing freely. It does not mean a continuously operating tap.

(29) [(27)] "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(30) [(28)] "Groundwater source" means any source of water for a public or semipublic water supply that does not have a free water surface exposed to the atmosphere or a turbidity content which exceeds acceptable levels for potable water as specified in 401 KAR 8:010 through 8:700 inclusive.

(31) [(29)] "Manmade beta particle and photon emitters" means all radionuclides emitting beta particles and photons listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," NBS Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

(32) [(30)] "Maximum contaminant level" (MCL) means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system as measured at points specified in 401 KAR 8:010 through 8:700 inclusive.

(33) [(31)] "Maximum total trihalomethane potential (MTP)" means the maximum concentration of total trihalomethanes (TTHMs) produced in a given water containing excess free chlorine residuals after seven (7) days retention at a temperature of twenty-five (25) degrees Centigrade (seventy-seven (77) degrees Fahrenheit) or above.

(34) [(32)] "Mineral water" means bottled water that contains no less than 500 parts per million total dissolved solids.

(35) [(33)] "Operator" means any person who has on-site responsibility and authority to conduct the procedures and practices necessary to ensure that the water supply system or any portion thereof is operated in accordance with the laws and regulations of the Commonwealth; or to supervise others in conducting such procedures and practices. Maintenance personnel and others who do not participate directly in the production or distribution of potable water are not included in the term "operator".

(36) [(34)] "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth or any interstate body.

(37) [(35)] "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(38) [(36)] "Point-of-entry treatment device" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

(39) [(37)] "Point-of-use treatment device" is a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

(40) [(38)] "Potable water" means any water which meets the provisions of these regulations, the quality of which is approved for human consumption by the cabinet.

(41) [(39)] "Private water supply" means a residential water supply located on private property for the use of residents, and not qualifying as a public or semipublic water system.

(42) [(40)] "Product water" means the water processed by a bottled water treatment plant that is used for bottled drinking water.

(43) [(41)] "Professional engineer" means an engineer with current registration as a professional engineer in Kentucky.

(44) [(42)] "Public water system" means any system owned by any person, for the provision to the public of water for human consumption, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year, and includes any collection, treatment, storage or distribution facilities used primarily in connection with such system. For the purposes of 401 KAR 8:020, 401 KAR 8:150, 401 KAR 8:200, "public water system" shall also include any commercial facility which serves food to the public and is not using water purchased from a public water system. However, if a facility serving food to the public uses exclusively bottled water as defined by this section for the preparation of food and the cleaning of food preparation utensils and dishes to serve food, the facility may establish, to the cabinet's satisfaction, that only potable water shall be received by the public and shall be exempt from this definition. A public water system is either a "community water system" or a "noncommunity water system."

(a) "Community water system" means a public water system which serves at least fifteen (15)

service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(b) "Noncommunity water system" means a public water system which serves at least fifteen (15) service connections used by persons for a period less than year-round or which serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year but less than year-round. Noncommunity water systems are either transient or nontransient.

1. "Transient noncommunity water system" means a water system which serves a transient group of people and does not meet the definition for nontransient noncommunity water system set forth below.

2. "Nontransient noncommunity water system" means a system which serves at least twenty-five (25) of the same persons over six (6) months of the year.

(45) [(43)] "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system.

(46) [(44)] "Sanitary survey" means an on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

(47) [(45)] "Secondary contaminants" means contaminants which do not, in general, have a direct impact on the health of consumers but whose presence in excessive quantities may discourage the utilization of drinking water and discredit the supplier.

(48) [(46)] "Secondary standards" means the maximum contaminant levels for secondary contaminants.

(49) [(47)] "Secretary" means the secretary for the Natural Resources and Environmental Protection Cabinet.

(50) [(48)] "Semipublic water system" means any water system made available for drinking or domestic use which serves more than three (3) families but does not qualify as a public water system.

(51) [(49)] "Specific analysis" means a laboratory analysis or procedure acceptable to the cabinet for determining the amount of a specific constituent of a type of contaminant regulated under these regulations.

(52) [(50)] "Standard Methods" means the 16th edition of "Standard Methods for the Examination of Water and Wastewater," prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

(53) [(51)] "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(54) [(52)] "Supplier of water" means any person who owns or operates a public water system.

(55) [(53)] "Surface water source" includes, but is not limited to, ponds, reservoirs, streams of all sizes, free-flowing springs, wells with variable turbidity due to the characteristics of the raw water, or any source of water supply for a public water system that has a free water surface exposed to the atmosphere.

(56) [(54)] "Total trihalomethanes (TTHMs)" means the arithmetic sum of the concentrations in milligrams per liter of the trihalomethane (THM) compounds (trichloromethane, dibromochloromethane, bromodichloromethane, and tribromomethane) rounded to two (2) significant figures.

(57) [(55)] "Trihalomethane (THM)" means one (1) family of organic halogen compounds resulting from the displacement of three (3) of the four (4) hydrogen atoms in methane with chlorine, bromine, or iodine atoms in the molecular structure.

(58) [(56)] "Turbidity" means the presence of suspended particulates, including, but not limited to, sand, silt, clay, finely divided organic or inorganic matter, plankton or other microscopic organisms or elements which optically interfere with the clarity of liquids.

(59) [(57)] "Water distribution system" means the portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of a consumer or a system of piping and ancillary equipment which is owned and operated by an established water system independent of the water supply system from which potable water is purchased.

(60) "Water supply reservoir" and "lake primarily used for drinking water" means, for the purpose of 401 KAR 8:020, Section 2(18), any lake or reservoir so designated by its developer, a public water system drawing raw water from the lake, a local government, and a property owner having an interest in the lake and the watershed upstream of the dam or downstream outlet of the lake.

(61) [(58)] "Water supply system" means the source of supply and all structures and appurtenances used for the collection, treatment, storage and distribution of water for a public or semipublic water supply.

(62) [(59)] "Water treatment plant" or "purification plant" means that portion of the water supply system which is designed to alter either the physical, chemical or bacteriological quality of the water.

Section 2. The following items are incorporated by reference and are available for public inspection and copying between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, at the Division of Water, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

1. Standard Methods for the Examination of Water and Wastewater, 16th Edition, 1985, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. This publication may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

2. "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and Water for Occupational Exposure," National Bureau of Standards Handbook number 69, U.S. Department of Commerce, August 1963. This document may be obtained by contacting the Division of Water.

Section 3. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.

Section 4. Repeal. Section 1, 401 KAR 6:015, entitled "Public and Semipublic Water Supplies," is hereby repealed.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 4, 1990
FILED WITH LRC: September 5, 1990 at 11 a.m.

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

401 KAR 8:020. Public and semipublic water supplies - general provisions.

RELATES TO: KRS Chapters 223, 224; 40 C.F.R. 141.3
STATUTORY AUTHORITY: KRS Chapter 223, 224.032, 224.033; Public Law 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, Public Law 100-572, 42 U.S.C.A. 300f, 300g, 300j.
NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. The purpose of this regulation is to stipulate general provisions for public and semipublic water supplies to enable the supplies to comply with KRS 224.032, as well as the Safe Drinking Water Act, as amended. This regulation is largely a restructuring of certain provisions currently found in 401 KAR 6:015, which will be repealed when this and additional following regulations are adopted.

Section 1. Applicability. (1) Inclusions. All public and semipublic water systems are subject to the requirements of 401 KAR 8:010 through 401 KAR 8:700, inclusive except those noted in subsection (2) of this section. Any commercial facility which uses water from its own premises to prepare food to be served to the public is subject to the requirements of 401 KAR 8:020, 401 KAR 8:150, and 401 KAR 8:200 unless bottled water is used exclusively for food preparation and dish washing, and the facility has demonstrated to the cabinet's satisfaction that no contaminated water may reach the public.
(2) Exclusions. Except as stated above, this chapter does not apply to water systems in the following two (2) categories:
(a) Water systems which consist only of distribution and storage facilities, which do not have any collection and treatment facilities, which obtain all of their water from, but are not owned or operated by, public water systems covered by these regulations, and which do not sell water to any person; or
(b) Water systems which are carriers which convey passengers in interstate commerce.

Section 2. Operation, Maintenance and Safety Requirements. (1) Public and semipublic water systems. No person shall operate or commence operation of a public or semipublic water system except in compliance with the provisions of 401 KAR 8:010 through 8:700, inclusive. Water supply systems constructed prior to the effective date of these regulations may be continued in use, if the operation, maintenance, bacteriological, chemical, physical, and radiological standards comply with 401 KAR 8:010 through 401 KAR 8:700 inclusive, or such systems obtain a variance or exemption as set forth in 401 KAR 8:060 from those standards with which they do not comply.
(2) Cross-connections prohibited. All cross-connections are prohibited. The use of automatic devices, such as reduced pressure zone back flow preventers and vacuum breakers, may be approved by the cabinet in lieu of proper air gap separation. A combination of air gap separation and automatic devices shall be required if determined by the cabinet to be necessary due to the degree of hazard to public health. It shall be the responsibility of every public water system to determine whether or where cross-connections exist and to immediately eliminate them.
(3) Bypasses. No bypass shall be created or maintained without the prior written approval of the cabinet stating the approved circumstances for establishment of a bypass, its design, and the exact conditions which must exist for its use.
(4) Auxiliary intakes. No auxiliary intake shall be used in direct connection with a public or semipublic water system except with prior written approval from the cabinet stating the emergency conditions which necessitate such an intake.
(5) Water and sewer connections. The sewer system serving the purification plant and auxiliary facilities, including all plumbing fixtures, toilets, showers, drinking fountains, and floor drains, shall discharge to the sewer system where available. If no such sewer is available, the connection shall be made to an approved sewage disposal facility. There shall be no connections between the sewer system and any filter backwash, filter-to-waste drains or clearwell overflow lines, unless an approved air gap is provided between such drains and overflow lines and the approved sanitary, storm sewer, or natural drainage system, so as to preclude the possibility of back-up of sewage or waste into the drain or overflow lines.
(6) Proper operation and maintenance. The owner or operator of a public water system shall at all times properly operate and maintain all facilities and systems of treatment, intake and distribution to achieve compliance with the provisions of 401 KAR 8:010 through 8:700 inclusive. Proper operation and maintenance includes effective performance, preventive maintenance, adequate operator staffing and training, adequate representative sample points, and adequate process controls for testing, including appropriate quality assurance procedures.
(7) Reports to the cabinet.
(a) Monthly operating reports. The supplier of water shall file complete monthly operating reports with the cabinet. The reports shall be on forms provided or approved by the cabinet and shall be received at the Division of Water, Frankfort Office Park, 18 Reilly Rd., Frankfort,

Ky. 40601, no later than ten (10) days after the end of the month for which the report is filed. Completed reports shall include volume of water treated, type and amount of chemicals added, and test results appropriate to be reported by the plant. Completed reports shall also include the dated original signature of the owner or authorized agent.

(b) Reports of failure to comply. Public water systems shall report to the cabinet, within forty-eight (48) hours, by phone or in writing, [twenty-four (24) hours,] the failure to comply with any provision of 401 KAR 8:010 through 8:700, inclusive, including the failure to comply with monitoring requirements. [Suppliers are not required to report analytical results to the cabinet if a state laboratory performs the analyses and reports the results directly to the cabinet.]

(c) Emergency Reports. When a public water system experiences a line break, loss of pressure, loss of disinfection, or other event which may result in contamination of the water, the public water system shall immediately report to the cabinet by calling the drinking water branch of the division of water in Frankfort at (502) 564-3410 or the appropriate regional field office of the division of water. If a report required by paragraph [(b) or] (c) of this subsection is made at a time other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number, (502) 564-2380.

(8) Records to be maintained. All owners or operators of public water and semipublic water systems shall keep on or near the premises the records set forth in this subsection.

(a) Data summaries - Either actual laboratory reports shall be kept or data shall be transferred to tabular summaries. The following information shall be included:

1. The date, place and time of sampling, and the name of the person who collected the sample;
2. Whether the sample was a routine distribution system sample, check sample, raw or processed water sample or other special purpose sample;
3. The date of analysis;
4. The laboratory and person responsible for performing analysis;
5. The analytical technique/method used; and
6. The results of the analysis.

(b) Bacteriological analysis records shall be kept at least five (5) years.

(c) Chemical analysis records shall be kept for a period of ten (10) years.

(d) Turbidity analysis records shall be kept for a period of at least one (1) year.

(e) Records of violations and the actions taken by the system to correct violation of primary drinking water regulations shall be kept no less than ten (10) years after the last action taken with respect to the particular violation involved.

(f) Records of sanitary surveys, copies of any written reports, summaries of communications relating to sanitary surveys of the system, conducted by the system, a private consultant, or any local, state or federal agency, shall be kept no less than ten (10) years after completion of the sanitary survey involved, at which time they may be transferred to the cabinet.

(g) Records concerning any variance or exemption granted to the system shall be kept no less then five (5) years following the expiration of the variance or exemption.

(9) Boil water notices and consumer advisories.

(a) Boil water notices and advisories. Public water systems and semipublic water systems may issue boil water notices or boil water advisories at any time the system feels a notice or advisory is warranted. The cabinet may direct that a boil water notice be issued when positive bacteriological sample results have been confirmed by an analysis or analyses made in a certified laboratory. The cabinet may direct that a boil water advisory be issued when conditions within a public water system indicate a possible adverse health effect from microbiological contamination may result from consumption of the water distributed by a system. The cabinet may, when it determines circumstances warrant, issue a boil water notice or boil water advisory directly, rather than rely on a public or semipublic water system to issue such notice.

(b) Consumer advisory. The cabinet may issue a consumer advisory at any time conditions within a public water system indicate a possible adverse health effect from consumption of the water distributed by the system or anytime other information of interest to the consumer exists. The advisory will notify affected persons of any required or recommended action that should be taken.

(10) How to issue notice or advisory. Boil water notices, boil water advisories, and consumer advisories shall be issued through newspapers, radio, television, or any other media having an immediate public impact. As a health and safety measure, the water system shall repeat the notification during the period of imminent danger at intervals which maintain public awareness. The notice or advisory shall be readily understandable and shall include instructions for the public, as well as an explanation of the steps being taken to correct the problem. Boiling instructions shall caution to only boil drinking water for short range use by boiling water for at least two (2) minutes at a rolling boil.

(11) Other notices. Other public notifications shall be issued by public water systems as required by 401 KAR 8:010 through 8:700 inclusive.

(12) Maps. Within twelve (12) months of the effective date of this regulation, all public and semipublic water systems shall have on the premises, or conveniently located to the premises, an up-to-date map of the distribution system. The map shall, at a minimum, show line size, cutoff valves, fire hydrants, flush hydrants, tanks, booster pumps, chlorination stations, connection to emergency or alternative sources, and wholesale customer master meters. The type of piping material in the distribution system and its location shall also be provided. If a public water system, due to age, improper documentation, lost documentation or other valid reason cannot comply with this requirement, the system may petition the cabinet to modify this requirement to the extent that compliance is not feasible. The petition for waiver shall state specifically what portion of this requirement is not practical and why.

(13) Operation and maintenance manual. Each water supply system shall develop and keep on the premises, for operators and employees of the system, an operation and maintenance manual that

includes a detailed design of the plant, daily operating procedures, a schedule of testing requirements designating who is responsible for such tests, and safety procedures for operation of the facility, including storage and inventory requirements for materials and supplies used by the facility. The operation and maintenance manual shall be updated as necessary and no less than annually and will be available within twelve (12) months of the effective date of this regulation.

(14) Flushing recommended. It is recommended that all distribution systems be thoroughly flushed at least twice a year, usually in the spring and fall. The purpose of systematic flushing is to reduce turbidity created from the scouring of accumulated sediment within the water lines. Flushing should start at the hydrants nearest the **source of supply** [purification plant] and proceed in an outward direction to the end of each main. Flushing should continue at each hydrant until all traces of turbidity and color are gone. Hydrants should be opened and shut slowly to prevent damage from water hammer. In addition to the regularly scheduled flushing, the following conditions indicate a need to flush the entire system: turbidity within the distribution system greater than five (5) nephelometric turbidity units (NTU); an inability to maintain an adequate residual of a disinfection agent in any part of the system or a heterotrophic plate count (HPC) in excess of 500. Other indicators that flushing may be called for are taste and odor complaints, color of water, contaminated water samples, or line repairs.

(15) No person shall introduce any substance which may have a deleterious physiological effect, or for which physiological effects may not be known, to the water supply system.

(16) Certified lab analysis required. For the purpose of determining compliance with the sampling requirements of 401 KAR 8:010 through 8:700 inclusive, samples shall be analyzed by a laboratory certified by the cabinet as prescribed in 401 KAR 8:040, except that measurements for turbidity and free chlorine may be performed by any person approved by the cabinet.

(17) Right of entry. The cabinet may enter, during normal business hours, any establishment, facility or other property of public and semipublic water supplies in order to determine whether such supplies have acted or are acting in compliance with any applicable law or regulation which the cabinet has the authority to enforce. Such entry may include collection of water samples for laboratory analyses, inspection of records, files, papers, processes, controls and facilities required to be kept, installed or used under the provision of 401 KAR 8:010 through 8:700, inclusive. The cabinet or its authorized agent may cause to be tested any feature of a public water system, including its raw water source, to determine compliance with applicable legal requirements.

(18) Recommended practices for water supply reservoirs to be used for drinking water. The following practices are recommended to be employed by water systems which have a lake primarily used as a source of raw drinking water:

(a) Prohibition of swimming, water skiing and other contact sports.

(b) Prohibition of large motor-driven craft or any craft with toilets.

(c) An area at least one hundred (100) feet wide from the upper pool elevation shall be kept clear of all sources of potential contamination such as septic tanks, drain fields, livestock, barns, etc.

(d) No effluent from sewage treatment plants shall be discharged into the lake.

(e) Picnicking may be permitted around the lake if plans for the development of any picnic area meet regulatory requirements of the cabinet.

(f) A nonpoint source pollution control plan shall be implemented.

(19) Water treatment chemicals and system components. All chemical additives and protective materials (such as paints and linings) used by a water system shall be acceptable to the cabinet for use in contact with potable water.

(20) Disposal of chlorinated water. Chlorinated water resulting from disinfection of treatment facilities and new, repaired or extended distribution systems shall be disposed in a manner which will not violate 401 KAR 5:031.

(21) Water loading stations. Public water systems which provide water loading stations for the purpose of providing water to water hauling trucks or other bulk water devices shall construct such stations to conform to the standards in the Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers' "Recommended Standards for Water Works," incorporated by reference in Section 3(1) below.

Section 3. Incorporation by Reference. The following materials are hereby incorporated by reference and are available for public inspection and copying between 8:00 am and 4:30 pm, Monday through Friday, at the Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Ky. 40601:

(1) Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers' "Recommended Standards for Water Works," 1987, published by the Health Research Inc., Health Education Services Division, P.O. Box 7126, Albany, New York 12224.

(2) "General Design Criteria for Surface and Ground Water Supplies", 1984, published by the Kentucky Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

(3) "Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed Within Five Miles Upstream from Public Water Supply Sources or From the Location of Public Water Supply Intakes Within Five Miles Downstream from Wastewater Discharges" 1983, published by the Kentucky Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

Section 4. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.

Section 5. Repeal. Section 2(1), (2), (3), (4), (5), (6), (7), (8), (11), (13), (14), and (15) of 401 KAR 6:015, Public and Semipublic Water Supplies, are hereby repealed.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 4, 1990
FILED WITH LRC: September 5, 1990 at 11 a.m.

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

401 KAR 8:030. Water treatment plants; water distribution systems; certification of operators.

RELATES TO: KRS Chapters 223, 224
STATUTORY AUTHORITY: KRS Chapters 160-220, 223 224.032, 224.033; Public Law 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, Public Law 100-572, 42 U.S.C.A. 300f, 300g, 300j
NECESSITY AND FUNCTION: KRS 223.160-223.220 establishes a board of certification and authorizes the cabinet to establish a program requiring certification of water system operators. KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. This regulation establishes standards for classification of water treatment plants and water distribution systems; qualifications of applicants; examination procedures; duties of the board; and provisions relating to the issuance, renewal, and revocation of certificates; [fee schedules;] and other provisions necessary for certification of operators. This regulation amends and repeals the current regulation for certification of operators, 401 KAR 6:040.

Section 1. General Provisions. (1) Direct responsible charge. Each public water system shall be operated under the supervision of a certified operator who is in direct responsible charge of the system. The operator in direct responsible charge shall hold a valid certificate in a class equal to or higher than that required for the system under his or her supervision. The operator in direct responsible charge may be an individual who has been assigned sole responsibility for the operation of the system, or who has been delegated the direct responsibility to supervise others in the performance of their duties in operating the system. Except as otherwise specified in subsection (2) of this section, the operator in direct responsible charge shall be physically on the premises of the water treatment facility, within the area of the distribution system, or otherwise performing system-related duties during the shift or shifts for which the operator is responsible.

(2) Shifts.

(a) Water treatment systems. Public water systems [which operate more than one (1) shift per day] shall use a certified operator who is in direct responsible charge as specified in subparagraphs 1 through 4 of this paragraph [of each shift];

1. Class I. All operational procedures performed at Class IA-D or IB-D water treatment systems shall be conducted under the supervision of, or by, a certified operator.

2. Class II.

a. All operational procedures performed at Class IIA water treatment systems serving a population less than 500 shall be conducted under the supervision of, or by, a Class IIA or higher certified operator. All Class IIA water treatment systems serving a population equal to or greater than 500 and less than 3,000 shall be staffed with a Class IIA or higher certified operator in direct responsible charge during the daytime shift. Operational procedures conducted during other shifts shall be conducted under the supervision of, or by, a Class IIA or higher certified operator.

b. All operational procedures performed at Class IIB-D water treatment systems shall be conducted under the supervision of, or by, a Class IIB-D or higher certified operator.

c. All operational procedures performed at Class IIC-D water treatment systems shall be conducted under the supervision of, or by, a Class IIC-D or higher certified operator.

3. Class III.

a. All Class IIIA water tratment systems shall be staffed with a Class IIIA or higher certified operator in direct responsible charge of all shifts where water is treated.

b. All Class IIIB and IIIC water treatment systems shall be staffed by a Class III or higher certified operator in direct responsible charge during the daytime shift. Operational procedures conducted during other shifts shall be conducted under the supervision of, or by, a Class III or higher certified operator.

4. Class IV. All Class IVA water treatment systems shall be staffed with a Class IVA certified operator in direct responsible charge for all shifts where water is treated.

(b) Water distribution systems.

1. All operational procedures performed within water distribution systems having no booster chlorination or other water treatment capabilities shall be conducted under the supervision of, or by, a distribution system operator certified in a class equal to or higher than the class of the system.

2. All water distribution systems having booster chlorination or other treatment capabilities shall be staffed with a certified distribution operator in direct responsible charge in a class equal to or higher than the class of the distribution system during the daytime shift. Operational procedures conducted during other shifts shall be conducted under the supervision of, or by, a distribution system operator certified in a class equal to or higher than the class of the system.

(3) Certifiable personnel. Persons who are under the supervision of the operator in direct responsible charge may become certified by the cabinet if they meet the appropriate education and experience requirements.

(4) Production personnel. Laboratory or distribution personnel and others who have significant routine input into the production or distribution of potable water may be certified if they can demonstrate to the satisfaction of the cabinet that they possess the technical and practical knowledge to perform the actual mechanical and other procedures involved in the operation of a water treatment plant or water distribution system.

(5) Semipublic system. Certified operators are not required for semipublic water systems. The systems shall be operated by competent operators.

[(6) Distribution operators. Public water systems shall be operated under the supervision of a certified distribution operator.]

Section 2. Duties of the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators. In carrying out its responsibilities the board shall:

(1) Examine the qualifications of applicants for certification;

(2) Review and approve all substitutions of education for experience;

(3) Review and assist in the preparation of examinations;

(4) Review the results of examinations;

(5) Recommend qualified applicants for certification by the cabinet;

(6) Maintain records;

(7) Recommend revocation of certificates for operators who fail to comply with the applicable laws and regulations;

(8) Review the regulations for certification of states which are seeking reciprocity with the commonwealth;

(9) Review applications and supporting documents **and** [,] determine eligibility of applicants for examination[, and notify them of their status]; and

(10) Review and provide comments to the cabinet on proposed fees for training and certification of operators.

Section 3. Application for certification. (1) Application. An operator desiring to be certified shall file an application with the **cabinet. Applications may be reviewed by the** board[, preceding examination, on an application form provided by the board].

(2) Determining eligibility. The executive secretary-treasurer of the board will assemble all the information needed by the board to determine eligibility of the applicant for examination and certification.

Section 4. Examinations. (1) Examinations. The board and the cabinet shall be jointly responsible for preparation of the examinations to be used in determining knowledge, ability and judgment of the applicants.

(2) Scheduling examinations. Examinations will be conducted at least semiannually at places and times set by the cabinet, with a suitable method of advance announcements provided by the cabinet.

(3) Examinations. Except in cases which the board decides are proper exceptions, all examinations shall be written. All examinations shall be graded by the **cabinet, subject to appropriate review by the** board, or by its designated representative, and the applicant will be notified of the outcome. Applicants shall achieve a score of seventy (70) percent in order to pass the examination. Papers will not be returned to the applicant, but means will be provided to review the results with a member of the board or cabinet upon written request by the applicant.

Section **5.** [6.] Issuance of certificates. (1) Certification. Upon satisfactory fulfillment of the requirements of this regulation and upon recommendation of the board, the cabinet will issue a certificate to the applicant designating the classification of the water treatment plant or water distribution system for which the operator has demonstrated competency.

(2) Duration and renewal of certificates.

(a) Certificates for all operator classes, except limited as defined in Section **9** [10](2)(h) of this regulation, shall be valid for two (2) years after each renewal, unless revoked for cause or replaced by one of a higher classification. Certificates of operators shall expire on June 30 of even-numbered years, but may be renewed without examination, if the operator is in good standing, upon written application and submission of the applicable renewal fee. Operators desiring renewal shall return renewal requests to the cabinet by June 1 of even-numbered years.

(b) Limited certificates shall expire on June 30 of each year and shall be renewed upon request, after the holder of the certificate has complied with all requirements for proper operation of the facility under his or her charge and has submitted the applicable renewal fee. **Limited certificates terminate immediately if not renewed.**

(c) If operators have not requested and met the requirements for renewal of a certificate, the certificate shall lapse upon expiration and shall not be renewed without payment of the reinstatement fee specified in **401 KAR 8:050(3)(d)** [section 5] following procedures for reissuing set forth in Section **5(4)** [6(6)] of this regulation.

(3) Qualifications. Certified operators who desire to become certified in a higher classification shall satisfactorily complete the requirements for the higher classification before a new certificate is issued. Experience under a limited certificate shall not count toward fulfillment of qualifications for other classifications.

[(4) Inactive. Operators holding certificates in any operator classes, except limited, who terminate their employment as a water treatment plant or water distribution system operator, will be considered to have a valid certificate for the unexpired portion of the renewal period. Upon expiration of this period, the cabinet may move these certificates to inactive status, if the operator continues to pay his certificate renewal fee and maintains proper continuing education credits. The cabinet may activate an inactive certificate when the operator is again employed by a water treatment plant or distribution system; the operator submits to the cabinet an application for reactivation containing, at a minimum, the name of the plant or system by which he or she is employed; and the cabinet determines that all other current requirements for certification are met. After four (4) years, the certificate shall terminate if not renewed. Limited certificates terminate immediately if not renewed.]

(4) [(5)] Reissuing. **After four (4) years, the certificate shall terminate if not renewed.** Operators whose certificates have terminated may have their certificates reinstated, or be issued new certificates after passing an examination in the classification for which they are qualified, except for those revoked by a cabinet action.

(5) [(6)] Reciprocity. Certificates in a comparable classification may be issued, without examination, to any person who holds a certificate in any state, territory, or

possession of the United States, or any country, provided the requirements for certification of operators under which the person's certificate was issued are no less stringent than any provisions of KRS Chapter 223 and KRS Chapter 224 or the regulations promulgated pursuant thereto; and reciprocal privileges are granted to certified operators of the commonwealth.

(6) [(7)] Display. Wall certificates shall be prominently displayed in the office of the operator.

(7) [(8)] Wallet cards. Wallet cards showing current certification status shall be carried by the operator at all times while on duty.

(8) [(9)] Training requirements.

(a) Class I operators shall complete six (6) hours of training for renewal. Class II, III, and IV operators shall complete twelve (12) hours of appropriate cabinet-approved training for certificate renewal. Such training may include, but is not limited to, correspondence courses, short courses, trade association meetings, and on-the-job training courses. Training hours completed in any given biennium in excess of the minimum requirement necessary for renewal may be carried forward for one (1) renewal period. No training is required for holders of limited certificates.

(b) The cabinet may waive any or all of the requirements of paragraph (a) of this subsection for all or portions of a class of operators, as defined in section 9 of this regulation.

(c) Operators holding both treatment and distribution certificates shall be required to complete eighteen (18) hours of training for recertification in lieu of the requirements of subsection 8 [10](a) of this section.

Section 6. [7.] Revocation of Certificates. The cabinet may revoke the certificate of an operator, when the operator: has practiced fraud or deception in obtaining certification or in filing cabinet mandated reports; has not used reasonable care or judgment; has failed to apply knowledge in the performance of duties; or is incompetent, unable or unwilling to properly perform duties.

Section 7. [8.] Classification of Water Treatment Plants and Water Distribution Systems. (1) Classification. Classification shall be generally in accordance with the classes listed in subsection (2) of this section. However, the cabinet may make changes in classification in accordance with needs created by particular complexities of any specific plant or distribution system by reason of special features of design, or by reason of a source of supply that has characteristics that may make operation more difficult than normal, or a combination of such conditions. Due notice of any such change shall be given to the owner of the treatment plant and/or water distribution system.

(2) Water treatment plants.

(a) Class I.

1. (Class IA-D). All plants using physical treatment and disinfection, if the treatment plant operator is also responsible for the distribution system, and which serves a population less than 500.

2. (Class IB-D). All plants using only disinfection, if the treatment plant operator is also responsible for the distribution system, and which serves a population less than 500.

(b) Class II.

1. (Class IIA). All plants using physical and chemical treatment, including chemical coagulation, water softening processes, or filtration and disinfection, and serving a population equal to or greater than 500 and less than 3,000.

2. (Class IIB-D). All plants using only physical treatment and disinfection, if the treatment plant operator is also responsible for the distribution system, and which serves a population equal to or greater than 500 but less than 3,000.

3. (Class IIC-D). All plants using only disinfection, if the treatment plant operator is also responsible for the distribution system, and which serves a population equal to or greater than 500 but less than 3,000.

(c) Class III.

1. (Class IIIA). All plants using physical and chemical treatment, including chemical coagulation, water softening processes, or filtration and disinfection, and serving a population equal to or greater than 3,000 and less than 15,000.

2. (Class IIIB). All plants using only physical treatment and disinfection, and serving a population equal to or greater than 3,000 and less than 15,000.

3. (Class IIIC). All plants using only disinfection, and serving a population equal to or greater than 3,000 and less than 15,000.

(d) Class IVA. All plants using physical and chemical treatment, including chemical coagulation, water softening processes, or filtration and disinfection, and serving a population equal to or greater than 15,000.

(3) Water distribution system.

(a) Class ID. All distribution systems serving a population less than 1,500.

(b) Class IID. All distribution systems serving a population equal to or greater than 1,500 and less than 15,000.

(c) Class IIID. All distribution systems serving a population equal to or greater than 15,000 and less than 50,000.

(d) Class IVD. All distribution systems serving a population equal to or greater than 50,000.

(4) Limited. A limited classification is available to water treatment facilities for schools or semipublic water systems.

(5) Special. Special designation(s) may be added to any certificate when found necessary to show competency of the operator for a parameter of treatment or operation not covered by the basic requirements for standard classification set forth in this section.

Section 8. [9.] Classification of Water Treatment Plant and Water Distribution System Operators. Nine (9) classes of operators are established and designated as class I through class IV for water treatment, class I through class IV for distribution, and limited. Each operator classification relates directly to the corresponding classification of water treatment plant or water distribution system.

Section 9. [10.] Operator Qualifications: Experience, Education and Equivalencies. (1) Requirements. Applicants shall be examined by the cabinet regarding education, experience, and knowledge, as related to the classification of

water treatment plants or water distribution systems for which the application applies. Applicants shall pass the required written examination.

(2) Classification of water treatment plant operators. Experience and educational requirements of operators shall be based upon the following classifications:

(a) Class IA-D and Class IB-D.

1. Completion of high school or general education development (GED) test; and

2. One (1) year's acceptable operation of a Class I water system or higher.

(b) Class IIA.

1. Completion of high school or **GED** [general education development (GED) test]; and

2. Two (2) years' acceptable operation of a class IA-D or IIA water system or higher, with six (6) months of that experience in a class IIA treatment plant or higher.

(c) Class IIB-D and class IIC-D

1. Completion of high school or GED; and

2. For class IIB-D, two (2) years' acceptable operation of a class IA-D combined treatment and distribution system or higher, with six (6) months of that experience in a class IIB-D treatment plant or higher; or

3. For class IIC-D, two (2) years of acceptable operation of a class IB-D combined treatment and distribution system or higher with six (6) months in a class IIC-D treatment plant or higher.

(d) Class IIIA.

1. Completion of high school or GED; and

2. Three (3) years' acceptable operation of a class IIA treatment plant class IIA or higher.

(e) Class IIIB.

1. Completion of high school or GED; and

2. Three (3) years' acceptable operation of a class IIA or class IIB-D treatment plant or higher.

(f) Class IIIC.

1. Completion of high school or GED; and

2. Three (3) years' acceptable operation of a IIA, IIB-D, or IIC-D treatment plant or higher.

(g) Class IVA.

1. A baccalaureate degree from an accredited college or university; and

2. Three (3) years' acceptable operation of a treatment plant of class IIA or higher, with one (1) year of that experience being in a class IIIA treatment plant or higher.

(h) Limited classification. An operator of a water treatment facility for a school or for a semipublic water supply shall be entitled to a limited certificate of competency for his particular facility, if he has demonstrated to the cabinet that he has the knowledge and experience required to properly operate the particular water treatment facility for which he is responsible.

(3) Classification of water distribution system operators. The following requirements shall apply to the certification of distribution system operators:

(a) Class ID.

1. Completion of high school or **GED** [general education development (GED) test]; and

2. One (1) year's acceptable operation of a distribution system.

(b) Class IID.

1. Completion of high school or GED; and

2. Two (2) years' acceptable operation of a distribution system with six (6) months in a class IID distribution system or higher.

(c) Class IIID.

1. Completion of high school or GED; and

2. Three (3) years' acceptable operation of a distribution system of class IID or higher, with six (6) months of that experience in a class IIID distribution system or higher.

(d) Class IVD.

1. A baccalaureate degree from an accredited college or university; and

2. Three (3) years' acceptable operation of class II distribution systems or higher, with one (1) year of that experience being in a class III distribution system or higher.

(e) For operators who were certified in any classification on March 12, 1985, the requirement for a high school diploma or GED shall not preclude their advancing to the next higher classification than they held on that date.

(4) Substitution. Where applicable, education may be substituted for a portion of experience requirements, as specified below:

(a) No substitution for class I.

(b) Each year of college may be substituted for one (1) year of experience. College credits earned in engineering or allied sciences or an associate degree in engineering technology may, as approved by the board, be substituted for experience, limited to one (1) year for class II, two (2) years for class III, and three (3) years for class IV. Education applied to the experience requirement cannot also be applied to the educational requirement.

(c) If applicable, the cabinet may, at its discretion, authorize experience to be substituted for education requirements as specified below:

1. Two (2) years experience in active operation of a water system at a class II level or above will be considered equivalent to one (1) year of college. Eight (8) years of such experience may be substituted for the requirement of a college degree by a high school graduate or recipient of a GED.

2. Experience applied to education requirements may not also be applied to the experience requirement.

(d) For experience to be counted toward satisfying the education requirements of this section, the operator shall be certified during the time in which the experience is earned.

Section **10.** [11.] The following are incorporated by reference and are available for public inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the Division of Water, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) New York State Department of Health, "Manual of Instruction for Water Treatment Plant Operators," May 1990, which may be obtained from Health Education Service, P.O. Box 7126, Albany, New York 12224.

(2) "American Water Works Association Water Distribution Training Handbook," 1976, which may be obtained from the American Water Works Association, 6666 West Quincy Ave., Denver, Colorado, 80235.

(3) Kentucky Division of Water, "Training Manuals for Large Water Plant Operators," Finance Printing Press Frankfort, 1984, which may be obtained from the Division.

(4) Kentucky Division of Water, "Training Manual for Small Water Plant Operators," Finance

Printing Press, Frankfort, 1984; which may be obtained from the Division.

Section 11. [12.] Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.

Section 12. [13.] Repeal. 401 KAR 6:040, entitled Water treatment plants; water distribution systems; certification of operators, is hereby repealed.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 4, 1990
FILED WITH LRC: September 5, 1990 at 11 a.m.

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

401 KAR 8:040. Laboratory certification.

RELATES TO: KRS Chapter 224, 40 CFR 141.28
STATUTORY AUTHORITY: KRS 224.032, KRS 224.033; Public Law 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, Public Law 100-572, 42 U.S.C.A. 300f, 300g, 300j
NECESSITY AND FUNCTION: KRS Chapter 224.032 directs the cabinet to enforce the rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. This regulation provides procedures whereby commercial or water system laboratories may be certified to test for various contaminant groups or constituents within a contaminant group. This regulation will repeal Section 2(12) of 401 KAR 6:015 and all of 401 KAR 6:060, and is substantially rewritten.

Section 1. Laboratory certification. Certification of laboratories will be performed by the U.S. Environmental Protection Agency or the cabinet for all public water systems or commercial laboratories performing analyses for public water systems. Certification may be for one (1) or more contaminant groups or for a single constituent within a contaminant group. Each contaminant group requires a different certification, but different certifications may be accomplished during one (1) inspection.

Section 2. Application. Laboratories which desire certification shall submit a written request for such certification to [from] the cabinet. The cabinet will provide application forms and request other information necessary to furnish the cabinet with the data needed to determine suitability for certification.

Section 3. Standards. Laboratories shall be certified in accordance with the "Manual for the Certification of Laboratories Analyzing Drinking Water," incorporated in Section 14 of this regulation, and other stipulations contained in this regulation.

Section 4. Performance Evaluations. Performance evaluation (PE) samples may be required by the cabinet for certification or for maintenance of certification. For laboratories certified, or for those laboratories seeking certification to conduct chemical analyses, performance evaluations shall be performed.

Section 5. Certification of laboratories are performed by the cabinet for all public water system laboratories or commercial laboratories performing analyses for public water systems. Certifications will be performed on an annual basis with fees payable as set forth in 401 KAR 8:050.

Section 6. Public Water System Laboratories. Public water systems may establish their own laboratories. These laboratories shall be properly certified and shall maintain annual certification. Failure to achieve or maintain annual certification shall not relieve the public water system of the responsibility for reporting results of the required analyses from a certified laboratory.

Section 7. Requirements. Maintenance of certification shall be dependent on the following factors:

(1) Submittal of routine results. Except as provided in subsection (4) of this section, results of analyses performed in certified laboratories by and for public water systems shall be submitted to the cabinet by the tenth of the month following the specified testing period for which the samples were taken and shall be submitted to the public water system as soon as possible. The public water system is responsible for this reporting requirement.

(2) Performance evaluation. Performance evaluation (PE) samples shall be analyzed and the results submitted to the cabinet at the cabinet's request, not to exceed twice a year, unless the cabinet has reason to believe that quality assurance at a lab may be questionable.

(3) Deviations. Any deviation from accepted practice, listed on a report resulting from an on-site inspection, shall be corrected. A written explanation of such deviation and steps taken to correct it shall be submitted to the cabinet within thirty (30) days of the issuance of the inspection report.

(4) Violations. The laboratory shall report any violation of maximum contaminant levels or other violation of tier one violations, as explained in 401 KAR 8:070, to the public water system and the cabinet within twenty-four (24) hours of sample analysis. The public water system shall begin check sampling within twenty-four (24) hours of notification of the violation.

(5) Twenty-four (24) hour call. Laboratories shall make provision for a twenty-four (24) hour emergency testing service.

(6) Minimum microbiological requirements. Laboratories certified to perform microbiological testing shall run a minimum of twenty (20) microbiological samples per month.

New laboratories shall meet this standard within six (6) months of certification. Any significant deviation from this standard may result in decertification.

Section 8. Right of Entry. The certified lab shall permit the cabinet to conduct on-site surveys during normal business hours, without prior notification.

Section 9. Revocation of certification and downgrading of certification shall be in accordance with the procedures set forth in the "Manual for the Certification of Laboratories Analyzing Drinking Water" incorporated in Section 11 of this regulation. Laboratories which have been notified of a change of certification shall, within seventy-two (72) hours, notify public water systems which the laboratory serves, of the change in certification status and any impact that change could have on the public water system. Laboratories may, with permission of the cabinet, and after notice to the public water system, fulfill their obligations to public water systems to provide monitoring reports by contracting with a certified laboratory.

Section 10. Recognition of Out-of-state Laboratories. The cabinet may recognize laboratories outside of Kentucky upon submission of proof of Environmental Protection Agency certification, certification by a state having primary enforcement responsibility for the provisions of the Safe Drinking Water Act, or such other proof as the cabinet may require. Any Kentucky water system may enter into a contract with a certified out-of-state laboratory, if reporting time intervals and capabilities are maintained. If on-site inspection is necessary for certification of out-of-state laboratories, the laboratories shall bear the cost.

Section 11. All analyses required by 401 KAR 8:010 through 8:700, inclusive, shall be performed in a certified laboratory and shall be in accordance with methods approved for drinking water by the United States Environmental Protection Agency (US EPA) or by the cabinet. The following documents are incorporated by reference and are available for inspection and copying between 8 a.m. and 4:30 p.m., Monday through Friday, at the Division of Water, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Standard Methods for the Examination of Water and Wastewater, 16th edition, 1985, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. This publication is printed, distributed and may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

(2) "Manual for the Certification of Laboratories Analyzing Drinking Water," EPA 570/9-90/008, April 1990, U.S. EPA, Office of Drinking Water, Washington, D.C. This publication may be obtained through the division.

Section 12. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.

Section 13. Repeal. Section 2(12) of 401 KAR 6:015 public and semipublic water supplies is hereby repealed; and 401 KAR 6:060 is hereby repealed in its entirety.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 4, 1990
FILED WITH LRC: September 5, 1990 at 11 a.m.

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

401 KAR 8:070. Public notification.

RELATES TO: KRS Chapter 224, 40 C.F.R. Parts 141, 142, 143.5.

STATUTORY AUTHORITY: KRS 224.032, 224.033, Public Law 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, Public Law 100-572, 42 U.S.C.A. 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. This regulation relates to notification of the public when these regulations have been violated by a public or semipublic water system. It has been substantially revised to reflect amendments to the Safe Drinking Water Act, and it will replace the public notification requirements of 401 KAR 6:015 (12).

Section 1. Notification for Tier One Violations. The owner or operator of a public or semipublic water system which fails to comply with an applicable maximum contaminant level or treatment technique established by 401 KAR 8:010 through 401 KAR 8:700, inclusive, or which fails to comply with the requirements of any schedule prescribed pursuant to a variance or exemption, shall notify the public in accordance with the requirements of this section. These violations are tier one violations and may be designated by the cabinet as ordinary or acute, with acute violations representing a class of violation which may represent an immediate threat to the public health, requiring consumers to take special precautions.

(1) Community public water systems. The owner or operator of a community public water system shall provide notice of any tier one violation in the following manner:

(a) Newspaper. By publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but in no case later than fourteen (14) days after the violation or failure has occurred. If the area served by a public water system is not served by a daily newspaper of general circulation, notice

shall instead be given by publication in a weekly newspaper of general circulation serving the area; and

(b) Mail. By mail delivery (by direct mail or with the water bill), or by hand delivery, no later than forty-five (45) days after the violation or failure. The cabinet may waive mail or hand delivery if it determines that the owner or operator of the public water system in violation has corrected the violation or failure within the forty-five (45) day period. The cabinet, if it chooses to issue a waiver, will issue the waiver in writing and within the forty-five (45) day period; and

(c) Acute violation. For violations of acute tier one standards the owner or operator of the public water system shall furnish copies of the public notification to radio and television stations serving the area served by the public water system as soon as possible, but in no case later than seventy-two (72) hours after notice of the violation is received by the public water system from the laboratory. The following violations are acute violations:

1. Violations of the maximum contaminant level for coliform bacteria, confirmed by a check sample as provided in 401 KAR 8:200;

2. Violation of the maximum contaminant level for nitrate, as provided in 401 KAR 8:250; and

3. Any other violation that the cabinet or public water system determines calls for special care by the consumer.

(d) Repeat notice. For as long as the violation continues, the owner or operator of the public water system shall give notice at least once every three (3) months by mail delivery (by direct mail or with the water bill) or by hand delivery.

(e) Newspaper not available. Community water systems in an area not served by a daily or weekly newspaper of general circulation may satisfy the requirements of this subsection by giving notice, within fourteen (14) days of the violation or failure, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation or failure exists. Notice by hand delivery shall be repeated at least once every three months for as long as the violation or failure exists.

(2) Noncommunity public water systems. The owner or operator of noncommunity water systems may comply with the notice requirements of this section by giving notice within seventy-two (72) hours for acute violations or within fourteen (14) days after any other violation or failure by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation or failure exists. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation or failure exists.

(3) Semipublic. The owner or operator of semipublic water systems may be required to give notice equivalent to the requirements of noncommunity systems at the discretion of the cabinet.

Section 2. Notification for Tier Two Violations. The owner or operator of a public or semipublic water system which fails to perform the monitoring required by 401 KAR 8:010 through 401 KAR 8:700, inclusive, fails to make a report required by 401 KAR 8:010 through 401 KAR 8:700, inclusive, [these regulations,] fails to comply with a testing procedure established by 401 KAR 8:010 through 401 KAR 8:700, inclusive, [these regulations,] is subject to a variance to 401 KAR 8:010 through 401 KAR 8:700, inclusive, [these regulations] granted by the cabinet, or is subject to an exemption from 401 KAR 8:010 through 401 KAR 8:700, inclusive, [these regulations] granted by the cabinet, shall notify persons served by the system as prescribed in this section. Such violation or receipt of a variance or exemption shall be considered a tier two category violation.

(1) Community systems. The owner or operator of community public water systems shall give notice of tier two violations in the following manner:

(a) Newspaper. Notice of tier two violations shall be made by the owner or operator of a community public water system, within three (3) months of the violation or granting of a variance or exemption, by publication in a daily newspaper of general circulation in the area served by the system. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area.

(b) Repeat notice. Following the initial notice given under this section, the owner or operator of the public water system shall give notice at least once every three (3) months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists. Repeat notice of the existence of a variance or exemption shall be given for as long as the variance or exemption remains in effect.

(c) Notice when newspaper not available. The owner or operator of community water systems not being served by a daily or weekly newspaper of general circulation may meet the requirements of paragraphs (a) and (b) of this subsection by giving notice, within three (3) months of the violation or granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation exists or a variance or exemption remains in effect. Notice by hand delivery must be repeated at least once every three (3) months for as long as the violation exists or a variance or exemption remains in effect.

(2) Noncommunity public water systems. The owner or operator of a noncommunity water system may comply with the notice provisions of this section by giving notice, within three (3) months of the violation or the granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation exists or the variance or exemption remains in effect. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation exists or a variance or exemption remains in effect.

(3) Semipublic. The owner or operator of semipublic water systems may be compelled to give the notice required of noncommunity systems when public health considerations require it.

(4) Reduction in notification frequency. The

cabinet may reduce notification frequency for minor violations when criteria for such reduction have been approved as a program revision, as stipulated by the United States Environmental Protection Agency.

Section 3. New Billing Units. The owner or operator of a community water system shall give a copy of the most recent public notice for any outstanding tier one violation to all new billing units or new hookups prior to, or at the time service begins.

Section 4. General Content of Public Notices. Each notice required by this regulation shall provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the population at risk, the steps that the public water system is taking to correct such violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected. Each notice shall be conspicuous; shall not contain unduly technical language, unduly small print, or other problems that frustrate the purpose of the notice; and, where appropriate, the notice shall be multilingual. Each notice shall include the name and telephone number of the owner, operator or designee of the public water system as a source of additional information concerning the notice.

Section 5. Proof of Notice. (1) How to submit. All public notices required by this regulation shall be submitted to the cabinet. In the case of newspaper advertisements, a copy of the complete page of the newspaper or newspapers in which the advertisement appeared and the date of its appearance, shall be submitted by the water system. A copy of notices that are hand delivered or mailed shall be mailed to the cabinet, along with an affidavit signed by the operator or owner of the water system stating that all consumers were notified. Mailing to the cabinet shall take place the same day as hand delivery or mailing to the public. If the notice is posted, the owner or operator of the water system shall submit a copy of the notice and an affidavit stating where such notices were placed. All notices to the cabinet shall be addressed to the Division of Water, Drinking Water Branch, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

(2) Public notification by the cabinet. The cabinet may give the notice to the public required by this section on behalf of the owner or operator of the public water system. However, the owner or operator of the public water system remains legally responsible for ensuring that the requirements are met.

(3) Failure to submit proof of notice. The cabinet may construe failure to submit proof of notice as evidence that the public water system has failed to notify the public. When the public water system fails to submit proof of notice within thirty (30) days of any requirement for notice, the cabinet may submit the notice to be published, with the cost of publication to be billed to the public water system by the publishing entity. Any costs incurred by the cabinet to notify the public, resulting from the failure of the public water system to do so, may be recovered by the cabinet.

Section 6. Mandatory Language for Tier One Violations. Public notice for those contaminants listed in this section shall contain language in addition to the information on potential adverse health effects required by section 4 of this regulation. The owner or operator of a public water system shall include the language specified below for each contaminant listed in those notices. The following mandatory-health-effects language shall be published intact and may not include inserted material not prescribed by this regulation:

(1) Trichloroethylene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that trichloroethylene is a health concern at certain levels of exposure. This chemical is a common metal cleaning and dry cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set forth the enforceable drinking water standard for trichloroethylene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(2) Carbon tetrachloride. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that carbon tetrachloride is a health concern at certain levels of exposure. This chemical was once a popular household cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for carbon tetrachloride at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(3) 1,2-Dichloroethane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2-dichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaning fluid for fats, oils, waxes, and resins. It generally gets into drinking water from improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,2-dichloroethane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed

in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(4) Vinyl chloride. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that vinyl chloride is a health concern at certain levels of exposure. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. The solvents are used as cleaners and degreasers of metals and generally get into drinking water by improper waste disposal. This chemical has been associated with significantly increased risks of cancer among certain industrial workers who were exposed to relatively large amounts of this chemical during their working careers. This chemical has also been shown to cause cancer in laboratory animals when the animals are exposed at high levels over their lifetimes. Chemicals that cause increased risk of cancer among exposed industrial workers and in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for vinyl chloride at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(5) Benzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that benzene is a health concern at certain levels of exposure. This chemical is used as a solvent and degreaser of metals. It is also a major component of gasoline. Drinking water contamination generally results from leaking underground gasoline and petroleum tanks or improper waste disposal. This chemical has been associated with significantly increased risks of leukemia among certain industrial workers who were exposed to relatively large amounts of this chemical during their working careers. This chemical has also been shown to cause cancer in laboratory animals when the animals are exposed at high levels over their lifetimes. Chemicals that cause increased risk of cancer among exposed industrial workers and in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for benzene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(6) 1,1-Dichloroethylene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1-dichloroethylene is a health concern at certain levels of exposure. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. The solvents are used as cleaners and degreasers of metals and generally get into drinking water by improper waste disposal. This chemical has been shown to cause liver and kidney damage in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1-dichloroethylene at 0.007 parts per million (ppm) to reduce the risk of these adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(7) Para-dichlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that para-dichlorobenzene is a health concern at certain levels of exposure. This chemical is a component of deodorizers, moth balls, and pesticides. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause liver and kidney damage in laboratory animals such as rats and mice when the animals are exposed to high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for para-dichlorobenzene at 0.075 parts per million (ppm) to reduce the risk of these adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(8) 1,1,1-Trichloroethane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1,1-trichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaner and degreaser of metals. It generally gets into drinking water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and circulatory system of laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during their working careers also suffered damage to the liver, nervous system, and circulatory system. Chemicals which cause adverse effects among exposed industrial workers and in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1,1-trichloroethane at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(9) Fluoride. The United States Environmental Protection Agency (EPA) requires that we send you this notice on the level of fluoride in your drinking water. The drinking water in your community has a fluoride concentration of _____ (Public Water Supply shall insert the compliance result which triggered public notice) milligrams per liter (mg/l).

Federal regulations require that fluoride, which occurs naturally in your water supply, not exceed a concentration of 4.0 mg/l in drinking water. This is an enforceable standard called a Maximum Contaminant Level (MCL), and it has been established to protect the public health.

Exposure to drinking water levels above 4.0 mg/l for many years may result in some cases of crippling skeletal fluorosis, which is a serious bone disorder.

Federal law also requires that we notify you when monitoring indicates that the fluoride in your drinking water exceeds 2.0 mg/l. This is intended to alert families about dental problems that might affect children under nine (9) years of age. The fluoride concentration of your water exceeds this federal guideline.

Fluoride in children's drinking water at levels of approximately 1.0 mg/l reduces the number of dental cavities. However, some children exposed to levels of fluoride greater than about 2.0 mg/l may develop dental fluorosis. Dental fluorosis, in its moderate and severe forms, is a brown staining and/or pitting of the permanent teeth.

Because dental fluorosis occurs only when developing teeth (before they erupt from the gums) are exposed to elevated fluoride levels, households without children are not expected to be affected by this level of fluoride. Families with children under the age of nine (9) are encouraged to seek other sources of drinking water for their children to avoid the possibility of staining and pitting. Your water supplier can lower the concentration of fluoride in your water so that you will still receive the benefits of cavity prevention while the possibility of stained and pitted teeth is minimized. Removal of fluoride may increase your water costs. Treatment systems are also commercially available for home use. Information on such systems is available at the address given below. Low fluoride bottled drinking water that would meet all standards is also commercially available. For further information contact _____ (Public Water Supply shall insert the name, address and telephone number of a contact person) at your water system.

Section 7. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.

Section 8. Repeal. Section 12 of 401 KAR 6:015, Public and semipublic water supplies, is hereby repealed.

FRANK DICKERSON, Commissioner
CARL M. BRADLEY, Secretary
APPROVED BY AGENCY: September 4, 1990
FILED WITH LRC: September 5, 1990 at 11 a.m.

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

401 KAR 8:100. Design, construction and approval of new or modified facilities.

RELATES TO: KRS Chapter 224; 40 CFR Part 141
STATUTORY AUTHORITY: KRS 224.032, 224.033, Public Law 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, Public Law 100-572, 42 U.S.C.A. 300f, 300g, 300j
NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. This regulation sets out design plan requirements for the construction of new and expanded facilities that deliver pure water for public or semipublic use. This regulation will repeal Section 3 of 401 KAR 6:015 and contains minor revisions.

Section 1. Plans and Specifications. (1) Plans to be submitted. Before a supplier or potential supplier of water may enter into a financial commitment for or initiate construction of a new public water system, or increase the capacity of an existing public water system, he shall submit the preliminary plans to the cabinet. An applicant shall demonstrate to the cabinet evidence of efforts to avoid locating part or all of the new or expanded facility at a site which is subject to a significant risk from earthquakes, floods, fires or other disasters which could cause a breakdown of the public water system or a portion thereof. Except for the intake structure, the facility shall be out of the 100-year flood plain.

(2) Preliminary information. The following information shall be submitted to the cabinet by a professional engineer on behalf of the applicant along with the fee required by 401 KAR 8:050 Section 1(1):

(a) The names of the applicant and the owner of the plant;

(b) A United States Geological Survey quadrangle map which shows the location of the proposed facility;

(c) The proposed source of water and quantity available, with the location of the intake or wellhead identified by latitude and longitude in degrees, minutes and seconds;

(d) An analysis of the water from the proposed source, which covers all regulated parameters, performed by a laboratory certified by the cabinet or its authorized agent;

(e) A description of the proposed facility, including size, flow rate through filters, settling basin size, and other general criteria; and

(f) An operation plan, including anticipated load, hours of operation, area served and the name of the plant operator.

(3) Preliminary plans approval. Upon receipt and review of the preliminary plans, as set forth in subsection (1) of this section, the cabinet will either approve the preliminary plans or return them to the supplier of water for revision. Approval of the preliminary plans signifies approval only of the concept described in the preliminary plans and does not alter in any way the responsibility of the supplier of water to submit complete plans and specifications to the cabinet for final approval. The facility shall comply with the approved preliminary plans. Any change in the final design from the concept set forth in the preliminary plans shall be approved prior to its incorporation in the final plans and

specifications.

(4) Preliminary plans for semipublic treatment facilities or distribution systems. Preliminary plans are not required by the cabinet for semipublic treatment facilities or for distribution system construction, extensions or improvements.

(5) Final plans and specifications for water treatment plants and distribution facilities.

(a) Plans for the construction or modification of public water systems shall be submitted by the water system or shall be accompanied by a letter from the water system confirming that it has reviewed the plans, accepts the design and can and will provide water service to the project. Public water systems which purchase water from another public water system, shall also submit a letter from the seller of water for all construction or modification projects if: such project will result in exceeding eighty-five (85) percent of the purchasers current purchase contract; or such project could result in a pressure reduction below thirty-five (35) pounds per square inch in either the purchaser's or the seller's system; or, such project will result in a demand for water by the purchaser in excess of a 10,000 gallon per day increase.

(b) Plans and specifications for all public water systems shall be prepared and submitted to the cabinet by a professional engineer registered in Kentucky, and shall bear his seal. The seal of a professional engineer is not required on plans and specifications for semipublic water supplies, for public water system projects for repair or maintenance of an existing system that cost less than $2,000, or for public water systems projects for the construction, repair or maintenance of a new facility that cost less than $25,000. The construction or installation of any new facilities or works or the alteration or reconstruction of any existing facilities or works, in any public or semipublic water system, shall not begin until four (4) copies of the plans and specifications, or any changes thereto, together with design data as may be required for proper review of the plans, have been submitted to the cabinet and have been approved by the cabinet in writing. A complete package, including plans, specifications, necessary fees, letters and other information, shall be submitted in such form and content as may be specified by the cabinet, and shall be submitted at least thirty (30) days prior to the date on which action is requested of the cabinet. The front page of the plans shall contain the name of the water supply, its ownership, location by city and county, and the name of the person preparing the plans.

(c) The cabinet's review of plans is limited to sanitary features of design and other features of public health significance and does not include an examination of structural, mechanical or electrical design or economic factors.

(d) The plans shall be drawn to scale and accompanied by proper specifications, so as to permit a comprehensive engineering review, and shall include, but not be limited to, the following:

1. If treatment facilities are involved, chemical analyses of the proposed raw water source or sources shall be performed and evaluated before final approval is granted;

2. A plan and sectional view with all necessary dimensions of the water treatment facilities;

3. A piping diagram showing all appurtenances, including treatment facilities, in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system; and

4. Specifications containing details on all treatment equipment, including catalog identification of pumps, chlorinators, chemical feeders and related equipment.

(6) Approval of final plans. If approved, one (1) set of plans and specifications stamped "approved" will be returned to the engineer or person who prepared them and one set will be returned to the water supply.

(7) Construction.

(a) During construction, a set of approved plans and specifications shall be available at the job site at all times. All work shall be performed in accordance with the approved plans and specifications.

(b) If the cabinet's representative observes work being performed in a manner which does not conform to the approved plans and specifications, the cabinet will notify the owner in writing [of any noncompliance].

(8) Final approval of facility. Upon completion of construction, the person who presented the plans shall certify in writing that the project has been completed in accordance with the "approved" plans and specifications. The public water supply shall operate the facility consistent with the approved plans and specifications.

(9) Expiration of approval. Unless construction is begun within one (1) year from date of approval, the approval shall expire. Extension of approval may be granted upon written request to the cabinet.

Section 2. The following documents are hereby incorporated by reference and are available for public inspection and copying between 8:00 a.m. and 4:30 p.m., Monday through Friday, at the Division of Water, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers "Recommended Standards for Water Works," 1987, published by and available from Health Research Inc., Health Education Services Division, P.O. Box 7126, Albany, New York 12224.

(2) "General Design Criteria for Surface and Ground Water Supplies" which is published by and may be obtained from the Division of Water; and

(3) "Water Policy Memorandum number 84-02, General Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed within Five Miles Upstream from Public Water Supply Sources, or for the Location of Public Water Supply Intakes within Five Miles Downstream from Wastewater Discharges", which is published by and may be obtained from the Division of Water.

Section 3. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.

Section 4. Repeal. Section 3, 401 KAR 6:015, Public and Semipublic Water Supplies, is hereby repealed.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 5, 1990
FILED WITH LRC: September 5, 1990 at 11 a.m.

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

401 KAR 8:150. Disinfection and filtration.

RELATES TO: KRS Chapter 224, 40 C.F.R. Parts 141, 142

STATUTORY AUTHORITY: KRS 224.032, 224.033, Public Law 93-523, The Safe Drinking Water Act as amended in 1986 and by the Lead Contamination and Control Act of 1988, Public Law 100-572, 42 U.S.C.A. 300, 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. This regulation sets out requirements for the disinfection and filtration of drinking water. It is anticipated that this regulation will be amended or replaced in the near future as a result of the Surface Water Treatment rule or the Total Coliform rule published in the Federal Register June 29, 1989. This regulation repeals Section 2 (9) and (10) of 401 KAR 6:015 and contains minor revisions.

Section 1. Disinfection. (1) Obligation to disinfect. All public and semipublic water supplies shall provide disinfection. Supplies which use chlorine shall use a continuous automatic disinfection by chlorination and shall provide a minimum free chlorine residual of two-tenths (0.2) milligrams per liter (or ppm) at all points throughout the distribution system. A contact period of at least thirty (30) minutes shall be provided between the chlorine and the water to allow adequate time for disinfection. For those supplies using chlorine, free chlorine residuals shall be checked daily at representative points throughout the system and shall be reported pursuant to 401 KAR 8:020, Section 2(7)[(8)](a). Disinfecting agents other than chlorine, such as chloramines and chlorine dioxide, may be acceptable to the cabinet but must be specifically approved by the cabinet on a case-by-case basis. If chloramination is used, a minimum combined residual of one-half (0.5) milligrams per liter (or ppm) shall be provided throughout the distribution system. If chlorine dioxide is used, the concentration of combined oxidants (chlorine dioxide, chlorate and chlorite) shall not exceed one (1.0) milligram per liter (or ppm) in the water delivered to the distribution system.

(2) Disinfection of water lines. All water distribution systems, including storage distribution tanks, repaired portions of existing systems or all extensions to existing systems, shall be thoroughly disinfected before being placed in service. Water distribution shall disinfect with chlorine or chlorine compounds, in such amounts as to produce a concentration of at least fifty (50) ppm and a residual of at least twenty-five (25) ppm at the end of twenty-four (24) hours, followed by a thorough flushing. New water distribution lines shall not be placed into service until bacteriological samples taken at the points specified in paragraph (a) of this subsection are examined and are shown to be negative following disinfection. Other methods of disinfection may be used with the written permission of the cabinet.

(a) Water distribution systems shall submit to the cabinet results of bacteriological samples [shall be submitted] for each new construction project, routine repair (which includes restoration of pressure to lines where pressure is lost), replacement, or extension to existing systems, after the disinfection and flushing. A core zone, which includes up to the first one-half mile, shall be established. Two (2) samples shall be taken from the core zone. Additionally, one (1) sample taken from each mile of new distribution line shall be submitted to the cabinet. New or routine replacement lines shall not be placed in service until negative laboratory results are obtained on the bacteriological analyses. Sample bottles shall be clearly identified as "special" construction tests. Notification of analytical results shall be given to the cabinet by the most expedient method. Other disinfection methods and testing procedures may be used if the cabinet grants prior written approval.

(b) When emergency repairs, due to breaks or ruptures in distribution system lines are required, public water systems may suspend bacteriological sampling, if appropriate and thorough flushing safeguards, with a chlorine residual present, are taken. When this suspension is exercised, records of flushing and chlorine residuals shall be maintained for one (1) year, and bacteriological tests shall be conducted after returning the line to service with records of results maintained for one (1) year. In all cases of loss of pressure below twenty (20) pounds per square inch or breaks or ruptures requiring more than four (4) hours to repair, the public water systems shall notify the cabinet immediately pursuant to 401 KAR 8:020, Section 2(7)(c). These emergency reports are not required for a loss of pressure, break or rupture occurring in service lines serving only one (1), single family residence. [In all cases of breaks, ruptures or other loss of pressure, the public water system shall notify the cabinet immediately pursuant to 401 KAR 8:020, Section 2(8)(c).]

Section 2. Filtration. All public water systems using a surface water source and all ground water systems under the direct influence of surface water shall establish filtration systems. The design for such systems shall be submitted to the cabinet in accordance with 401 KAR 8:100.

Section 3. Severability. If any provision of this regulation is set aside by a court of

competent jurisdiction, the remainder of this regulation remains in effect.

Section 4. Repeal. Section 2, subsections (9) and (10) of 401 KAR 6:015, Public and semipublic water supplies, are hereby repealed.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 5, 1990
FILED WITH LRC: September 5, 1990, at 11 a.m.

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

401 KAR 8:200. Microbiological and turbidity monitoring.

RELATES TO: KRS Chapter 224, 40 C.F.R. Part 141
STATUTORY AUTHORITY: KRS 224.032, 224.033, Public Law 93-523, The Safe Drinking Water Act, as amended in 1986, and by the Lead Contamination and Control Act of 1988, 42 U.S.C.A. 300f, 300g, 300j
NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce the rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. This regulation sets out a schedule and method for sampling drinking water to test for bacteriological contaminants and establishes maximum contaminant levels for bacteria. This regulation also specifies requirements if tests show maximum contaminant levels have been exceeded, as well as requirements for monitoring turbidity. This regulation repeals Sections 5 and 6 of 401 KAR 6:015 and contains no substantial changes.

Section 1. All suppliers of water operating a public or semipublic water system, including suppliers operating those systems which provide water purchased from another system, shall meet the requirements of this regulation.

(1) Sampling frequency. Suppliers of water for all public water systems shall collect samples to be analyzed for total coliform bacteria per 100 milliliters of water. Coliform density samples shall be taken at regular time intervals and in numbers proportionate to the population served by the system. In no event shall the frequency be less than that set forth as follows:

MINIMUM NUMBER OF SAMPLES PER MONTH

Population Served	Minimum Number Samples	Population Served	Minimum Number Samples
25 - 2,500	2	37,001 - 41,000	45
2,501 - 3,300	3	41,001 - 46,000	50
3,301 - 4,100	4	46,001 - 50,000	55
4,101 - 4,900	5	50,001 - 54,000	60
4,901 - 5,800	6	54,001 - 59,000	65
5,801 - 6,700	7	59,001 - 64,000	70
6,701 - 7,600	8	64,001 - 70,000	75
7,601 - 8,500	9	70,001 - 76,000	80
8,501 - 9,400	10	76,001 - 83,000	85
9,401 - 10,300	11	83,001 - 90,000	90
10,301 - 11,100	12	90,001 - 96,000	95
11,101 - 12,000	13	96,001 - 111,000	100
12,001 - 12,900	14	111,001 - 130,000	110
12,901 - 13,700	15	130,001 - 160,000	120
13,701 - 14,600	16	160,001 - 190,000	130
14,601 - 15,500	17	190,001 - 220,000	140
15,501 - 16,300	18	220,001 - 250,000	150
16,301 - 17,200	19	250,001 - 290,000	160
17,201 - 18,100	20	290,001 - 320,000	170
18,101 - 18,900	21	320,001 - 360,000	180
18,901 - 19,800	22	360,001 - 410,000	190
19,801 - 20,700	23	410,001 - 450,000	200
20,701 - 21,500	24	450,001 - 500,000	210
21,501 - 22,300	25	500,001 - 550,000	220
22,301 - 23,200	26	550,001 - 600,000	230
23,201 - 24,000	27	600,001 - 660,000	240
24,001 - 24,900	28	660,001 - 720,000	250
24,901 - 25,000	29	720,001 - 780,000	260
25,001 - 28,000	30	780,001 - 840,000	270
28,001 - 33,000	35	840,001 - 910,000	280
33,001 - 37,000	40	910,001 - 970,000	290
		970,001 - 1,050,000	300

(2) Population-served calculation. For purposes of determining the population served, the applicable method below shall be used:

(a) When the supplier of water serves an area defined by an official census count or a population projection, the most recent census count or official population projection shall be used; or

(b) When no official figures on population are available on the area served by a supplier of water, the population served shall be considered to be a factor of not less than three and three-tenths (3.3) times the number of residential connections or a factor of not less than three (3) times the total number of all connections, whichever is greater.

(3) Semipublic systems. Suppliers of water for semipublic water systems shall cause samples to be tested, for the purpose of determining coliform density, at least twice per month.

(4) Sampling schedule. Each public and semipublic water system shall take routine samples for the purpose of determining coliform density. No more than half of the samples shall be taken in one (1) week [and half of the samples shall be taken on a different week of the month]. Results of the analyses of the samples shall be submitted to the cabinet no later than ten (10) days after the end of the month for which the samples were taken. If the tenth day falls on a Saturday, Sunday or holiday the results shall be submitted on the following working day. A noncommunity water system shall sample for total coliform bacteria per 100 milliliters twice each month of operation. Seasonally operated facilities shall notify the cabinet in writing in advance as to the opening and closing dates covered by such sampling requirements. This frequency may be changed by the cabinet on the basis of subsequent surveys and conditions.

(5) Forwarding samples. The cabinet shall, upon request, notify any water supplier as to those commercial or state laboratories, certified in accordance with 401 KAR 8:040, to which samples may be sent for coliform density analysis. The samples shall be forwarded to a certified laboratory by the most expeditious or speedy method available to the water supply.

(6) Sampling points. The water supply shall sample for coliform analysis shall be taken at representative points throughout the water distribution system. Different sampling points shall be designated by the water supply,

including remote points in the distribution system. When the sample is collected, the free chlorine residual shall be determined and recorded on the form provided with the sample container. Bacteriological sampling forms shall be fully and accurately completed or the sample shall be invalid.

(7) Sample collection. Samples taken by or on behalf of public water systems shall be collected in bottles prepared and sterilized in accordance with "Standard Methods". Any disinfecting agent shall be removed from the sample at the time of its collection. A distributor of water collecting bacteriological samples for analysis in its own certified laboratory may use containers other than bottles, if this practice is approved in writing by the cabinet.

(8) Analytical techniques and maximum contaminant levels for bacteriological contamination. The analysis for the determination of bacteriological contamination shall be determined by either the membrane filter technique or the multiple tube fermentation technique (MPN procedure). The analysis shall be conducted in accordance with "Standard Methods" except that a standard sample size shall be employed. The standard sample used in the membrane filter procedure shall be 100 milliliters. The standard sample used in the five (5) tube most probable number (MPN) procedure (fermentation tube method) shall be five (5) times the standard portion. The standard portion is either ten (10) milliliters or 100 milliliters, as described herein.

(9) Maximum bacteriological contaminant level, membrane filter technique. When the membrane filter technique is used, the number of coliform bacteria shall not exceed any of the following:

(a) One (1) per 100 milliliters as the arithmetic mean of all samples examined per month pursuant to subsection (1) of this section except that, at the cabinet's discretion, systems required to take ten (10) or fewer samples per month may be authorized to exclude one (1) positive routine sample per month from the monthly calculation if:

1. As approved on a month-to-month basis, the cabinet determines and notifies the public water system that no unreasonable risk to health would exist under the conditions of this modification. A notification may be based upon, but is not limited to, the following:

a. The fact that the system provides and maintains an active disinfectant residual in the distribution system;

b. The potential for contamination, as indicated by a sanitary survey; and

c. The history of water quality at the public water system, including, but not limited to, MCL or monitoring violations;

2. The supplier initiates a check sample on each of two (2) consecutive days from the same sampling point, within twenty-four (24) hours after notification that the routine sample is positive, and each check sample is negative; and

3. The original positive routine sample is reported to the cabinet and recorded by the supplier pursuant to the provisions of 401 KAR 8:020 Section 2(8). The supplier shall report to the cabinet its compliance with the conditions specified in this subparagraph and a summary of the action taken to correct the prior positive sample result. If a positive routine sample is not used for the monthly calculation, another routine sample shall be analyzed for compliance purposes. This provision may be used only once during two (2) consecutive compliance periods.

(b) Four (4) per 100 milliliters in more than one (1) sample when less than twenty (20) are examined per month.

(c) Four (4) per 100 milliliters in more than five (5) percent of the samples when twenty (20) or more are examined per month.

(10) Maximum bacteriological contaminant level, multiple tube fermentation technique (MPN procedure).

(a) Ten (10) milliliter standard tube. When the fermentation tube method and ten (10) milliliter standard tube are used, coliform bacteria shall not be present in any of the following:

1. More than ten (10) percent of the tubes in any month except that, at the cabinet's discretion, systems required to take twenty (20) or fewer samples per month may be authorized to exclude one (1) positive routine sample, resulting in one (1) or more positive tubes per month, from the monthly calculation, if:

a. As approved on a case-by-case basis, the cabinet determines and notifies the public water system, in writing, that no unreasonable risk to health exists under the conditions of this modification. A notification may be based upon, but not limited to, the following:

(i) The provision and maintenance, by the system, of an active disinfectant residual in the distribution system;

(ii) The potential for contamination, as indicated by a sanitary survey; and

(iii) The history of the water quality at the public water system (e.g., MCL or monitoring violations);

b. The supplier initiates a check sample on each of two (2) consecutive days, from the same sampling point, within twenty-four (24) hours after notification that the routine sample is positive, and each check sample is negative; and

c. The original positive routine sample is reported to the cabinet and recorded by the supplier pursuant to the provisions of 401 KAR 8:020 Section 2(8), the supplier reports to the cabinet its compliance with the conditions specified in this paragraph, and reports the action taken to correct the prior positive sample result. If a positive routine sample is not used for the monthly calculation, another routine sample shall be analyzed for compliance purposes. This provision shall be used only once during two (2) consecutive compliance periods;

2. Three (3) or more tubes in more than one (1) sample when less than twenty (20) samples are examined per month; or

3. Three (3) or more tubes in more than five (5) percent of the samples when twenty (20) or more samples are examined per month.

(b) 100 milliliter standard sample. When the fermentation tube method and 100 milliliter standard samples are used, coliform bacteria shall not be present in any of the following:

1. More than sixty (60) percent of the tubes in any month;

2. Five (5) tubes in more than one (1) sample, when less than five (5) samples are examined per month; or

3. Five (5) tubes in more than twenty (20) percent of the samples, when five (5) or more samples are examined per month.

(11) Bacteriological check sampling. Check sampling shall begin within twenty-four (24)

hours of the time of notification of sample analysis and is the responsibility of the public water system. The following check sampling levels are established:

(a) Membrane filter technique. When coliform bacteria occur in a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet, until the results obtained from at least two (2) consecutive check samples show less than one (1) coliform bacterium per 100 milliliters.

(b) Multiple tube fermentation technique:

1. Ten (10) milliliter tubes. When coliform bacteria occur in three (3) or more ten (10) milliliter tubes of a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet, until the results obtained from at least two (2) consecutive check samples show no positive tubes.

2. 100 milliliter tubes. When coliform bacteria occur in all five (5) of the 100 milliliter tubes of a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet, until the results obtained from at least two (2) consecutive daily check samples show no positive tubes.

(12) Check sample locations. The location at which the check samples were taken pursuant to this section shall not be eliminated from future sampling without written approval of the cabinet. The results from all coliform bacterial analyses performed pursuant to this section, except those obtained from check samples and special purpose samples, shall be used to determine compliance with the maximum contaminant level for coliform bacteria. Check samples shall not be included in calculating the total number of samples taken each month to determine compliance with Section 1(1) of this regulation.

(13) Check sample reporting. When the presence of coliform bacteria in water taken from a particular sampling point has been confirmed by any check samples examined as directed by this section, the supplier of water shall report that to the cabinet within twenty-four (24) hours pursuant to the provisions of 401 KAR 8:020, Section 2(8)(b).

(14) When a maximum contaminant level set forth in this section is exceeded, the supplier of water shall report that to the cabinet and notify the public as prescribed in 401 KAR 8:070, Section 1. The cabinet may conduct an on-site inspection to assist the operator in determining the cause of the contamination and may issue an order which includes a time period during which all causes of the contamination shall be corrected.

(15) Special purpose samples. Special purpose samples, such as those taken to determine whether disinfection practices following pipe placement, replacement, or repair have been sufficient, shall not be used to determine compliance with Section 1(1) of this regulation.

Section 2. Turbidity Sampling, Analytical Techniques and Maximum Contaminant Levels. (1) Who must sample. All producers of water for public water systems who use surface water sources, in whole or in part, and those groundwater sources which demonstrate a variable turbidity, shall comply with this section. Semipublic systems and systems that purchase water from other systems or obtain their water from turbidity free groundwater sources are not subject to this section.

(2) Sampling frequency. At least one (1) sample per day for the determination of turbidity shall be taken at the producing facility. Turbidity level determinations shall be made within one (1) hour after sample collection.

(3) Sampling point. Samples for the determination of turbidity shall be taken at a representative entry point to the distribution system. Where water is produced by more than one (1) treatment plant for a single system, each plant shall be considered a separate sampling point.

(4) Maximum turbidity limit. The maximum contaminant level for turbidity is one (1) turbidity unit (TU), as determined by a monthly average of daily samples, and no more than five (5) turbidity units, based on an average for two (2) consecutive days.

(5) Measurement technique. The measurement for turbidity shall be by the Nephelometric Method, as set forth in "Standard Methods," or by an alternate method approved in writing by the cabinet.

(6) Excessive turbidity. If the result of a turbidity analysis indicates that the maximum allowable limit has been exceeded, the sampling and measurement shall be confirmed by resampling as soon as practicable and no later than one (1) hour thereafter. If the repeat sample exceeds the maximum allowable limit, the supplier shall report the excess to the cabinet within twenty-four (24) hours. The repeat sample shall be the sample used for the purpose of calculating the monthly average. If the monthly average of the daily samples exceeds the maximum allowable limit, or if the average of two (2) samples taken on consecutive days exceeds five (5) TU, the supplier of water shall report the excess to the cabinet within twenty-four (24) hours and notify the public pursuant to 401 KAR 8:070.

(7) Exceptions. Up to five (5) turbidity units may be allowed, if the supplier of water demonstrates to the cabinet that the higher turbidity does not:

(a) Interfere with disinfection;

(b) Prevent the maintenance of an effective disinfectant agent throughout the distribution system; or

(c) Interfere with microbiological determinations.

Section 3. Analysis for microbiological contamination and turbidity shall be in accordance with methods approved for drinking water by the U.S. Environmental Protection Agency or by the cabinet. The following documents are hereby incorporated by reference and are available for public inspection and copying between 8 a.m. and 4:30 p.m., Monday through Friday, at the Division of Water, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Standard Methods for the Examination of Water and Wastewater, 16th edition, 1985, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. This publication is printed, distributed and may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

(2) "Manual for the Certification of Laboratories Analyzing Drinking Water," EPA 570/9-90/008, April 1990, may be obtained by contacting U.S. EPA, Office of Drinking Water, Washington, D.C., 20460.

Section 4. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.

Section 5. Repeal. Sections 5 and 6, 401 KAR 6:015 Public and semipublic water supplies are hereby repealed.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 5, 1990
FILED WITH LRC: September 5, 1990 at 11 a.m.

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

401 KAR 8:350. Corrosivity monitoring.

RELATES TO: KRS Chapter 224, 40 CFR 141.42
STATUTORY AUTHORITY: KRS 224.032, 224.033, Public Law 93-523 The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, Public Law 100-572, 42 U.S.C.A. 300f, 300g, 300j
NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. This regulation sets forth the requirements for the monitoring and reporting of corrosion characteristics of water supplies. This regulation will repeal Section 17 of 401 KAR 6:015.

Section 1. Applicability. (1) Each community water system which utilizes surface water sources or groundwater sources shall identify specific types of corrosivity-related characteristics within their water distributed for human, domestic or industrial consumption.

(2) Sampling frequency. The supplier shall collect two (2) samples, or more at the request of the cabinet, for analysis from each plant using any surface water source. One (1) sample will be collected during midwinter and one (1) sample shall be collected during midsummer. The supplier of water shall collect one (1) sample, or more if required by the cabinet, for analysis from each plant using any groundwater source. The cabinet may consider multiple wells drawing raw water from a single aquifer to be one (1) treatment plant for the purpose of determining the minimum number of samples.

(3) Sampling point. Suppliers of water for community public water systems shall collect samples from a representative entry point to the water distribution system for analysis to determine the corrosivity characteristics of the water.

(4) Determination of corrosivity characteristics. Parameters for the determination of corrosivity characteristics shall include pH, calcium hardness, alkalinity, temperature, total dissolved solids (total filterable residue), and calculation of the Langelier Index in accordance with subsection (5) of this section. The determination of corrosivity characteristics shall include one (1) round of sampling using two (2) samples per plant for surface water and one (1) sample per plant for groundwater sources. However, the cabinet may require more frequent monitoring as appropriate. In addition, the cabinet may require monitoring for additional parameters which may indicate corrosivity characteristics, such as sulfates and chlorides.

(5) Langelier Index calculation. Based on the parameters in subsection (4) of this section, the Langelier Index shall be calculated pursuant to Standard Methods. In certain cases, the Aggressive Index can be used instead of the Langelier Index. The supplier shall request substitution, in writing, to the cabinet and the cabinet will make the determination. For interpretive purposes, the following table of indices shall be used:

Corrosivity Characteristics as Addressed by Indices

Corrosive Characteristics	Langelier Index	Aggressive Index
Highly aggressive	<-2.0	<10.0
Moderately aggressive	-2.0 to 0.0	10.0 to 12.0
Nonaggressive	>0.0	>12.0

(6) Reporting. The results of the analyses for the corrosivity characteristics shall be reported to the cabinet within ten (10) days after the sample results are received. If more frequent sampling is required by the cabinet, the supplier may accumulate the data and report each value within ten (10) days of the end of the month in which the analytical results of the last sample are received.

(a) If the corrosive characteristics derived from the calculation in subsection (5) of this section indicate that the water distributed is highly aggressive the water supply system shall notify the cabinet as whether any of the following materials are present in the distribution system:

1. Lead from piping, solder, caulking, interior lining of distribution mains, alloys, or any other source;
2. Copper from piping, alloys, service lines, or any other source;
3. Galvanized piping <u>in</u> [or] service lines;
4. Ferrous piping materials, such as cast iron

and steel; and
5. Asbestos cement pipe.
(b) In addition, the cabinet may require identification and reporting of other materials of construction present in distribution systems that may contribute contaminants to the drinking water, including, but not limited to:
1. Vinyl-lined asbestos cement pipe; and
2. Coal tar-lined pipes and tanks.
(7) Measurement techniques. Measurement for corrosive characteristics, as listed in subsection (4) of this section shall be conducted in accordance with the procedures and methods set forth in Standard Methods. Alternative methods approved by the cabinet may be substituted.

Section 2. Standard Methods for the Examination of Water and Wastewater, 16th edition, 1985, is hereby incorporated by reference and is available from 8:00 a.m. to 4:30 p.m. Monday through Friday for public inspection and copying at the Division of Water, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601. This document is prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. This publication may be obtained from the Publication Office, American Public Health Association, 1015 Fifteenth Street, N.W., Washington, D.C. 20005.

Section 3. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.

Section 4. Repeal. Section 17 of 401 KAR 6:015 Public and semipublic water supplies is hereby repealed.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 5, 1990
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 32:030. Pretransport requirements.

RELATES TO: KRS 224.071, 224.830 through 224.877, 224.994, 49 CFR Parts 172, 173, 178, 179
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.864
NECESSITY AND FUNCTION: KRS 224.864 requires the cabinet to promulgate regulations to establish standards for the generation of hazardous waste. The chapter establishes standards applicable to generators of hazardous waste. This regulation establishes the requirements for labeling, marking, placarding, and accumulation time.

Section 1. Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall [must] package the waste in accordance with the applicable U.S. Department of Transportation regulations on packaging under 49 CFR Parts 173, 178, and 179 (1989).

Section 2. Labeling. Before transporting or offering hazardous waste for transportation off-site, a generator shall [must] label each package in accordance with the applicable U. S. Department of Transportation regulations on hazardous materials, under 49 CFR 172 (1989).

Section 3. Marking. (1) Before transporting or offering hazardous waste for transportation off-site, a generator shall [must] mark each package of hazardous waste in accordance with the applicable U.S. Department of Transportation regulations on hazardous materials under 49 CFR 172 (1989).
(2) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall [must] mark each container of 110 gallons or less used in such transportation in accordance with the requirements of 49 CFR 172.304 (1989). The following words and information shall be displayed: "Hazardous Waste - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.
Generator's Name and Address_____.
Manifest Document Number_____."

Section 4. Placarding. Before transporting hazardous waste or offering
hazardous waste for transportation off-site, a generator shall [must] offer the initial transporter the appropriate placards according to U.S. Department of Transportation regulations for hazardous materials under 49 CFR Part 172, Subpart F (1989).

Section 5. Accumulation Time. (1) Except as provided in subsection (3) [(4)] of this section and Section 6 of this regulation, a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without having interim status if [provided that]:
(a) The waste is placed in containers which meet the standards of Section 1 of this regulation and the generator complies with 401 KAR 35:180, or the waste is placed in tanks and the generator complies with 401 KAR 35:190, except those provisions in Sections 8(3) and 11 of 401 KAR 35:190. Forty-five (45) days prior to closing a tank, the generator shall notify the cabinet in writing of the intent to begin closure. Excluding the requirements in Section 2(1), (2), 4 and 5 of 401 KAR 35:070, a generator is exempt from the requirements in 401 KAR 35:070 through 35:130.
(b) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
(c) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste;" and
(d) The generator complies with the requirements specified in 401 KAR 35:030, and 401 KAR 35:040, and Sections 6 and 7 of 401 KAR 35:020.
(2) A generator who accumulates hazardous waste for more than ninety (90) days is an operator of a storage facility and is subject to the requirements of 401 KAR Chapter 34, 401 KAR Chapter 35 and the permit requirements of 401 KAR Chapter 38, unless he has been granted an

extension to the ninety (90) day period. Such extensions may be granted by the cabinet if hazardous wastes shall [must] remain on-site for longer than ninety (90) days due to unforeseen, temporary, and uncontrolled circumstances. An extension of up to thirty (30) days may be granted at the discretion of the cabinet on a case-by-case basis.

(3) Satellite accumulation.

(a) A generator may accumulate as much as fifty-five (55) gallons of hazardous waste or one (1) quart of acutely hazardous waste listed in Section 4 of 401 KAR 31:040 in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (1) of this section provided that upon commencement of accumulation, he:

1. Complies with Sections 2, 3, and 4(1) of 401 KAR 35:180; and

2. Marks his containers with the words "Hazardous Waste."

(b) A generator who accumulates either hazardous waste or acutely hazardous waste listed in Section 4 of 401 KAR 31:040 in excess of the amounts listed in paragraph (a) of this subsection at or near any point of generation shall [must], with respect to that amount of excess waste, comply with subsection (1) of this section or other applicable provisions of this chapter and continue to comply with paragraph (a)1 and 2 of this subsection. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating. The date shall [must] be placed on the container on the day that excess accumulation began.

Section 6. Accumulation Time for Small Quantity Generators. (1) A generator generating a total quantity of hazardous waste greater than 100 kilograms, but less than 1,000 kilograms during a calendar month for every month in a calendar year (i.e., a registered small quantity generator), may accumulate without a permit for up to 180 days. The [Such] on-site accumulation may occur without a permit for not more than 6,000 kilograms for up to 270 days if the [such] generator **is obligated to** [shall] [must] ship or haul the [such] waste over 200 miles.

(2) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste or offer his waste for transportation over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 401 KAR Chapters 34 and 35 and the permit requirements of 401 KAR Chapter 38 unless he has been granted an extension to the 180 day (or 270 day if applicable) period. Such extension may be granted by the cabinet if hazardous wastes shall [must] remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty (30) days may be granted at the discretion of the cabinet on a case-by-case basis.

(3) A small quantity generator may accumulate hazardous waste on site for 180 days (or for 270 days if he **is obligated to** [shall] [must] transport his waste or offer his waste for transportation over a distance of 200 miles or more) or less without a permit or without [with] having interim status provided that he complies with the requirements of Section 5(1)(a) through (d) of this regulation.

(4) A small quantity generator may accumulate hazardous waste in satellite areas provided that he complies with the requirements of Section 5(3) of this regulation.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: September 5, 1990
FILED WITH LRC: September 5, 1990 at 3 p.m.

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

401 KAR 34:120. Liability requirements.

RELATES TO: KRS 224.033, 224.071, 224.830 through 224.877, 224.994

STATUTORY AUTHORITY: KRS 13A.210, [224.017,] 224.862, 224.866, 224.867

NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes the liability requirements.

Section 1. Coverage for Sudden Accidental Occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, shall [must] demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall [must] have and maintain liability coverage for sudden or accidental occurrences in the amount of at least $1,000,000 per occurrence with an annual aggregate of at least $2,000,000, exclusive of legal defense costs. This liability coverage may be demonstrated in one (1) of three (3) ways, as specified in subsections (1), (2) and (3) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this section.

(a) Each insurance policy shall [must] be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The liability endorsement shall [must] be executed on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:172. The Certificate of Liability Insurance shall [must] be on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:176. The owner

or operator shall [must] submit an originally signed duplicate of the endorsement or the certificate of insurance to the cabinet [director]. If requested by the cabinet [director], the owner or operator shall [must] provide an originally signed duplicate of the insurance policy. An owner or operator of a new facility shall [must] submit the originally signed duplicate of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the cabinet [director] at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage or disposal. The insurance shall [must] be effective before this initial receipt of hazardous waste.

(b) Each primary insurance policy shall [must] be issued by an insurer which, at a minimum, is licensed to transact the business of primary insurance in Kentucky except as KRS 304.11-030 provides otherwise. Each excess insurance policy shall [must] be issued by an insurer which, at a minimum, is licensed to provide insurance as an excess or surplus lines insurer in one (1) state.

(2) An owner or operator may meet the requirements of this regulation by passing a financial test or using the corporate guarantee for liability coverage as specified in Section 7 of this regulation.

(3) An owner or operator may demonstrate the required liability coverage through use of the financial test, insurance, the corporate guarantee, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance. The amounts of coverage demonstrated shall [must] total at least the minimum amounts required by this section.

Section 2. Coverage for Nonsudden Accidental Occurrences. An owner or operator of a surface impoundment, landfill, [or] land treatment facility, facility for land disposal as specified in KRS 224.005 or miscellaneous unit for disposal that [which] is used to manage hazardous waste, or a group of such facilities, shall [must] demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall [must] have and maintain additional liability coverage for nonsudden accidental occurrences in the amount of at least $3,000,000 per occurrence with an annual aggregate of at least $6,000,000, exclusive of legal defense costs. This liability coverage may be demonstrated in one (1) of three (3) ways, as specified in subsections (1), (2), and (3) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this section.

(a) Each insurance policy shall [must] be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The liability endorsement shall [must] be on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:172. The certificate of liability insurance shall [must] be on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:176. The owner or operator shall [must] submit an originally signed duplicate of the endorsement or the certificate of insurance to the cabinet [director]. If requested by the cabinet [director], the owner or operator shall [must] provide an originally signed duplicate of the insurance policy. An owner or operator of a new facility shall [must] submit the originally signed duplicate of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the cabinet [director] at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage or disposal. The insurance shall [must] be effective before this initial receipt of hazardous waste.

(b) Each primary insurance policy shall [must] be issued by an insurer which, at a minimum, is licensed to transact the business of primary insurance in Kentucky except as KRS 304.11-030 provides otherwise. Each excess insurance policy shall [must] be issued by an insurer which, at a minimum, is licensed to provide insurance as an excess or surplus lines insurer in one (1) state.

(2) An owner or operator may meet the requirements of this regulation by passing a financial test or using the corporate guarantee for liability coverage as specified in Sections 6 and 7 of this regulation.

(3) An owner or operator may demonstrate the required liability coverage through use of the financial test, insurance, the corporate guarantee, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance. The amounts of coverage demonstrated shall [must] total at least the minimum amounts required by this section.

(4) For existing facilities, the required liability coverage for nonsudden accidental occurrences shall [must] be demonstrated by the dates listed below. The total sales or revenues of the owner or operator in all lines of business, in the fiscal year preceding the effective date of these regulations, shall [will] determine which of the dates apply. If the owner and operator of a facility are two (2) different parties, or if there is more than one (1) owner or operator, the sales or revenues of the owner or operator with the largest sales or revenues shall [will] determine the date by which the coverage shall [must] be demonstrated. The dates are as follows:

(a) For an owner or operator with sales or revenues totaling $10,000,000 or more, February 24, 1983.

(b) For an owner or operator with sales or revenues greater than $5,000,000 but less than $10,000,000, February 24, 1984.

(c) All other owners or operators, February 24, 1985.

Section 3. Adjustments by the Cabinet [Director]. If the cabinet [director] determines that the levels of financial responsibility required by Sections 1 and 2 of this regulation are not consistent with the degree and duration of risks associated with treatment, storage, or disposal at any facility or group of facilities, the cabinet [director] may increase the level of financial responsibility required under Sections 1 and 2 of this regulation as may be necessary to protect human health and the environment. This adjusted level shall [will] be based on the cabinet [director]'s assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of such facilities. If the cabinet [director]

determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, the cabinet [director] may require that the owner or operator of the facility comply with Section 2 of this regulation. An owner or operator shall [must] furnish to the cabinet [director], within a reasonable time, any information which the cabinet [director] requests to determine whether cause exists for such adjustments of the level or type of coverage. Any adjustment of the level of required coverage for a facility that has a permit shall be treated as a permit modification under Section 2(1)(e) of 401 KAR 38:040 and Section 2 of 401 KAR 38:050.

Section 4. Request for a Variance. If an owner or operator can demonstrate to the satisfaction of the cabinet [director] that the increased level of financial responsibility required by Section 3 of this regulation is not consistent with the degree and duration of risk associated with the treatment, storage, or disposal at each facility or group of facilities, the owner or operator may obtain a variance from the cabinet [director]. The cabinet [director] shall not grant any requests for a variance which seek to decrease the level of financial responsibility below the minimums required by KRS 224.866(3)(c). If granted, the variance shall take the form of an adjusted level of required liability coverage, such level to be based on the cabinet [director]'s assessment of the degree and duration of risk associated with the ownership or operation of each facility or group of facilities. The cabinet [director] may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the cabinet [director] to determine a level of financial responsibility other than that required by Sections 1 and 2 of this regulation. Any request for a variance for a permitted facility shall be treated as a request for a permit modification under Section 2(1)(e) of 401 KAR 38:040 and Section 2 of 401 KAR 38:050.

Section 5. Period of Coverage. An owner or operator shall [must] continuously provide liability coverage for a facility as required by this regulation until certification of termination pursuant to the requirements of KRS 224.866.

Section 6. Liability Self-Insurance. (1) An owner or operator may satisfy the requirements of this regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator shall [must] demonstrate that the level of self-insurance does not exceed ten (10) percent of equity and shall [must] meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The owner or operator shall [must] have:

1. Net working capital and tangible net worth each at least six (6) times the amount of liability coverage to be demonstrated by this test; and

2. Tangible net worth of at least $10 million; and

3. Assets in the United States amounting to either, at least, ninety (90) percent of his total assets or at least six (6) times the sum of the appropriate liability coverage to be demonstrated by this test.

(b) The owner or operator shall [must] have:

1. A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth of at least $10 million; and

3. Tangible net worth at least six (6) times the amount of the liability coverage to be demonstrated by this test; and

4. Assets located in the United States amounting to either, at least, ninety (90) percent of his total assets or at least six (6) times the amount of the liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in subsection (1) of this section refers to the annual aggregate amounts for which coverage is required under Sections 1 and 2 of this regulation.

(3) To demonstrate that he meets this test, the owner or operator shall [must] submit the following three (3) items to the cabinet [director]:

(a) A letter signed by the owner's or operator's chief financial officer and executed on a form provided by the cabinet which is worded as specified in 401 KAR 34:162;

(b) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(c) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall [must] submit the items specified in subsection (3) of this section to the cabinet [director] at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage or disposal.

(5) After the initial submission of items specified in subsection (3) of this section, the owner or operator shall [must] send updated information to the cabinet [director] within ninety (90) days after the close of each succeeding fiscal year. This information shall [must] consist of all three (3) items specified in subsection (3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (1) of this section, he shall [must] obtain insurance for the entire amount of required liability coverage as specified in this regulation. Evidence of insurance shall [must] be submitted to the cabinet [director] within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

(7) The cabinet [director] may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (1) of this section, require reports of

financial condition at any time from the owner or operator in addition to those specified in subsection (3) of this section. If the cabinet [director] finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (1) of this section, the owner or operator shall [must] provide liability insurance as specified in this regulation within thirty (30) days after notification of such a finding.

(8) The cabinet [director] may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see subsection (3)(c) of this section). An adverse opinion or a disclaimer of opinion shall [will] be cause for disallowance. The cabinet shall [director will] evaluate other qualifications on an individual basis. The owner or operator shall [must] provide liability insurance for the entire amount of liability coverage as specified in this regulation within thirty (30) days after notification of the disallowance.

Section 7. Corporate Guarantee for Liability Coverage. (1) Subject to subsection (2) of this section, an owner or operator may meet the requirements of this regulation by obtaining a written guarantee, [hereinafter] referred to as "corporate guarantee." The guarantor shall be the parent corporation of the owner or operator. The guarantee shall meet the requirements for owners or operators in Section 6(1) through (8) of this regulation. The wording of the corporate guarantee shall be identical to the wording specified in Section 1(2) of 401 KAR 34:165. A certified copy of the corporate guarantee shall accompany the items sent to the cabinet [director] as specified in Section 6(3) of this regulation. The terms of the corporate guarantee shall provide that:

(a) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage.

(b) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the cabinet [director]. This guarantee may not be terminated unless and until the cabinet [director] approves alternate liability coverage complying with this regulation or 401 KAR 35:120.

(2)(a) In the case of corporations incorporated in the United States, a corporate guarantee may be used to satisfy the requirements of this regulation only if the Attorney General or insurance commissioner of the state in which the guarantor is incorporated, each state in which a facility covered by the guarantee is located and in the state in which it has its principle place of business, [and the Department of Law [office of general counsel] in the Kentucky Natural Resources and Environmental Protection Cabinet or [and] the Insurance Commissioner of the Commonwealth of Kentucky,] have submitted a written statement to the director [cabinet] that a corporate guarantee executed as described in this regulation and Section 1(2) of 401 KAR 34:165 is a legally valid and enforceable obligation in that state and the Commonwealth of Kentucky.

(b) In the case of corporations incorporated outside of the United States, a corporate guarantee may be used to satisfy the requirements of this section only if the non-United States corporation has identified a registered agent for service of process in each state in which a facility covered by the guarantee is located and in the state in which it has its principle place of business, and the attorney general or insurance commissioner of each state in which a facility covered by the guarantee is located, and the state in which the guarantor corporation has its principle place of business, and the Department of Law or Insurance Commissioner of the Commonwealth of Kentucky have submitted a written statement to the director that a corporate guarantee executed as described in this section and Section 1(2) of 401 KAR 34:165 is a legally valid and enforceable obligation in that state and the Commonwealth of Kentucky.

(c) A corporate guarantee may be used to satisfy the requirements of this regulation only if the assets to be collected are located in the United States. [Companies which choose to use a corporate guarantee shall submit to the director documentation from each attorney general or Insurance Commissioner and the Department of Law in the Kentucky Natural Resources and Environmental Protection Cabinet or Insurance Commissioner of the Commonwealth of Kentucky that complies with the requirements of this subsection.] Failure to **provide the written statement referenced in paragraphs (a) and (b) of this subsection** [include documentation to support the use of the corporate guarantee] shall be grounds for denial of the instrument.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: September 5, 1990
FILED WITH LRC: September 5, 1990 at 3 p.m.

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

401 KAR 34:250. Miscellaneous units.

RELATES TO: KRS 224.033, 224.060, 224.071, 224.830 through 224.877, 224.994, 40 CFR Part 146

STATUTORY AUTHORITY: KRS Chapter 13A.210, 224.033, 224.866, 224.867

NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities. This

regulation establishes the permit requirements for miscellaneous units [for disposal].

Section 1. Applicability. The requirements in this regulation apply to owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units [for disposal], except as Section 1 of 401 KAR 34:010 provides otherwise.

Section 2. Environmental Performance Standards. A miscellaneous unit [for disposal] shall be located, designed, constructed, operated, and maintained, and closed in a manner that shall ensure protection of human health and the environment. Permits for miscellaneous units [for disposal] are to contain such terms and provisions as necessary to protect human health and the environment, including, but not limited to, as appropriate, design and operating requirements, detection and monitoring requirements, and requirements for responses to releases of hazardous waste or hazardous constituents from the unit. Permit terms and provisions shall include those requirements of 401 KAR 34:180 through 34.240, 401 KAR Chapter 38, and 40 CFR Part 146, (1989), that are appropriate for the miscellaneous unit [for disposal] being permitted. Protection of human health and the environment includes, but is not limited to:

(1) Prevention of any releases that may have adverse effects on human health or the environment due to migration of waste constituents in the groundwater or subsurface environment, considering:

(a) The volume and physical and chemical characteristics of the waste in the unit, including its potential for migration through soil, liners, or other containing structures;

(b) The hydrologic and geologic characteristics of the unit and the surrounding area;

(c) The exiting quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater;

(d) The quantity and direction of groundwater flow;

(e) The proximity to and withdrawal rates of current and potential groundwater users;

(f) The patterns of land use in the region;

(g) The potential for deposition or migration of waste constituents into subsurface physical structures, and into the root zone of food-chain crops and other vegetation;

(h) The potential for health risks caused by human exposure to waste constituents; and

(i) The potential for damage to domestic animals, wildlife, crops, vegetation and physical structures caused by exposure to waste constituents.

(2) Prevention of any releases that may have adverse effects on human health or the environment due to migration of waste constituents in surface water, or wetlands, or on the soil surface considering:

(a) **The** volume and physical and chemical characteristics of the waste in the unit;

(b) The effectiveness and reliability of containing, confining, and collecting systems and structures in preventing migration;

(c) The hydrologic characteristics of the unit and the surrounding area, including the topography of the land around the unit;

(d) The patterns of precipitation in the region;

(e) The quantity, quality, and direction of groundwater flow;

(f) The proximity of the unit to surface waters;

(g) The current and potential uses of nearby surface waters and any water quality standards established for those surface waters;

(h) The existing quality of surface waters and surface soils, including other sources of contamination and their cumulative impact on surface waters and surface soils;

(i) The patterns of land use in the region;

(j) The potential for health risks caused by human exposure to waste constituents; and

(k) The potential for damage to domestic animals, wildlife, crops, vegetation and physical structures caused by exposure to waste constituents.

(3) Prevention of any release that may have adverse effects on human health or the environment due to migration of waste constituents in the air, considering:

(a) The volume and physical and chemical characteristics of the waste in the unit, including its potential for the emission and dispersal of gases, aerosols and particulates;

(b) The effectiveness and reliability of systems and structures to reduce or prevent emissions of hazardous constituents to the air;

(c) The operating characteristics of the unit;

(d) The atmospheric, meteorologic, and topographic characteristics of the unit and the surrounding area;

(e) The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

(f) The potential for health risks caused by human exposure to waste constituents; and

(g) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents.

Section 3. Monitoring, Analysis, Inspection, Response, Reporting, and Corrective Action. Monitoring, testing, analytical data, inspections, response, and reporting procedures and frequencies shall ensure compliance with Section 2 of this regulation, Section 6 of 401 KAR 34:020, Section 4 of 401 KAR 34:030, Sections 6 through 8 of 401 KAR 34:050, and Section 12 of 401 KAR 34:060 as well as meet any additional requirements needed to protect human health and the environment as specified in the permit.

Section 4. Postclosure Care. A miscellaneous unit [for disposal] shall be maintained in a manner that complies with Section 2 of this regulation during the postclosure care period. In addition, if a treatment or storage unit has contaminated soils or groundwater that cannot be completely removed or decontaminated during closure, then that unit shall also meet the requirements of Section 2 of this regulation during postclosure care. The postclosure plan under Section 9 of 401 KAR 34:070 shall specify the procedures that shall be used to satisfy this requirement.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: September 5, 1990
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NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 35:120. Liability requirements (IS).

RELATES TO: KRS 224.033, 224.071, 224.830 through 224.877, 224.994
STATUTORY AUTHORITY: KRS 224.017, 224.862, 224.866, 224.867
NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes the liability requirements.

Section 1. Coverage for Sudden Accidental Occurrences. By October 8, 1982, an owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, shall [must] demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall [must] have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1,000,000 per occurrence with an annual aggregate of at least $2,000,000, exclusive of legal defense costs. This liability coverage may be demonstrated in one (1) of three (3) ways, as specified in subsections (1), (2), and (3) of this section.

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this section.

(a) Each insurance policy shall [must] be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The liability endorsement shall [must] be executed on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:172. The certificate of liability insurance shall [must] be on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:176. The owner or operator shall [must] submit an originally signed duplicate of the endorsement or the certificate of insurance to the cabinet [director]. If requested by the cabinet [director], the owner or operator shall [must] provide an originally signed duplicate of the insurance policy.

(b) Each primary insurance policy shall [must] be issued by an insurer which, at a minimum, is licensed to transact the business of primary insurance in Kentucky except as KRS 304.11-030 provides otherwise. Each excess insurance policy shall [must] be issued by an insurer which, at a minimum, is licensed to provide insurance as an excess or surplus lines insurer in one (1) state.

(2) An owner or operator may meet the requirements of this regulation by passing a financial test or using the corporate guarantee for liability coverage as specified in Section 7 of this regulation.

(3) An owner or operator may demonstrate the required liability coverage through use of the financial test, insurance, the corporate guarantee, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance. The amounts of coverage demonstrated shall [must] total at least the minimum amounts required by this section.

Section 2. Coverage for Nonsudden Accidental Occurrences. An owner or operator of a surface impoundment, landfill, facility for land disposal as specified in KRS 224.005, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, shall [must] demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility, or group of facilities. The owner or operator shall [must] have and maintain additional liability coverage for nonsudden accidental occurrences in the amount of at least $3,000,000 per occurrence with an annual aggregate of at least $6,000,000, exclusive of legal defense costs. This liability coverage may be demonstrated in one (1) of three (3) ways, as specified in subsections (1), (2), and (3) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this section.

(a) Each insurance policy shall [must] be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The liability endorsement shall [must] be on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:172. The certificate of liability insurance shall [must] be on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:176. The owner or operator shall [must] submit an originally signed duplicate of the endorsement or the certificate of insurance to the cabinet [director]. If requested by the cabinet [director], the owner or operator shall [must] provide an originally signed duplicate of the insurance policy.

(b) Each primary insurance policy shall [must] be issued by an insurer which, at a minimum is licensed to transact the business of primary insurance in Kentucky except as KRS 304.11-030 provides otherwise. Each excess insurance policy shall [must] be issued by an insurer which, at a minimum is licensed to provide insurance as an excess or surplus lines insurer in one (1) state.

(2) An owner or operator may meet the requirements of this regulation by passing a financial test, or using the corporate guarantee for liability coverage as specified in Sections 6 and 7 of this regulation.

(3) An owner or operator may demonstrate the required liability coverage through use of the financial test, insurance, the corporate guarantee, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance. The amounts of coverage demonstrated shall [must] total at least the minimum amounts required by this section.

(4) The required liability coverage for

nonsudden accidental occurrences shall [must] be demonstrated by the dates listed below. The total sales or revenues of the owner or operator in all lines of business, in the fiscal year preceding October 8, 1982, shall [will] determine which of the dates apply. If the owner and operator of a facility are two (2) different parties, or if there is more than one (1) owner or operator, the sales or revenues of the owner or operator with the largest sales or revenues shall [will] determine the date by which the coverage shall [must] be demonstrated. The dates are as follows:

(a) For an owner or operator with sales or revenues totaling $10,000,000 or more, February 24, 1983.

(b) For an owner or operator with sales or revenues greater than $5,000,000 but less than $10,000,000, February 24, 1984.

(c) For all other owners or operators, February 24, 1985.

Section 3. Adjustments by the Cabinet [Director]. If the cabinet [director] determines that the levels of financial responsibility required by Sections 1 and 2 of this regulation are not consistent with the degree and duration of risks associated with treatment, storage, or disposal at any facility or group of facilities, the cabinet [director] may increase the level of financial responsibility required under Sections 1 and 2 of this regulation as may be necessary to protect human health and the environment. This adjusted level shall [will] be based on the cabinet [director]'s assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of such facilities. In addition, if the cabinet [director] determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, the cabinet [director] may require that the owner or operator of the facility comply with Section 2 of this regulation. An owner or operator shall [must] furnish to the cabinet [director], within a reasonable time, any information which the cabinet [director] requests to determine whether cause exists for such adjustments of the level or type of coverage. Any adjustment of the level of required coverage for a facility that has a permit shall be treated as a permit modification under Section 2(1)(e) of 401 KAR 38:040 and subject to the procedures of Section 2 of 401 KAR 38:050. Notwithstanding any other provision, the cabinet may hold a public hearing at its discretion or whenever the cabinet finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to adjust the level or type of required coverage.

Section 4. Request for a Variance. If an owner or operator can demonstrate to the satisfaction of the cabinet [director] that the increased level of financial responsibility required by Section 3 of this regulation is not consistent with the degree and duration of risks associated with the treatment, storage, or disposal at each facility or group of facilities, the owner or operator may obtain a variance from the cabinet [director]. The request for a variance shall [must] be submitted to the cabinet [director] in writing. The cabinet [director] shall not grant any requests for a variance which seek to decrease the level of financial responsibility below the minimums required by KRS 224.866(3)(c). If granted, the variance shall take the form of an adjusted level of required liability coverage, such level to be based on the cabinet [director]'s assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of facilities. The cabinet [director] may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the cabinet [director] to determine a level of financial responsibility other than that required by Sections 1 and 2 of this regulation. Any request for a variance for a permitted facility shall be treated as a request for a permit modification under Section 2 of 401 KAR 38:040 and subject to the procedures of Section 2 of 401 KAR 38:050. Notwithstanding any other provision, the cabinet may hold a public hearing at its discretion or whenever the cabinet finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to grant a variance.

Section 5. Period of Coverage. An owner or operator shall [must] continuously provide liability coverage for a facility as required by this regulation until certification of termination pursuant to the requirements of KRS 224.866.

Section 6. Liability Self-Insurance. (1) An owner or operator may satisfy the requirements of this regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator shall [must] demonstrate that the level of self-insurance does not exceed ten (10) percent of equity and shall [must] meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The owner or operator shall [must] have:

1. Net working capital and tangible net worth each at least six (6) times the amount of liability coverage to be demonstrated by this test; and

2. Tangible net worth of at least $10 million; and

3. Assets in the United States amounting to either, at least, ninety (90) percent of his total assets or at least six (6) times the sum of the appropriate liability coverage to be demonstrated by this test.

(b) The owner or operator shall [must] have:

1. A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth of at least $10 million; and

3. Tangible net worth at least six (6) times the amount of the liability coverage to be demonstrated by this test; and

4. Assets located in the United States amounting to either, at least, ninety (90) percent of his total assets or at least six (6) times the amount of the liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in subsection (1) of this section refers to the annual aggregate amounts for which coverage is required under Sections 1 and 2 of

this regulation.

(3) To demonstrate that he meets this test, the owner or operator shall [must] submit the following three (3) items to the cabinet [director]:

(a) A letter signed by the owner's or operator's chief financial officer and executed on a form provided by the cabinet which is worded as specified in 401 KAR 34:162;

(b) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(c) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall [must] submit the items specified in subsection (3) of this section to the cabinet [director] at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage or disposal.

(5) After the initial submission of items specified in subsection (3) of this section, the owner or operator shall [must] send updated information to the cabinet [director] within ninety (90) days after the close of each succeeding fiscal year. This information shall [must] consist of all three (3) items specified in subsection (3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (1) of this section, he shall [must] obtain insurance for the entire amount of required liability coverage as specified in this regulation. Evidence of insurance shall [must] be submitted to the cabinet [director] within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

(7) The cabinet [director] may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (3) of this section. If the cabinet [director] finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (1) of this section, the owner or operator shall [must] provide liability insurance as specified in this regulation within thirty (30) days after notification of such a finding.

(8) The cabinet [director] may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see subsection (3)(c) of this section). An adverse opinion or a disclaimer of opinion shall [will] be cause for disallowance. The cabinet shall [director will] evaluate other qualifications on an individual basis. The owner or operator shall [must] provide liability insurance for the entire amount of liability coverage as specified in this regulation within thirty (30) days after notification of the disallowance.

Section 7. Corporate Guarantee for Liability Coverage. (1) Subject to subsection (2) of this section, an owner or operator may meet the requirements of this regulation by obtaining a written guarantee, hereinafter referred to as "corporate guarantee." The guarantor shall be the parent corporation of the owner or operator. The guarantee shall meet the requirements for owners or operators in Section 6(1) through (8) of this regulation. The wording of the corporate guarantee shall be identical to the wording specified in Section 1(2) of 401 KAR 34:165. A certified copy of the corporate guarantee shall accompany the items sent to the cabinet [director] as specified in Section 6(3) of this regulation. The terms of the corporate guarantee shall provide that:

(a) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage.

(b) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the cabinet [director]. This guarantee may not be terminated unless and until the cabinet [director] approves alternate liability coverage complying with 401 KAR 35:120 or this regulation.

(2)(a) In the case of corporations incorporated in the United States, a corporate guarantee may be used to satisfy the requirements of this regulation only if the Attorney General or insurance commissioner of the state in which the guarantor is incorporated, **each state in which a facility covered by the guarantee is located and in the state in which it has its principle place of business,** [and the Department of Law [office of general counsel] in the Kentucky Natural Resources and Environmental Protection Cabinet or [and] the insurance commissioner of the Commonwealth of Kentucky,] have submitted a written statement to the director [cabinet] that a corporate guarantee executed as described in this regulation and Section 1(2) of 401 KAR 34:165 is a legally valid and enforceable obligation in that state and the Commonwealth of Kentucky.

(b) In the case of corporations incorporated outside of the United States, a corporate guarantee may be used to satisfy the requirements of this section only if the non-U.S. corporation has identified a registered agent for service of process in each state in which a facility covered by the guarantee is located, and in the state in which it has its principle place of business, and the Attorney General or insurance commissioner of each state in which a facility covered by the guarantee is located, and the state in which the guarantor corporation has its principle place of business, and the Department of Law or insurance

commissioner of the Commonwealth of Kentucky have submitted a written statement to the cabinet that a corporate guarantee executed as described in this section and Section 1(2) of 401 KAR 34:165 is a legally valid and enforceable obligation in that state and the Commonwealth of Kentucky.

(c) **A corporate guarantee may be used to satisfy the requirements of this regulation only if the assets to be collected are located in the United States.** [Companies which choose to use a corporate guarantee shall submit to the cabinet documentation from each Attorney General or insurance commissioner, and the Department of Law in the Natural Resources and Environmental Protection Cabinet or the insurance commissioner of the Commonwealth of Kentucky, that complies with the requirements of this subsection.] **Failure to provide the written statement referenced in paragraphs (a) and (b) of this subsection** [include documentation to support the use of the corporate guarantee] shall be grounds for denial of the instrument.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 38:040. Changes to permits; expiration of permits.

RELATES TO: KRS 224.033, 224.036, 224.071, 224.087, 224.830 through 224.877, 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.866
NECESSITY AND FUNCTION: KRS 224.842 and 224.866 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes permitting standards on duration, termination, renewal and deadlines.

Section 1. Transfer of Permits. A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under Section 2(2)(b) of this regulation) or a minor modification made (under Section 3(4) of this regulation) to identify the new permittee and incorporate such other requirements as may be necessary under KRS Chapter 224 and the waste management regulations.

Section 2. Major Modification or Revocation and Reissuance of Permits. 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 38:030, receives a request for modification or revocation and reissuance under Section 2 of 401 KAR 38:050, or conducts a review of permit file), the cabinet may determine whether or not one (1) or more of the causes listed in subsections (1) and (2) of this section for modification or revocation and reissuance or both exist. If cause exists, the cabinet may modify or revoke and reissue the permit accordingly, subject to the limitations of subsection (3) of this section and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term (see Section 2(4) of 401 KAR 38:050. If cause does not exist under this section or Section 3 of this regulation, the cabinet shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in Section 3 of this regulation for "minor modifications," the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in 401 KAR 38:050 and, if applicable, 401 KAR 38:500 followed.

(1) Causes for modification. Paragraphs (a) through (d) of this subsection are causes for modification but not revocation and reissuance of permits. Paragraphs (a) through (d) of this subsection may be causes for revocation and reissuance as well as modification, when the permittee requests or agrees.

(a) Alterations. There are material and substantial alterations or additions to the permitted hazardous waste site or facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(b) Information. The cabinet has received new information. Permits [for wells] may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

(c) New statutory requirements or regulations. The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued. Except as provided in paragraph (e) of this subsection, permits may be modified during their terms for this cause as follows:

1. The cabinet may modify the permit when the standards or regulations on which the permit was based have been changed by statute or amended standards or regulations. [For promulgation of new or amended standards or regulations, when:]

2. Permittee may request modification when:

a. The permit condition [requested] to be modified was based on an effective hazardous waste management regulation; and

b. The cabinet has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based; or [and]

c. A permittee requests modification in accordance with Section 2 of 401 KAR 38:050 within ninety (90) days after notice of the action on which the request is based.

3. [2.] For judicial decisions, a court of competent jurisdiction has remanded and stayed cabinet promulgated regulations, if the remand and stay concern that portion of the regulations [or guidelines] on which the permit condition

was based or if [and] a request is filed by the permittee in accordance with Section 2 of 401 KAR 38:050 within ninety (90) days of judicial remand.

(d) 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).

(e) The cabinet may modify a permit:

1. When modification of a closure plan is required under 401 KAR 34:070, Section 3(2) or 4(2).

2. When the cabinet receives notification of expected closure under 401 KAR 34:070, Section 4, and finds that any of the following previously granted permit conditions are no longer warranted:

a. Extension of the ninety (90) or 180 day periods under 401 KAR 34:070, Section 4;

b. Modification of an extended postclosure care period under 401 KAR 34:070, Section 7;

c. Continuation of security requirements under 401 KAR 34:070, Section 7(2); or

d. Permission to disturb the integrity of the containment system under 401 KAR 34:070, Section 7(3).

3. When the permittee has filed a request under 401 KAR 34:120, Section 4 for a variance to the level of financial responsibility or when the cabinet [secretary] demonstrates under 401 KAR 34:120, Section 5 that an upward adjustment of the level of financial responsibility is required.

4. When the corrective action program specified in the permit under Section 11 of 401 KAR 34:060 has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable period of time.

5. To include a detection monitoring program meeting the requirements of Section 9 of 401 KAR 34:060, when the owner or operator has been conducting a compliance monitoring program under Section 10 of 401 KAR 34:060 or a corrective action program under Section 11 of 401 KAR 34:060 and the compliance period ends before the end of the postclosure care period for the unit.

6. When a permit requires a compliance monitoring program under Section 10 of 401 KAR 34:060, but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard.

7. To include the conditions applicable to units at a facility that were not previously included in the site or facility's permit.

8. When a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.

9. To include conditions applicable in new or amended standards or regulations.

10. When modification is necessary to protect the public health or the environment.

11. To include conditions applicable as the result of a hearing or enforcement action as specified in 401 KAR Chapter 40.

(f) Not withstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the cabinet under Section 5(4) of this regulation, 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 30 through 39.

(2) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

(a) Cause exists for termination under Section 4 of this regulation and the cabinet determines that modification or revocation and reissuance is appropriate.

(b) The cabinet has received notification (as required in the permit in Section 1(12)(c) of 401 KAR 38:030 of a proposed transfer of the permit.

(c) Cause exists for termination under Section 2(1)(e) and (f) of this regulation, and the cabinet determines that modification or revocation and reissuance is appropriate.

(3) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

(4) Major modifications that include changes in ownership and operational control of a facility may be made if the new owner or operator submits a revised permit application no later than ninety (90) days prior to the scheduled change. A change in ownership or operational control includes a transfer of twenty-five (25) or more percent interest in the corporation, joint venture, partnership, proprietorship, or entity designated to own or operate the hazardous waste site or facility. When a transfer of ownership or operational control of a site or facility occurs, the old owner or operator shall comply with the requirements of 401 KAR 34:080 through 401 KAR 34:176 (financial requirements), until the new owner or operator has demonstrated to the cabinet that he is complying with the requirements in 401 KAR 34:080 through 401 KAR 34:176. The new owner or operator shall demonstrate compliance with the requirements in 401 KAR 34:080 through 401 KAR 34:176 within six (6) months of the date of the change in the ownership or operational control of the site or facility. Upon demonstration to the cabinet by the new owner or operator of compliance with the requirements in 401 AKR 34:080 through 401 KAR 37:176, the cabinet shall notify the old owner or operator in writing that he no longer needs to comply with the requirements in 401 KAR 34:080 through 401 KAR 34:176 as of the date of demonstration. Past performance as specified in 401 KAR 38:090, Section 2(20) shall be considered.

Section 3. Minor Modifications of Permits. Upon consent of the permittee, the cabinet may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 401 KAR 38:050. Any permit modification not processed as a minor modification under this section shall [must] be made for cause and with a 401 KAR 38:050 draft permit, public notice as required in Section 2 of this regulation and, if applicable, compliance with 401 KAR 38:500 shall [must] be demonstrated. Minor modifications may only:

(1) Correct typographical errors;

(2) Require more frequent monitoring or reporting by the permittee;

(3) Change an interim compliance date in a

schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

(4) Allow for a name change where [in] ownership or operational control of a site or facility is not affected. [where the cabinet determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to the cabinet.] Name changes [in the ownership or operational control] of a site or facility may be made if the [new] owner or operator submits a revised permit application no later than ninety (90) days prior to the scheduled change. When a name change [transfer of ownership or operational control] of a site or facility occurs, compliance [the old owner or operator shall comply] with the requirements of 401 KAR 34:080 through 401 KAR 34:176 (financial requirements), shall be demonstrated by revising the financial instrument to reflect the correct facility name. [until the new owner or operator has demonstrated to the cabinet that he is complying with the requirements in 401 KAR 34:080 through 401 KAR 34:176. The new owner or operator must demonstrate compliance with the requirements in 401 KAR 34:080 through 401 KAR 34:176 within six (6) months of the date of the change in the ownership or operational control of the site or facility. Upon demonstration to the cabinet by the new owner or operator of compliance with the requirements in 401 KAR 34:080 through 401 KAR 34:176, the cabinet will notify the old owner or operator in writing that he no longer needs to comply with the requirements in 401 KAR 34:080 through 401 KAR 34:176 as of the date of demonstration.]

(5) Change the lists of facility emergency coordinators or equipment in the permit's contingency plan;

(6) Change estimates of maximum inventory under Section 3(1)(b) of 401 KAR 34:070; or

(7) Change estimates of expected year of closure or schedules for final closure under Section 3(1)(d) of 401 KAR 34:070;

(8) Approve periods longer than ninety (90) days or 180 days under Section 4(1) and (2) of 401 KAR 34:070.

(9) Change the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided that the change is minor.

(10) Change the operating requirements set in the permit for conducting a trial burn, provided that the change is minor.

(11) Grant one (1) extension of the time period for determining operational readiness following completion of construction, for up to 720 hours operating time for treatment of hazardous waste.

(12) Change the treatment program requirements for land treatment units under Section 2 of 401 KAR 34:220 to improve treatment of hazardous constituents, provided that the change is minor.

(13) Change any conditions specified in the permit for land treatment units to reflect the results of field tests or laboratory analyses used in making a treatment demonstration in accordance with Section 8 of 401 KAR 38:080, if [provided that] the change is minor.

(14) Allow a second treatment demonstration for land treatment to be conducted when the results of the first demonstration have not shown the conditions under which the waste or wastes can be treated completely as required by Section 3(1) of 401 KAR 34:220, provided the conditions of the second demonstration are substantially the same as the conditions for the first demonstration.

(15) Allow treatment of hazardous wastes not previously specified in the permit if:

(a) The hazardous waste has been prohibited from one (1) or more methods of land disposal under 401 KAR 37:030 or KRS 224.866 [and treatment standards have been established under 401 KAR 37:040];

(b) Treatment is in accordance with Section 4 of 401 KAR 37:010 (if applicable), Section 3 of 401 KAR 37:010; and [the standards established under Section 2 of 401 KAR 37:040, or a variance established under Section 5 of 401 KAR 37:040;]

1. Treatment is in accordance with applicable standards established under 401 KAR 37:040, Section 3, 4, and 5; or

2. Where no treatment standards have been established, treatment renders the waste no longer subject to the applicable prohibitions set forth in Section 4 of 401 KAR 37:030 and KRS 224.866.

(c) Handling and treatment of the restricted waste shall [will] not present risks substantially different from those of wastes listed in the permit; and

(d) Cabinet approval of a minor permit modification request is granted. No permit changes can occur except for the addition of new waste codes and administrative or technical changes necessary to handle new wastes. Changes in treatment processes or physical equipment may not be made under this subsection.

Section 4. Termination of Permits. (1) The cabinet may terminate a permit during its term or deny a permit renewal application for the following causes:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(d) A violation of any requirement of KRS Chapter 224 or the respective regulations promulgated pursuant thereto (including 401 KAR 40:040).

(2) The cabinet shall follow the applicable procedures in this regulation and in 401 KAR 38:050 and 401 KAR Chapter 40 in terminating any permit under this section.

Section 5. Duration of Permit. (1) Term of permit. Hazardous waste site or facility permits shall be effective for a fixed term not to exceed ten (10) years. (See also Section 5 of 401 KAR 38:060, Interim permits for UIC wells.)

(2) Modification of term of permit. Except as provided in Section 6 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.

(4) Each permit for a land disposal facility shall be reviewed by the cabinet five (5) years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in Section 2 of this regulation.

(5) A permit for the nerve agents specified in KRS 224.865 shall be reviewed by the cabinet five (5) years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in Section 2 of this regulation.

Section 6. Continuation of Expiring Permits. (1) The conditions of an expired permit continue in force until the effective date of a new permit if:

(a) The permittee has submitted a timely application under 401 KAR 38:090 and 401 KAR 38:100 and the applicable requirements in 401 KAR 38:150 through 401 KAR 38:210 and which is a complete (under Section 1(3) of 401 KAR 38:070) application for a new permit, paid the appropriate fees due (under 401 KAR Chapter 39); and

(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 resources constraints).

(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 38:050. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(c) Issue a new permit under 401 KAR 38:050 with appropriate conditions; or

(d) Take other actions authorized by 401 KAR Chapters 30 through 40.

(4) State continuation. As provided in 40 CFR 270.51(d), an EPA issued permit shall not continue in force beyond its expiration date under federal law if at that time the cabinet is the RCRA permitting authority.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 38:230. Specific Part B requirements for miscellaneous units [for disposal].

RELATES TO: KRS 224.033, 224.036, 224.071, 224.087, 224.830 through 224.877, 224.994
STATUTORY AUTHORITY: KRS 13A.210, 224.033, 224.866
NECESSITY AND FUNCTION: KRS 224.842 and 224.866 require any person who treats, stores, recycles, or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the Natural Resources and Environmental Protection Cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes the specific Part B information requirements for miscellaneous units [for disposal].

Section 1. Specific Part B Information Requirements. Except as otherwise provided in Section 1 of 401 KAR 34:250, owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units [for disposal] shall provide the following additional information:

(1) A detailed description of the unit being used or proposed for use, including the following:

(a) Physical characteristics, materials of construction, and dimensions of the unit;

(b) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of Sections 2 and 3 of 401 KAR 34:250; and

(c) For disposal units, a detailed description of the plans to comply with the postclosure requirements of Section 4 of 401 KAR 34:250.

(2) Detailed hydrologic, geologic, and meteorologic assessments and land use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of Section 2 of 401 KAR 34:250. If the applicant can demonstrate that he does not violate the environmental performance standards of Section 2 of 401 KAR 34:250 and the cabinet agrees with the demonstration, preliminary hydrologic, geologic, and meteorologic assessments shall suffice.

(3) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures.

(4) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data.

(5) Any additional information determined by the cabinet to be necessary for evaluation of compliance of the unit with the environmental performance standards of Section 2 of 401 KAR 34:250.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 50:010. Definitions and abbreviations of terms used in Title 401, Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65.

RELATES TO: KRS 224.320, 224.330, 224.340
STATUTORY AUTHORITY: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the defining of terms to be used in Title 401, Chapters 50 to 65.

Section 1. Definitions. All terms not defined in this regulation [herein] or in subsequent regulations, shall have the meaning given them in KRS 224.005 or by commonly accepted usage. As used in the regulations of the Division for Air Quality, unless the content clearly indicates otherwise, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an [any] air contaminant into the outdoor atmosphere.

(2) "Air contaminant [or air pollutant]" has the meaning given it in KRS 224.005 [includes smoke, dust, soot, grime, carbon, or any other particulate matter, radioactive matter, noxious acid, fumes, gases, odor, vapor, or any combination thereof].

(3) "Air pollutant" means an air contaminant.

(4) [(3)] "Air pollution" has the meaning given it in KRS 224.005 [means the presence in the outdoor atmosphere of one (1) or more air contaminants in sufficient quantities and of such characteristics and duration as is or threatens to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the comfortable enjoyment of life or property].

(5) [(4)] "Air pollution control equipment" means a [any] mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) [(5)] "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A [Any] physical change in or change in the method of operation of an [any] affected facility which increases the potential to emit of a [any] pollutant (to which a standard applies) emitted by the [such] facility or which results in the emission of an [any] air pollutant (to which a standard applies) not previously emitted.

(7) [(6)] "Alternative method" means a [any] method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) [(7)] "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) [(8)] "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive [and/]or control measures.

(10) [(9)] "Cabinet" has the meaning given it in KRS 224.005 [means the Natural Resources and Environmental Protection Cabinet].

(11) [(10)] "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(12) [(11)] "Compliance schedule" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a [any] limitation or standard.

(13) [(12)] "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(14) [(13)] "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(15) [(14)] "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(16) [(15)] "District" has the meaning given it in KRS 224.005 [means an air pollution control district as provided for in KRS Chapter 77].

(17) [(16)] "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an [any] affected facility or from air pollution control equipment installed in an [any] affected facility.

(18) [(17)] "Equivalent method" means a [any] method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(19) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(20) [(18)] "Existing source" means a [any] source which is not a new source.

(21) [(19)] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(22) [(20)] "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these

[such] materials for the purpose of creating useful heat.

(23) [(21)] "Fugitive emissions" [except where 401 KAR 51:017 and 401 KAR 51:052 are applicable,] means the emissions of an [any] air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(24) [(22)] "Hydrocarbon" means an [any] organic compound consisting predominantly of carbon and hydrogen.

(25) [(23)] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(26) [(24)] "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(27) [(25)] "Malfunction" means a [any] failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner.

(28) [(26)] "Major source" means a [any] source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(29) [(27)] "Modification" means a [any] physical change in, or change in the method of operation of an affected facility which increases the potential to emit of an [any] air pollutant (to which a standard applies) emitted by the [such] facility, or which results in the emission of an [any] air pollutant (to which a standard applies) not previously emitted, except that:

(a) Routine maintenance, repair, and replacement of component parts shall not be considered physical changes;

(b) The following shall not be considered a change in the method of operation:

1. An increase in the production rate, if the [such] increase does not exceed the operating design capacity of the affected facility, or the maximum operating capacity specified as a condition to a permit issued by the cabinet;

2. An increase in hours of operation;

3. Use of an alternative fuel or raw material if, prior to the date a [any] standard becomes applicable to the [such] facility, the affected facility is designed to accommodate the [such] alternative use.

(30) [(28)] "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(31) [(29)] "New source" means a [any] source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a [any] change in emission rate.

(32) [(30)] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(33) [(31)] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(34) [(32)] "Owner or operator" means a [any] person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(35) [(33) "Particulate matter" means a [any] material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(36) [(34)] "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(37) [(35)] "Person [or persons]" means an [any] individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity [whatsoever].

(38) [(36)] "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated [filed] by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(39) [(37)] "PM_{10} emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(40) [(38)] "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A [Any] physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall [do] not count in determining the potential to emit of a stationary source.

(41) [(39)] "Reconstruction" means the replacement of components of an existing affected facility to the [such an] extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions

from the affected facility; and

(d) [Any] Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(42) [(40)] "Reference method" means a [any] method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61. This term may be more narrowly defined within a specific regulation or chapter.

(43) [(41)] "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(44) [(42)] "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall [must] be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an [any] off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include [any] emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(45) [(43)] "Shutdown" means the cessation of an operation [for any purpose].

(46) [(44)] "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(47) [(45)] "Stack or chimney" means a [any] flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(48) [(46)] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with [the provisions of] Title 401, Chapter 51, of the regulations of the Division for Air Quality.

(49) [(47)] "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68)) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(50) [(48)] "Start-up" means the setting in operation of an affected facility [for any purpose].

(51) [(49)] "State implementation plan" means the most recently prepared plan or revision [thereof] required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

(52) [(50)] "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated [filed] by reference in 401 KAR 50:015.

(53) [(51)] "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(54) [(52)] "Urban county" means a [any] county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 [1970] census. If a [any] portion of a county is a part of [such] an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.

(55) [(53)] "Urbanized area" means an [any] area defined as such by the U.S. Department of Commerce, Bureau of Census.

(56) [(54)] "Volatile organic compound [(VOC)]" or "VOC" means an [, except as used in 401 KAR 51:017 or 401 KAR 51:052, any] organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: [; or which is measured under the applicable regulation by a reference method, an equivalent method, an alternative method, or which is determined by procedures specified in the applicable regulation. Compounds which do not participate in atmospheric photochemical reactions or which are not considered to be organic compounds are:] methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, ammonium carbonates, methylene chloride, 1,1,1,-trichloroethane (methyl chloroform), trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), trichlorotrifluoroethane (CFC-113), dichlorotetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115), dichlorotrifluoroethane (HCFC-123), tetrafluoroethane (HFC-134a), dichlorofluoroethane (HCFC-141b), chlorodifluoroethane (HCFC-142b). These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet. **Approval by the cabinet shall not constitute or imply approval by the U.S. EPA.** The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard [carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate].

Section 2. Abbreviations. The abbreviations used in the regulations of Title 401, Chapters 50 to 65, shall have the following meanings:

AOAC - Association of Official Analytical Chemists

ANSI - American National Standards Institute

ASTM - American Society for Testing and Materials

BOD - Biochemical oxidant demand

BTU - British Thermal Unit

°C - Degree Celsius (centigrade)

Cal - calorie

cfm - Cubic feet per minute

CFR - Code of Federal Regulations

CH_4 - methane

CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram(s)
gal - gallon(s)
gr - grain(s)
hr - hour(s)
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch(es)
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram(s)
KRS - Kentucky Revised Statutes
l - liter(s)
lb - pound(s)
m_3 - meter(s)
m^3 - cubic meter
min - minute(s)
mg - milligram(s)
MJ - megajoules
MM - million
mm - millimeter(s)
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
ug - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: September 14, 1990
FILED WITH LRC: September 14, 1990 at 11 a.m.

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

401 KAR 59:021. New municipal solid waste incinerators.

RELATES TO: KRS 224.320, 224.330, 224.340, [224.855,] E.O. 90-68, 40 CFR 60.13 (1990), 40 CFR 60, Appendix A, Methods, 1, 2, 3, 5, 6, 6A, 6C, 7, 7E, 9, 10, and 19 (1990), 40 CFR 60, Appendix B, Performance Specifications 1, 2, 3, and 4 (1990)

STATUTORY AUTHORITY: KRS 224.033, 40 CFR 60.13 (1990), 40 CFR 60, Appendix A, Methods, 1, 2, 3, 5, 6, 6A, 6C, 7, 7E, 9, 10, and 19 (1990), 40 CFR 60, Appendix B, Performance Specifications 1, 2, 3, and 4 (1990)

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides standards of performance for new municipal solid waste incinerators.

Section 1. Definitions. As used in this regulation, all terms not defined in this section shall have the meaning given them in 401 KAR 50:010.

(1) "Affected facility" means each municipal solid waste incinerator unit for which construction, modification, or reconstruction is commenced on or after December 20, 1989.

(2) "Municipal solid waste incinerator" or municipal "solid waste incinerator unit" or "MSWI" or "MSWI unit" means a device that combusts material, which if included in the waste stream, would be municipal solid waste. This includes but is [including, but] not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved air or excess air), boilers (i.e., steam generating units), and furnaces (whether suspension-fired, grate-fired, mass-fired, or fluidized bed-fired).

(3) "ASME" means the American Society of Mechanical Engineers.

(4) "Biologicals" means a biological product used in the prevention or treatment of disease [noxious organisms].

(5) "Bubbling fluidized bed incinerator" means a fluidized bed incinerator in which the majority of the bed material remains in the primary combustion zone.

(6) "Chief facility operator" means the person in direct charge and control of the operation of a MSWI and who is responsible for daily on-site supervision, technical direction, management, and overall performance of the facility.

(7) "Circulating fluidized bed incinerator" means a fluidized bed incinerator in which the majority of the bed material is carried out of the primary combustion zone and is transported back to the primary zone through a recirculation loop.

(8) "[Coal and] Refuse-derived fuel cofired incinerator" or "[coal and] RDF cofired incinerator" means an incinerator that is designed to fire [coal and] refuse-derived fuel simultaneously with other fuels.

(9) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household and industrial wastes. Commercial solid waste includes waste from medical facilities, schools, and other institutions that is not medical waste.

(10) "Contained landfill" has the meaning given it in 401 KAR 30:010.

(11) "Continuous emission monitoring system" or "CEMS" means a monitoring system for continuously measuring and recording the emissions of a pollutant from an affected facility.

(12) "Daily average" means the average of all hourly emission rates when the affected facility is operating and firing municipal solid waste measured between 12 midnight and the following midnight.

(13) "Dioxin or furan" means total tetra- through octa-chlorinated dibenzo-p-dioxins and tetra- through octa-chlorinated dibenzofurans.

(14) "Ferrous metals" means metals and alloys containing iron. Ferrous metals include, but are not limited to, pieces of scrap metal and household appliances made of iron-containing metals, including stoves, refrigerators, air conditioners, and other appliances. Ferrous metals shall not include whole automobiles or other vehicles or vehicle bodies.

(15) "Field-erected" means assembled from components at a final site of operation.

(16) "Four (4) hour block average" means the average of all hourly emission rates when the affected facility is operating and combusting municipal solid waste measured over four (4) hour periods of from 12 midnight to 4 a.m., 4 a.m. to 8 a.m., 8 a.m. to 12 noon, 12 noon to 4 p.m., 4 p.m. to 8 p.m., 8 p.m. to 12 midnight.

(17) "Hazardous waste" has the meaning given it in KRS 224.005 [means waste that has the characteristics identified in 401 KAR 31:030].

(18) "Household battery" means a dry cell battery.

(19) "Household solid waste" means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunkhouses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and campgrounds.

(20) "Industrial waste" means a liquid, gaseous, or solid waste substance resulting from a process of industry, manufacture, trade, or business, or from the development, process, or recovery of a natural resource.

(21) "Large MSWI plant" means a MSWI plant with a MSWI plant capacity greater than 225 megagrams per day (250 tons per day) of municipal solid waste.

(22) "Mass burn refractory incinerator" means an incinerator that combusts waste in a refractory wall furnace.

(23) "Mass burn rotary waterwall incinerator" means an incinerator that combusts waste in a cylindrical rotary waterwall furnace.

(24) "Mass burn waterwall incinerator" means an incinerator that combusts waste in a conventional waterwall furnace.

(25) "Maximum MSWI unit load" means the maximum one (1) hour MSWI load achieved when compliance with all applicable regulations is demonstrated or during a subsequent test demonstrating compliance at a higher unit load.

(26) "Medical waste" means:

[(a) Wastes contaminated by patients who are isolated due to communicable disease;]

(a) [(b)] Cultures and stocks of infectious agents, including specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;

(b) [(c)] Waste human blood and blood products such as serum, plasma, and other blood components;

(c) [(d)] Pathological wastes, such as tissues, organs, body parts, and body fluids that are removed during surgery and autopsy;

(d) [(e)] All discarded sharps, including but not limited to [e.g.,] hypodermic needles, syringes, Pasteur pipettes, broken glass, scalpels, scalpel blades, glass vials, etc., used in patient care, autopsy, embalming, or which have come into contact with infectious agents during use in medical, research, or industrial laboratories;

(e) [(f)] Carcasses and [,] body parts [, and bedding] of animals that were exposed to pathogens in research, in the production of biologicals, or in the in vivo testing of pharmaceuticals; and

(f) [(g)] Other wastes as may be designated by a permit issued by the Division for Air Quality.

(27) "Modular excess air incinerator" means an incinerator that combusts waste and that is not field-erected and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

(28) "Modular starved air incinerator" means an incinerator that combusts waste and that is not field-erected and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

(29) "Multiple chamber incinerator" means an incinerator consisting of at least two (2) refractory lined combustion chambers (primary and secondary) in series, physically separated by refractory walls, and interconnected by gas passage ports or ducts.

(30) "Municipal solid waste" or "MSW" means household solid waste and commercial solid waste. Medical waste shall not be considered to be MSW, but may be regulated by other regulations of the Division for Air Quality, including but not limited to 401 KAR 59:023 or Title 401, Chapter 63.

[(31) "Municipal solid waste incinerator" or "MSWI" means a type of MSWI that combusts MSW exclusively.]

(31) [(32)] "Normal" means a volumetric measurement at thirty-two (32) degrees Fahrenheit and one (1) atmosphere.

(32) [(33)] "Particulate matter" means total particulate matter emitted from MSWI units.

(33) [(34)] "Particulate matter carryover" means particulate matter which is passed from the primary chamber of an incinerator into the flue gas stream.

(34) [(35)] "Processed MSW or refuse-derived fuel" or "processed MSW or RDF" means MSW or refuse-derived fuel that has been processed to separate materials for recovery

prior to combustion in a MSWI unit. MSW or RDF shall be considered to be processed MSW or RDF if an overall forty (40) percent or greater reduction by weight (annual average) of MSW is achieved through the separation of recoverable materials. A maximum of fifteen (15) [ten (10)] percent reduction (by weight) of the overall MSW shall be attributed to separation of yard waste. The forty (40) percent or greater overall reduction requirement may be achieved by on-site mechanical separation, on-site manual separation, off-site mechanical separation, off-site manual separation, or a curbside source reduction or materials separation (recycling) program, or a combination thereof.

(35) [(36)] "RDF spreader stoker" means a steam generating unit that combusts RDF in a semi-suspension firing mode using air-fed distributors.

(36) [(37)] "Recoverable materials" means paper, paperboard, ferrous metals, nonferrous metals, glass, plastics, household batteries, and yard waste.

(37) [(38)] "Refuse-derived fuel" or "RDF" means a type of MSW produced by processing MSW through shredding and size classification. This includes all classes of RDF including low density fluff RDF through densified RDF fuel pellets.

(38) [(39)] "Same location" means the same or contiguous property that is under common ownership or control, including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or a combination thereof, including a municipality or other governmental unit, or a quasi-governmental authority (e.g., a public utility district or waste management district).

(39) [(40)] "Shift supervisor" means the person in direct charge and control of the operation of a MSWI and who is responsible for on-site supervision, technical direction, management, and overall performance of the facility during an assigned shift.

(40) [(41)] "Small MSWI plant" means a MSWI plant with a MSWI plant capacity of greater than 500 pounds per hour but less than or equal to 225 megagrams per day (250 tons per day) of municipal solid waste.

(41) [(42)] "Solid waste" has the meaning given it in KRS 224.005.

(42) [(43)] "Solid waste burnout" means the percent [degree] of matter completely burned in the primary chamber of a MSWI.

(43) [(44)] "Standard" means a volumetric measurement at sixty-eight (68) degrees Fahrenheit and and one (1) atmosphere.

(44) [(45)] "MSWI acid gases" means sulfur dioxide and hydrogen chloride gases emitted from MSWI units.

(45) [(46)] "MSWI metals" means condensible metals emitted from MSWI units. For the purpose of this regulation, particulate matter shall serve as a surrogate for the measurement and control of MSWI metals.

(46) [(47)] "MSWI organics" means organic compounds emitted from MSWI units and includes dioxins or furans. For the purpose of this regulation, dioxin or furan shall serve as a surrogate for the measurement and control of MSWI organics.

(47) [(48)] "MSWI plant" means one (1) or more MSWI units at the same location for which construction, modification, or reconstruction is commenced on or after December 20, 1989.

(48) [(49)] "MSWI plant capacity" means the aggregate MSWI unit capacity of all MSWI units at a MSWI plant. MSWI units for which construction, modification, or reconstruction is commenced before December 20, 1989, shall not be included for determining applicability under this regulation.

(49) [(50)] "MSWI unit capacity" means the maximum designed charging rate of the waste for an individual MSWI.

(50) [(51)] "MSWI unit load" means volume of steam produced expressed in kilograms per hour (pounds per hour) of steam.

(51) [(52)] "Uncontrolled hydrogen chloride emission rate" means the hydrogen chloride emission rate that would occur from combustion of MSW [solid waste] in the absence of hydrogen chloride emissions control.

(52) [(53)] "Uncontrolled sulfur dioxide emission rate" means the sulfur dioxide emission rate that would occur from combustion of MSW [solid waste] in the absence of sulfur dioxide emissions control.

(53) [(54)] "Unprocessed MSW or RDF" means MSW or RDF that has not been processed to separate materials for recovery prior to combustion or for which less than a forty (40) percent reduction by weight (annual average) of MSW is achieved.

(54) [(55)] "Vehicle battery" means a wet lead-acid battery.

(55) [(56)] "Waste management district" has the meaning given it in KRS 224.005.

(56) [(57)] "Yard waste" means vegetative matter removed as a result of outdoor maintenance practices from residential and commercial yards, municipal parks, gardens, golf courses, and other similar areas, and includes, but is not limited to, grass trimmings, tree branches, straw, and leaves.

Section 2. Applicability. (1) This regulation shall apply to each affected facility which means each MSWI unit for which construction, modification, or reconstruction is commenced on or after December 20, 1989. [Coal and] RDF cofired incinerators which combust less than or equal to twenty (20) percent RDF shall be exempt from this regulation. Incinerators which combine and combust municipal solid waste[, hazardous waste,] and medical waste shall be subject to 401 KAR 59:023.

(2) The physical or operational changes made to an existing MSWI unit to comply with 401 KAR 61:011 shall not be considered a modification or reconstruction and shall not subject the existing MSWI unit to this regulation.

(3) Owners or operators of MSWI plants with a plant capacity of 500 pounds per hour or less [and owners or operaters of MSWI units which combust untreated or kiln-dried wood wastes or coal wastes exclusively] shall be exempt from Sections 3 to 11 [12] of this regulation. However, these facilities shall comply with the following requirements:

(a) Emissions discharged into the atmosphere shall not exhibit greater than ten (10) percent opacity. Method 9, which has been filed by reference in 401 KAR 50:015, shall be used to determine compliance with the opacity standard.

(b) Other regulatory requirements including but not limited to 401 KAR 53:010 and Title 401, Chapter 63.

(4) Emission limitations or control requirements imposed by any other regulation of the Division for Air Quality **or the Division of Waste Management** may impose more stringent requirements than those imposed by this regulation.

(5) Siting criteria. No owner or operator of an affected facility subject to 401 KAR 47:030 shall construct or operate the affected facility in a manner which will violate the requirements of that regulation.

Section 3. Standards for MSWI Metals. On and after the date on which the initial performance test is completed or is required to be completed by Section 10 of this regulation, no owner or operator of an affected facility shall cause or allow to be discharged into the atmosphere from the affected facility:

(1) Emissions that contain particulate matter in excess of thirty-four (34) milligrams per dry standard cubic meter (0.015 grains per dry standard cubic foot), corrected to seven (7) percent oxygen (dry basis).

(2) Emissions that exhibit greater than ten (10) percent opacity.

Section 4. Standards for MSWI Organics. On and after the date in which the initial performance test is completed or is required to be completed by Section 10 of this regulation, no owner or operator of an affected facility:

(1) Located within a small MSWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions that contain dioxin or furan emissions that exceed seventy-five (75) nanograms per normal cubic meter (thirty (30) grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis)[, except as provided under subsection (2) of this section];

[(2) Combusting RDF and located within a small SWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions that contain dioxin or furan emissions that exceed 250 nanograms per normal cubic meter (100 grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis);] or

(2) [(3)] Located within a large MSWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions that contain dioxin or furan emissions that exceed **thirty (30)** [five (5)] nanograms per normal cubic meter (**fourteen (14)** [two (2)] grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis).

Section 5. Standards for MSWI Acid Gases. (1) Small MSWI plant. On and after the date on which the initial performance test is completed or is required to be completed by Section 10 of this regulation, no owner or operator of an affected facility located within a small MSWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions that contain:

(a) Sulfur dioxide in excess of fifty (50) percent of the uncontrolled sulfur dioxide emission rate (fifty (50) percent reduction by weight) or thirty (30) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent.

(b) Hydrogen chloride in excess of twenty (20) percent of the uncontrolled hydrogen chloride emission rate (eighty (80) percent reduction by weight) or twenty-five (25) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent.

(2) Large MSWI plant. On and after the date on which the initial performance test is completed or is required to be completed by Section 10 of this regulation, no owner or operator of an affected facility located within a large MSWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions that contain:

(a) Sulfur dioxide in excess of fifteen (15) percent of the uncontrolled sulfur dioxide emission rate (eighty-five (85) percent reduction by weight) or thirty (30) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent.

(b) Hydrogen chloride in excess of five (5) percent of the uncontrolled hydrogen chloride emission rate (ninety-five (95) percent reduction by weight) or twenty-five (25) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent.

Section 6. Standard for Nitrogen Oxides. On and after the date on which the initial performance test is completed or is required to be completed by Section 10 of this regulation, no owner or operator of an affected facility located within a large MSWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions that contain nitrogen oxides in excess of 120 parts per million by volume, corrected to seven (7) percent oxygen (dry basis).

Section 7. Standards for Carbon Monoxide. On and after the date on which the initial performance test is completed or is required to be completed by Section 10 of this regulation, no owner or operator of an affected facility shall cause or allow the facility to exceed the carbon monoxide standard for the applicable MSWI technology in Appendix A of this regulation.

Section 8. Standards for MSWI Operating Practices. (1) No owner or operator of an affected facility that generates steam shall cause or allow the facility to operate at a load level greater than 100 percent of the maximum MSWI unit load. An owner or operator of an affected facility who wishes to operate at a load level greater than the maximum MSWI unit load may do so by conducting all applicable compliance tests to establish a higher maximum MSWI unit load.

(2) No owner or operator of an affected facility shall burn **MSW** [solid waste] except in a multiple chamber incinerator with a solid hearth, or in a device found to be equally effective for the purpose of air contaminant control as determined by the cabinet.

(3) Temperature and residence time requirements **for affected facilities equipped with a secondary chamber while combusting MSW**:

(a) The incinerator secondary chamber shall be maintained at a minimum temperature of 982

degrees Celsius (1800 degrees Fahrenheit);

(b) The minimum secondary chamber residence time shall be **one (1.0)** [two (2.0)] seconds; and

(c) The incinerator shall have interlocks or other process control devices to prevent operation of the incinerator until the conditions in paragraphs (a) and (b) of the subsection and subsection (4) of this section are assured.

(4) No owner or operator of an affected facility **other than a facility using a wet scrubber as a particulate matter control device** shall allow the temperature of the flue gases entering the particulate matter control device inlet to exceed 149 degrees Celsius (300 degrees Fahrenheit) **while combusting MSW**.

(5) Except as provided under subsection (8) [and (9)] of this section, on and after the date of initial start-up, no owner or operator of an affected facility shall cause or allow unprocessed MSW or RDF to be combusted in the facility.

(6) No owner or operator of an affected facility shall cause or allow **yard waste or** vehicle batteries to be combusted in the facility.

(7) Prior to initial start-up, the owner or operator of an affected facility shall establish a program which has been approved by the cabinet to remove household batteries from MSW [solid waste] prior to combustion. On and after the date of initial start-up, the owner or operator shall comply with the approved plan for removing household batteries from MSW [solid waste].

(8) The owner or operator of an affected facility may apply to the cabinet for a materials separation or combustion permit for any combustible material designated for separation under the materials separation plan under Section 11(3) of this regulation for which a market is unavailable for the separated material for 120 days. **Approval by the cabinet shall not constitute or imply approval by the U.S. EPA.** A market shall be considered to be unavailable for these combustibles if the cabinet determines that the cost of recycling these combustibles exceeds the cost of landfilling them, and that the forty (40) percent reduction requirement for processed MSW or RDF cannot be obtained through separation of other recoverable materials. An owner or operator wishing to demonstrate that a recycling market is unavailable for recoverable combustibles shall submit a demonstration to the cabinet that includes a list of recycling facilities and facility officials contacted, a written discussion of why he was not able to obtain recycling for the combustible wastes, **and** [or] a list of landfill facilities and facility individuals contacted and a documented comparison of the costs of recycling versus the costs of landfilling. The MSWI owner or operator shall also provide to the cabinet the following certification: "I certify under penalty of law that a recycling market is unavailable for the following combustible recoverables as defined in 401 KAR 59:021, Section 1. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."

(a) If a materials separation or combustion permit has been issued, separated material covered under the materials separation or comubstion permit may be combusted in the affected facility and may be credited toward the overall forty (40) percent materials separation requirement for processed MSW or RDF.

(b) If a materials separation or combustion permit is granted by the cabinet, it shall be valid for a maximum of one (1) year. Reapplication may be made for subsequent materials separation or combustion permits. A reapplication shall be made within ninety (90) days before expiration of the permit and may be renewed for one (1) year.

(9) Owners or operators of affected facilities **shall cause ash from MSWI units to be tested to determine the toxicity of the ash, using tests rquired in Title 401, Chapter 31. Ash which is determined to be a hazardous waste shall be disposed of according to the regulations of the Division of Waste Management. Ash which is determined to be not hazardous waste** [which MSW in order to recover energy may request a reduction in the percent reduction requirements of subsection (5) of this section. The request shall demonstrate that a forty (40) percent material reduction will significantly decrease the amount of energy recovered in the combustion process, thereby rendering the MSW-to-energy operation technically or economically infeasible. The request shall propose and justify a site-specific alternative percent reduction. If the request is approved by the cabinet, the owner or operator shall comply with the site-specific alternative.

(10) Ash resulting from the combustion of solid waste] shall be disposed of in a contained landfill.

(10) Owners or operators of affected facilities that receive MSW from generators that are noncontiguous to the incineration site shall comply with the operating requirements for contained landfills in 401 KAR 48:090, Section 2.

(11) Owners or operators of affected facilities shall comply with the design requirements for contained landfills in 401 KAR 48:070, Section 15.

Section 9. Operator Certification and Training. (1) Within twenty-four (24) months from the date that ASME adopts a certification program for municipal solid waste combustor (incinerator) unit operators, each facility operator and shift supervisor of an affected facility shall obtain and keep current either a provisional or operator certification from ASME.

(2) **No** [The] owner or operator of an affected facility shall cause or allow an **affected facility to be operated unless an** ASME certified shift supervisor **or ASME certified chief facility operator is** [to be] on duty at the affected facility at all times during periods of MSWI unit operation. This requirement shall take effect twenty-four (24) months after the date that ASME adopts a certification program for municipal solid waste combustor (incinerator) unit operators.

(3) The owner or operator of an affected facility shall develop and update on a yearly basis a site-specific operation manual that shall at a minimum, address the following elements of MSWI unit operation:

(a) Summary of the applicable standards under this regulation;

(b) Description of basic comubstion theory applicable to a MSWI unit;

(c) Procedures for receiving, handling, and feeding MSW [solid waste];
(d) MSWI unit start-up, shutdown, and malfunction procedures;
(e) Procedures for maintaining proper comubstion air supply levels;
(f) Procedures for operating a MSWI unit within the standards established under this regulation;
(g) Procedures for responding to periodic upset or off-specification conditions;
(h) Procedures for minimizing particulate matter carryover;
(i) Procedures for monitoring [the degree of] solid waste burnout;
(j) Procedures for handling ash;
(k) Procedures for monitoring MSWI unit emissions; and
(l) Reporting and recordkeeping procedures.
(4) The owner or operator of an affected facility shall establish a program for reviewing the operating manual annually with each person who has responsibilities affecting the operation of an affected facility including, but not limited to, chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane or load handlers.
(5) The initial review of the operating manual, as specified under subsection (4) of this section, shall be conducted prior to assumption of responsibilities affecting MSWI unit operation by those persons required to undergo training under subsection (4) of this section. Subsequent reviews of the manual shall be carried out annually by each person required to undergo training.
(6) The operating manual shall be kept in a readily accessible location for all persons required to undergo training under subsection (4) of this section. The operating manual and records of training shall be available for inspection by the cabinet upon request.
(7) The owner or operator of each affected facility shall maintain documentation to support compliance with this section. The documentation shall be made available to the cabinet upon request, and shall include, at a minimum, a description of the instruction given, the date of the instruction, [and] the signature of the person receiving the instruction, **and copies of the certificates issued to the chief facility operator and shift supervisor documenting compliance with subsection (1) of this section**.

Section 10. Compliance and Performance Testing. Within sixty (60) days after achieving the maximum production rate at which an affected facility will be operated, but not later than 180 days after initial start-up of the facility and at other times as may be required by the cabinet, the owner or operator of an affected facility shall conduct performance tests according to 401 KAR 50:045 and this section and shall furnish the cabinet a written report of the results of the performance tests. This section shall apply at all times, except for a period of one (1) hour for the start-up or shutdown of the affected facility and for a period not to exceed three (3) hours during the malfunction of an affected facility. Except as provided in 401 KAR 50:045, the following methods and procedures shall be used to determine compliance with Sections 3 to 8 of this regulation. 40 CFR 60.13, Methods 1, 2, 3, 5, 6, 6A, 6C, 7, 7E, 9, 10, and 19, and Performance Specifications 1, 2, 3, and 4 are adopted without change in Section 12 of this regulation. Kentucky Methods 23 and 26, Kentucky Specification 4A, and Kentucky Procedure 1 are incorporated by reference in Section 12 of this regulation. For each performance test, an owner or operator may request that compliance be determined using carbon dioxide measurements corrected to an equivalent of seven (7) percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established during each initial performance test.
(1) MSWI metals [Particulate matter]. The following procedures and test methods shall be used to determine compliance with the standards for MSWI metals [particulate matter] in Section 3 of this regulation.
(a) Mehtod 1 shall be used to select sampling sites and the number of traverse points. **Method 2 shall be used to determine the stack gas velocity and volumetric flow rates.**
(b) Method 3 shall be used for gas analysis.
(c) Method 5 shall be used for determining compliance with the particulate matter emission standard. The minimum sample volume shall be **one and seven-tenths (1.7) cubic meters (sixty (60) cubic feet)** [three and four-tenths (3.4) cubic meters (120 cubic feet)]. The temperature of the sample gas in the probe and filter holder shall be **120 + (plus or minus) 14°C (248 + (plus or minus) 25°F)** [160 ± 14°C (320 ± 25°F)]. An oxygen or carbon dioxide measurement shall be obtained simultaneously with each Method 5 run.
(d) Both Method 9 and CEMS shall be used for determining compliance with the opacity standard. However, Method 9 results shall take precedence over CEMS data **if** [in the event of] concurrent readings **occur**.
(e) The owner or operator of an affected facility with a MSWI unit capacity greater than 500 lb per hr except for MSWI units equipped with a wet scrubber shall install, calibrate, maintain, and operate a CEMS for measuring opacity and shall record the output of the system.
(f) Following the date the initial performance test for the mass emission standard for particulate matter is completed or is required to be completed by this section, the owner or operator of an affected facility shall conduct a performance test for the mass emission standard for particulate matter on an annual basis (no more than twelve (12) calendar month following the previous compliance test). For an affected facility located within a small MSWI plant, if all three (3) performance tests for a three (3) year period indicate compliance with the particulate matter standard, the owner or operator may forego a performance test for the subsequent two (2) years. At a minimum, a performance test for particulate matter for an affected facility located within a small MSWI plant shall be conducted every third year (no more than thirty-six (36) month following the previous compliance test). If a performance test conducted every third year within a small MSWI plant indicates compliance with the mass emission particulate matter standard, the owner or operator may forego a performance test for an additional two (2) years.
(g) Following the date the initial performance

test is completed or is required to be completed in this section, compliance with the opacity standard shall be determined by a six (6) minute average of the opacity readings obtained from the CEMS.

(2) MSWI organics [Dioxin or furan]. The following procedures and test methods shall be used to determine compliance with the standards for MSWI organics [dioxin for furan emissions] under Section 4 of this regulation.

(a) Kentucky Method 23 shall be used for determining compliance with dioxin or furan emission standards. The sampling time shall be four (4) hours and the minimum sampling volume shall be four (4.0) cubic meters (140 cubic feet).

(b) Following the date of the initial performance test or the date on which the initial performance test is required to be completed by this section, the owner or operator of an affected facility shall conduct a performance test for dioxin or furan emissions on an annual basis (no more than twelve (12) calendar months following the previous performance test). For an affected facility located within a small MSWI plant, if all three (3) performance tests in a three (3) year period indicate compliance with the dioxin or furan emissions standard, the owner or operator may forego a performance test for the subsequent two (2) years. At a minimum, a performance test for dioxin or furan emissions at affected facilities located within a small MSWI plant shall be conducted every third year (no more than thirty-six (36) months following the previous performance test). If a performance test conducted every third year within a small MSWI plant indicates compliance with the dioxin or furan emissions standard, the owner or operator may forego conducting a performance test for an additional two (2) years.

(3) Sulfur dioxide. The following procedures and test methods shall be used for determining compliance with the sulfur dioxide standards under Section 5 of this regulation.

(a) The percentage reduction in the uncontrolled sulfur dioxide emissions ($\%P_{SO2}$) shall be computed using the formula in Appendix B of this regulation.

(b) Methods 6, 6A, or 6C, and 19 shall be used for determining the sulfur dioxide emission rate.

(c) The sulfur dioxide performance test shall be conducted over twenty-four (24) consecutive unit operating hours at maximum MSWI unit load. Compliance with the sulfur dioxide standard shall be determined using a daily average.

(d) The owner or operator of an affected facility with a MSWI unit capacity greater than 500 pound per hour shall install, calibrate, maintain, and operate a CEMS for measuring sulfur dioxide emissions discharged to the atmosphere and shall record the input and output of the system.

(e) Following the date of the initial performance test or the date on which the initial performance test is required to be completed by this section compliance with the sulfur dioxide standard shall be determined based on the arithmetic average of the hourly emission rates during each daily period measured between 12 midnight and the following midnight using CEMS inlet and outlet data, if compliance is based on a percentage reduction; or outlet data only if compliance is based on an emission limit.

(f) The one (1) hour averages required under paragraph (e) of this subsection shall be expressed in nanograms per hour (pounds per hour) and shall be used to calculate the daily average emission rates. The one (1) hour averages shall be calculated using the data points required under 40 CFR 60.13(h).

(g) For affected facilities which shall install CEMS, the span value of the CEMS at the inlet to the sulfur dioxide control device shall be 125 percent of the maximum estimated hourly uncontrolled sulfur dioxide emissions of the MSWI unit, and the span value of the CEMS at the outlet to the sulfur dioxide control device shall be fifty (50) percent of the maximum estimated hourly uncontrolled sulfur dioxide emissions of the MSWI unit.

(4) Hydrogen chloride. The following procedures and test methods shall be used for determining compliance with the hydrogen chloride standards under Section 5 of this regulation.

(a) The percentage reduction in the uncontrolled hydrogen chloride emissions ($\%P_{HCl}$) shall be computed using the formula in Appendix C of this regulation.

(b) Kentucky Method 26 shall be used for determining the hydrogen chloride emission rate.

(c) Following the date of the initial performance test or the date on which the initial performance test is required by this section, the owner or operator of an affected facility shall conduct a performance test for hydrogen chloride on an annual basis (no more than twelve (12) calendar months following the previous compliance test). For an affected facility located within a small MSWI plant, if all three (3) performance tests in a three (3) year period indicate compliance with the hydrogen chloride standard, the owner or operator may forego a performance test for the subsequent two (2) years. At a minimum a performance test for hydrogen chloride for an affected facility within a small MSWI plant shall be conducted every third year (no more than thirty-six (36) months following the previous compliance test). If a performance test conducted every third year at a small MSWI plant indicates compliance with the hydrogen chloride standard, the owner or operator may forego conducting a performance test for an additional two (2) years.

(5) Nitrogen oxides. The following procedures and test methods shall be used to determine compliance with the nitrogen oxides standard under Section 6 of this regulation.

(a) Methods 7 or 7E, and 19 shall be used for determining the nitrogen oxides emission rate.

(b) The initial performance test for nitrogen oxides required by this section for a large MSWI facility shall be conducted over twenty-four (24) consecutive hours of unit operation to determine compliance with the nitrogen oxides standard. CEMS data shall be used if required by paragraph (c) of this subsection. Compliance with the nitrogen oxides standard shall be determined using a daily average.

(c) The owner or operator of an affected facility with a MSWI unit capacity greater than 500 pound per hour which is subject to the nitrogen oxides emissions standard of Section 6 of this regulation shall install, calibrate, maintain, and operate a CEMS for measuring

nitrogen oxides discharged to the atmosphere and shall record the output of the system.

(d) Following the initial performance test or the date on which the initial performance test is required to be completed by this section, compliance with the emission limits for nitrogen oxides required under Section 6 of this regulation shall be determined based on the arithmetic average of the hourly emission rates during each twenty-four (24) hour daily period measured between 12 midnight and the following midnight using CEMS data.

(e) The one (1) hour averages required by paragraph (d) of this subsection shall be expressed in parts per million volume (dry basis) and shall be used to calculate the daily average emission rates under Section 6 of this regulation. The one (1) hour averages shall be calculated using the data points required under 40 CFR 60.13(h).

(6) Carbon monoxide. The following procedures shall be used for determining compliance with the carbon monoxide standards under Section 7 of this regulation.

(a) Compliance with the carbon monoxide emission limits in Appendix A of this regulation shall be determined using Method 10.

(b) The owner or operator of an affected facility with a MSWI unit capacity greater than 500 pound per hour shall install, calibrate, maintain, and operate a CEMS for measuring carbon monoxide at the incinerator outlet and shall record the output of the system.

(c) Following the initial performance test or the date on which the initial performance test is required to be completed by this section, compliance with the carbon monoxide emission limits shall be determined based on the arithmetic average of the four (4) hour emission rates measured using CEMS data.

(7) The following procedures shall be used for determining compliance with the operating practices under Section 8 of this regulation.

(a) The owner or operator of an affected facility that generates steam with a MSWI unit capacity greater than 500 pound per hour shall install, calibrate, maintain, and operate a steam flow meter, shall measure steam flow in kilograms per hour (pounds per hour) steam on a continuous basis, and shall record the output of the monitor. Steam flow shall be calculated in one (1) hour block averages.

(b) The owner or operator of an affected facility with a MSWI unit capacity greater than 500 pound per hour shall install, calibrate, maintain, and operate a continuous monitoring system for measuring both secondary chamber temperature and the temperature of the flue gas stream at the inlet to the particulate matter air pollution control device and shall record the output of the device. Temperature shall be calculated in four (4) hour block averages.

(c) Percent reduction requirements. The following procedures shall be used to determine compliance with Section 8(5) to (7) of this regulation.

1. Except as provided in subparagraph 4 of this paragraph, the initial demonstration of compliance with the percent reduction requirement for processed MSW or RDF and Section 8(5), (6), and (7) of this regulation shall be required at the end of the second full calendar year (January through December) after the date of initial start-up of an affected facility. The annual average percent MSW reduction calculated and reported at the end of the first full calendar year after initial start-up shall not be used to determine compliance.

2. Compliance with the percent reduction requirement for processed MSW or RDF shall be determined by calculating the percentage difference between the weight of MSW received at the affected facility and the weight of MSW combusted in the MSWI unit or the weight of separated recoverable materials. Except as provided in subparagraph 4 of this paragraph, beginning the month after the date of the initial start-up for new MSWIs, the percent reduction in MSW shall be calculated on a monthly basis using the monthly total weights recorded in compliance with Section 11(1)(h) and (i) of this regulation. At the end of each full calendar year (January through December) the annual average percent MSW reduction (by weight) shall be calculated **by using the annual total weights**. In calculating the percent MSW reduction, a maximum of **fifteen (15)** [ten (10)] percent weight reduction shall be attributed to separation of yard waste. If the annual average percentage reduction requirement for processed MSW or RDF is not achieved, the MSW or RDF shall not be considered to be processed MSW or RDF.

3. An owner or operator may elect to achieve, either wholly or partially, the percent reduction requirement for processed MSW or RDF, the prohibition of **yard waste or** vehicle batteries in Section 8(6) of this regulation, or the removal of household batteries in Section 8(7) of this regulation, through an off-site source reduction or materials separation (recycling) program. The owner or operator shall submit a separation plan which contains sufficient information to measure the performance of the off-site separation program on an annual basis beginning the first full calendar year (January through December) for the initial start-up of the affected facility, except as provided in subparagraph 4 of this paragraph. The off-site separation plan shall be submitted along with the initial compliance demonstration results.

4. The owner or operator of an affected facility shall be responsible for operating the affected facility in compliance with all standards including the prohibition on combustion of unprocessed MSW, **yard waste,** and vehicle batteries under Section 8(5) and (6) of this regulation and the implementation of a program for removal of household batteries under Section 8(7) of this regulation. If another party provides processed MSW, or removes **yard waste or** vehicle or household batteries, the provider of the service may become a co-operator of the affected facility. If the party providing the off-site processing of MSW, removal of **yard waste or** vehicle batteries, or removal of household batteries elects to become a co-operator for purposes of demonstrating compliance with Section 8(5), (6), or (7) of this regulation, the owner or operator of the affected facility shall submit at the time of submittal of the initial compliance demonstration related to the requirements of Section 8(5), (6), or (7) of this regulation:

a. A copy of a validly executed contract between the owner and operator of the affected facility and the party providing the processing of MSW, removal of vehicle batteries, **removal**

of yard waste, or removal of household batteries which contains the following provisions:

(i) An undertaking any the party that is co-operator or sole operator of the affected facility regarding compliance with the requirements of Section 8(5), (6), or (7) of this regulation; and

(ii) An undertaking by the party to meet the requirements of Section 8(5), (6), or (7) of this regulation and a description of the specific actions that will be implemented to comply with these requirements; and

b. A certified statement signed by an authorized official representing the party that they agree to become a cooperator, or sole operator, for the purpose of demonstrating compliance with Section 9(5), (6), or (7) of this regulation and recognizing that enforcement action, including penalties, may be taken against the party for failure to demonstrate compliance with these requirements.

(8) Additional CEMS and continuous monitoring system requirements.

(a) CEMS and continuous monitoring data, if required, shall be used to determine compliance with emission standards and operating practice standards.

(b) At a minimum, CEMS or continuous monitoring system data, if required, shall be obtained for ninety (90) percent of the hours per day for ninety (90) percent of the days per month that the unit is operated and combusting MSW.

(c) All valid CEMS or continuous monitoring system data, if required, shall be used in calculating emission rates and percent reductions even if the minimum CEMS or continuous monitoring system data requirements of paragaraph (b) of this subsection are not met.

(d) If emissions data from CEMS or continuous monitoring systems are not obtained because of CEMS or monitoring system breakdown, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the cabinet or Methods 6, 6A, 6C, 7, 7E, 10, and 19, as appropriate, to provide necessary emission data for a minimum of ninety (90) percent of the hours per day for ninety (90) percent of the days per month the unit is operated and combusting MSW [solid waste].

(e) The procedures in 40 CFR 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

(f) The CEMS shall conform to the applicable performance specifications in 40 CFR Part 60, Apendix B or Kentucky Specification 4A.

(g) The requirements of Kentucky Procedure 1 shall be met in the operation of the CEMS.

Section 11. Reporting and Recordkeeping Requirements. (1) The owner or operator of an affected facility subject to Sections 3 to 10 of this regulation shall maintain records of the following information for each affected facility:

(a) Calendar date that data from performance tests, CEMS, or continuous monitoring systems were obtained.

(b) Emission rates and parameters measured using the units and time bases required for demonstrating compliance.

(c) Identification of the operating periods that the calculated sulfur dioxide, nitrogen oxides, or carbon monoxide emission rates, the opacity, or the operating parameters exceeded the applicable standards, with reasons for the exceedances and a description of corrective actions taken.

(d) Identification of operating periods for which sulfur dioxide, nitrogen oxides, or carbon monoxide emissions, opacity, or operational data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken.

(e) Identification of the times that sulfur dioxide, nitrogen oxides, or carbon monoxide emission, opacity, or operational data have been excluded from the calculation of average emission rates or parameters and the reasons for excluding the data.

(f) The results of daily sulfur dioxide, nitrogen oxides, and carbon monoxide CEMS drift tests and accuracy assessments as required under Kentucky Procedure 1.

(g) The results of all annual performance tests conducted to determine compliance with the mass particulate matter, dioxin or furan, and hydrogen chloride standards.

(h) Beginning the month after the date of the initial start-up, the amount (by weight) of MSW or RDF received on a monthly basis at the affected facility, the amount (by weight) of MSW or RDF combusted on a monthly basis, and the amount of recoverable materials (by type and weight) separated on a monthly basis. Separated paper and paperboard shall be stored in a covered area and shall be protected from rain and moisture, so that the moisture content of the paper and paperboard when weighed is similar to their moisture content when received in the MSW or RDF.

(i) Beginning the month after the date of the initial start-up, the estimated amount (by type and weight) of recoverable materials reduced or separated for recovery on a monthly basis through an off-site or community source reduction or materials separation (recycling) program.

(j) Beginning at the end of the first full calendar year after the date of initial start-up, the calculations of the annual average percentage reduction in MSW achieved for the previous calendar year.

(k) Beginning the month after the date of the initial start-up and for each month thereafter, the amount (by weight) of vehicle batteries separated for recovery.

(2) After completion in accordance with applicable regulations, the owner or operator of an affected facility shall submit to the cabinet the initial performance test data, the performance evaluation of the CEMS using the applicable performance specifications in 40 CFR Part 60, Appendix B or Kentucky Specification 4A, and the maximum MSWI unit load within sixty (60) days upon completion.

(3) A plan describing the procedures for separating materials for recovery to achieve the forty (40) percent or greater MSW reduction requirement for processed MSW or RDF, a plan describing the procedures for ensuring that vehicle batteries are not combusted in the affected facility, and a description of the program for removal of household batteries shall be provided at the time of submittal of the initial demonstration of compliance with the requirements of Section 8(5), (6), and (7) of this regulation. The information shall be provided by the thirtieth day following the end

of the second full calendar year after initial start-up.

(4) The owner or operator of an affected facility shall submit quarterly reports to the cabinet containing the information recorded under subsection (1) of this section and 401 KAR 59:005, Section 3(3) for all records required by this regulation which are applicable to the facility. Both a printed report and computer tape or discs shall be furnished in the format specified by the cabinet. All reports shall be postmarked by the thirtieth day following the end of each calendar quarter.

(5) Records of CEMS, steam flow, and temperature data shall be maintained for at least two (2) years after date of recording and shall be made available for inspection upon request.

(6) Records showing the names of persons who have completed review of the operating manual, including the date of the initial review and all subsequent annual reviews, and the documentation required by Section 9(7) of this regulation shall be maintained for at least two (2) years after date of manual review and shall be made available to the cabinet for inspection upon request.

(7) A description of the procedures employed for ensuring that unprocessed MSW or RDF is not combusted in an affected facility shall be maintained, along with associated records to demonstrate use of the procedures, and shall be made available for inspection upon request.

(8) Documentation demonstrating that the ash disposal from an affected facility complies with **Section 8(9) of this regulation and** 401 KAR 47:080 shall be submitted to the Division **of Waste Management in the frequency required by the Division of Waste Management** [for Air Quality on a quarterly basis].

[Section 12. Public Participation. KRS 224.855 shall apply for all permit applications for the construction, modification, reconstruction, or operation of an affected facility.]

Section **12.** [13.] Reference Material. (1) The subject matter of this regulation relating to reference methods, CEMS, and testing shall be governed by 40 CFR 60.13 (1990), 40 CFR 60, Appendix A, Methods 1, **2.** 3, 5, 6, 6A, 6C, 7, 7E, **9.** 10, and 19 (1990), and 40 CFR 60, Appendix B, Performance Specifications 1, 2, 3, and 4 (1990).

(2) Incorporation by reference. The following documents from the Kentucky Division for Air Quality are hereby incorporated by reference.

(a) Kentucky Method 23, effective **October** [July] 1990;

(b) Kentucky Method 26, effective July 1990;

(c) Kentucky Specification 4A, effective July 1990; and

(d) Kentucky Procedure 1, effective July 1990.

(3) The documents incorporated by reference in subsection (2) of this section are available for public inspection and copying at the following main regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time.

(a) Kentucky Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601, (502)564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606)325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502)843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606)292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606)439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502)686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001,(502)444-8295.

[Section 14. 401 KAR 59:020, New incinerators, is hereby repealed.]

APPENDIX A TO 401 KAR 59:021

CARBON MONOXIDE STANDARDS FOR
MUNICIPAL SOLID WASTE INCINERATORS

Municipal Solid Waste Incinerator	Carbon Monoxide Emission Limit (ppmv)*
Mass burn waterwall	100
Mass burn refractory	100
Mass burn rotary waterwall	150
Modular starved air	50
Modular excess air	50
Refuse-derived fuel spreader stoker	150
Bubbling fluidized bed incinerator	100
Circulating fluidized bed incinerator	100
[Coal or] RDF co-fired incinerator	150
Other technologies	150

*Measured at the incinerator outlet in conjunction with a measurement of oxygen concentration, corrected to seven (7) percent oxygen (dry basis) using a four (4) hour block average.

APPENDIX B TO 401 KAR 59:021
FORMULA FOR PERCENTAGE REDUCTION IN
UNCONTROLLED SULFUR DIOXIDE EMISSIONS

$$\%P_{SO2} = \frac{(E_i - E_o)}{E_i} \times 100$$

Where:

$\%P_{SO2}$ is the percentage reduction in uncontrolled sulfur dioxide emissions.

E_i is the daily uncontrolled sulfur dioxide emission rate.

E_o is the daily sulfur dioxide emission rate measured at the outlet of the acid gas control device.

APPENDIX C TO 401 KAR 59:023
FORMULA FOR PERCENTAGE REDUCTION IN
UNCONTROLLED HYDROGEN CHLORIDE EMISSIONS

$$\%P_{HCl} = \frac{(E_i - E_o)}{E_i} \times 100$$

Where:

$\%P_{HCl}$ is the percentage reduction in uncontrolled hydrogen chloride emissions.

E_i is the daily uncontrolled hydrogen chloride emission rate.

E_o is the daily hydrogen chloride emission rate measured at the outlet of the acid gas control device.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 14, 1990
FILED WITH LRC: September 14, 1990 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Division for Air Quality
(Amended After Hearing)

401 KAR 59:023. New medical waste [or hazardous waste] incinerators.

RELATES TO: KRS 224.320, 224.330, 224.340, [224.855,] E.O. 90-68, 40 CFR 60.13 (1990), 40 CFR 60, Appendix A, Methods 1, 2, 3, 5, 6, 6A, 6C, 7, 7E, 9, 10 and 19 (1990), 40 CFR 60, Appendix B, Performance Specifications 1, 2, 3, and 4 (1990)

STATUTORY AUTHORITY: KRS 224.033, 40 CFR 60.13 (1990), 40 CFR 60, Appendix A, Methods 1, 3, 5, 6, 6A, 6C, 7, 7E, 9, 10 and 19 (1990), 40 CFR 60, Appendix B, Performance Specifications 1, 2, 3, and 4 (1990)

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for standards of performance for new medical waste [or hazardous waste] incinerators.

Section 1. Definitions. As used in this regulation, all terms not defined in this section shall have the meaning given them in 401 KAR 50:010.

(1) "Affected facility" means a [any] device for which construction, modification, or reconstruction commenced on or after the effective date of this regulation [December 20, 1989], that combusts material which, if included in the waste stream, would be medical waste [or hazardous waste].

[(2) "ASME" means the American Society of Mechanical Engineers.]

(2) [(3)] "Acid gases" means sulfur dioxide and hydrogen chloride gases emitted from units.

(3) [(4)] "Biologicals" means a biological product used in the prevention or treatment of disease [noxious organisms].

(4) [(5)] "Bubbling fluidized bed incinerator" means a fluidized bed incinerator in which the majority of the bed material remains in the primary combustion zone.

(5) [(6)] "Burnout" means the percent [degree] of matter completely burned in the primary chamber of an affected facility.

(6) [(7)] "Chief facility operator" means the person in direct charge and control of the operation of an affected facility unit and who is responsible for daily on-site supervision, technical direction, management, and overall performance of the facility.

(7) [(8)] "Circulating fluidized bed incinerator" means a fluidized bed incinerator in which the majority of the bed material is carried out of the primary combustion zone and is transported back to the primary zone through a recirculation loop.

(8) [(9) "Coal and] "Refuse-derived fuel cofired incinerator" or "[coal and] RDF cofired incinerator" means an incinerator that is designed to fire [coal and] refuse-derived fuel simultaneously with other fuels.

(9) [(10)] "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household and industrial wastes. Commercial solid waste includes waste from medical facilities, schools, and other institutions that is not medical waste.

(10) [(11)] "Contained landfill" has the meaning given it in 401 KAR 30:010.

(11) [(12)] "Continuous emission monitoring system" or "CEMS" means a monitoring system for continuously measuring and recording the emissions of a pollutant from an affected facility.

(12) [(13)] "Daily average" means the average of all hourly emission rates when the affected facility is operating and combusting [processed municipal solid waste,] medical waste, [hazardous waste, or solid waste] measured over a twenty-four (24) hour period between 12 midnight and the following midnight.

(13) [(14)] "Dioxin or furan" means total tetra- through octa-chlorinated dibenzo-p-dioxins and tetra- through octa-chlorinated dibenzofurans.

(14) [(15)] "Ferrous metals" means metals and alloys containing iron. Ferrous metals include, but are not limited to, pieces of scrap metal and household appliances made of iron-containing metals, including stoves, refrigerators, air conditioners, and other appliances. Ferrous metals shall not include whole automobiles or other vehicles or vehicle bodies.

(15) [(16)] "Field-erected" means assembled from components at a final site of operation.

(16) [(17)] "Four (4) hour block average" means the average of all hourly emission rates when the affected facility is operating and combusting medical waste [and hazardous waste] measured over four (4) hour periods of from 12 midnight to 4 a.m., 4 a.m. to 8 a.m., 8 a.m. to 12 noon, 12 noon to 4 p.m., 4 p.m. to 8 p.m., 8 p.m. to 12 midnight.

(17) [(18)] "Hazardous waste" has the meaning given it in KRS 224.005 [means waste that has the characteristics identified in 401 KAR 31:030].

(18) [(19)] "Household battery" means a [any] dry cell battery.

(19) [(20)] "Household solid waste" means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunkhouses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and campgrounds.

(20) [(21)] "Industrial waste" means a [any] liquid, gaseous, or solid waste substance resulting from a [any] process of industry, manufacture, trade, or business, or from the development, processing, or recovery of a natural resource.

(21) [(22)] "Mass burn refractory incinerator" means an incinerator that combusts waste in a refractory wall furnace.

(22) [(23)] "Mass burn rotary waterwall incinerator" means an incinerator that combusts waste in a cylindrical rotary waterwall furnace.

(23) [(24)] "Mass burn waterwall incinerator" means an incinerator that combusts waste in a conventional waterfall furnace.

(24) [(25)] "Maximum unit load" means the maximum one (1) hour load achieved when

compliance with all applicable regulations is demonstrated or during a [any] subsequent test demonstrating compliance at a higher unit load.

(25) [(26)] "Medical waste" means:

[(a) Wastes contaminated by patients who are isolated due to communicable disease;]

(a) [(b)] Cultures and stocks of infectious agents, including specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;

(b) [(c)] Waste human blood and blood products such as serum, plasma, and other blood components;

(c) [(d)] Pathological wastes, such as tissues, organs, body parts, and body fluids that are removed during surgery and autopsy;

(d) [(e)] All discarded sharps, **including but not limited to** [e.g.,] hypodermic needles, syringes, Pasteur pipettes, broken glass, scalpel blades, **scalpels, glass vials,** etc., used in patient care, autopsy, embalming, or which have come into contact with infectious agents during use in medical, research, or industrial laboratories;

(e) [(f)] Carcasses **and** [,] body parts[, and bedding] of animals that were exposed to pathogens in research, in the production of biologicals, or in the in vivo testing of pharmaceuticals; and

(f) [(g)] Other wastes as may be designated by a permit issued by the Division for Air Quality.

(26) [(27)] "Metals" means condensible metals emitted from units. For the purpose of this regulation, particulate matter shall serve as a surrogate for the measurement and control of metals.

(27) [(28)] "Modular excess air incinerator" means an incinerator that combusts waste and that is not field-erected and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

(28) [(29)] "Modular starved air incinerator" means an incinerator that combusts waste and that is not field-ereceted and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

(29) [(30)] "Municipal solid waste" or "MSW" means household solid waste and commercial solid waste. Medical waste shall not be considered to be MSW.

(30) [(31)] "Municipal solid waste incinerator" or "MSWI" means a solid waste incinerator that combusts MSW exclusively.

(31) [(32)] "Multiple-chamber incinerator" means an incinerator consisting of at least two (2) refractory lined combustion chambers (primary and secondary) in series, physically separated by refractory walls, and interconnected by gas passage ports or ducts.

(32) [(33)] "Normal" means a volumetric measurement at thirty-two (32) degrees Fahrenheit and one (1) atmosphere.

(33) [(34)] "Organics" means organic compounds emitted from units and includes dioxins or furans. For the purpose of this regulation, dioxin or furan shall serve as a surrogate for the measurement and control of organics.

(34) [(35)] "Plant" means one (1) or more units at the same location for which construction, modification, or reconstruction is commenced on or after **the effective date of this regulation** [December 20, 1989].

(35) [(36)] "Plant capacity" means the aggregate unit capacity of all units at a plant for which construction, modification, or reconstruction is commenced on or after **the effective date of this regulation** [December 20, 1989].

(36) [(37)] "Particulate matter" means total particulate matter emitted from affected facilities.

(37) [(38)] "Particulate matter carryover" means particulate matter which is passed from the primary chamber of an incinerator into the flue gas stream.

(38) [(39)] "Processed MSW or refuse-derived fuel" or "processed MSW or RDF" means MSW or refuse-derived fuel that has been processed to separate materials for recovery prior to combustion in a solid waste incinerator. MSW or refuse-derived fuel is considered to be processed MSW or RDF if an overall forty (40) percent or greater reduction by weight (annual average) of MSW is achieved through the separation of recoverable materials. A maximum of **fifteen (15)** [ten (10)] percent reduction (by weight) of the overall MSW shall be attributed to separation of yard waste. The forty (40) percent or greater overall reduction requirement may be achieved by on-site mechanical separation, on-site manual separation, off-site mechanical separation, off-site manual separation, or a curbside source reduction or materials separation (recycling) program, or a combination thereof.

(39) [(40)] "Recoverable materials" means paper, paperboard, ferrous metals, nonferrous metals, glass, plastics, household batteries, and yard waste.

(40) [(41)] "Refuse-derived fuel" or "RDF" means a type of MSW produced by processing MSW through shredding and size classification. This includes all classes of RDF including low density fluff RDF through densified RDF fuel pellets.

(41) [(42)] "RDF spreader stoker" means a steam generating unit that combusts RDF in a semisuspension firing mode using air-fed distributors.

(42) [(43)] "Same location" means the same or contiguous property that is under common ownership or control, including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or a [any] combination thereof, including a [any] municipality or other governmental unit, or a [any] quasi-governmental authority (e.g., a public utility district or waste management district).

(43) [(44)] "Shift supervisor" means the person in direct charge and control of the operation of an affected facility [unit] and who is responsible for on-site supervision, technical direction, management, and overall performance of the affected facility during an assigned shift.

(44) [(45)] "Solid waste" has the meaning given it in KRS 224.005.

[(46) "Solid waste incinerator" or "solid waste incinerator unit" or "SWI" or "SWI unit" means any device that combusts solid waste including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved air or excess air), boilers (i.e., steam generating units), and furnaces (whether suspension-fired, grate-fired, mass-fired, or fluidized bed-fired).]

(45) [(47)] "Standard" means a volumetric measurement at sixty-eight (68) degrees Fahrenheit and one (1) atmosphere.

(46) [(48)] "Uncontrolled hydrogen chloride emission rate" means the hydrogen chloride emission rate that would occur from combustion of medical waste or other wastes combined with medical [hazardous] waste in the absence of hydrogen chloride emissions control.

(47) [(49)] "Uncontrolled sulfur dioxide emission rate" means the sulfur dioxide emission rate that would occur from combustion of medical waste or other wastes combined with medical [hazardous] waste in the absence of sulfur dioxide emissions control.

(48) [(50)] "Unit" means an affected facility including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved air or excess air), boilers (i.e., steam generating units), and furnaces (whether suspension-fired, grate-fired, mass-fired, or fluidized bed-fired).

(49) [(51)] "Unit capacity" means the maximum design charging rate of the waste for an individual unit.

(50) [(52)] "Unit load" means the volume of steam produced, expressed in kilograms per hour (pounds per hour) of steam.

(51) [(53)] "Unprocessed MSW or RDF" means MSW or RDF that has not been processed to separate materials for recovery prior to combustion or for which less than a forty (40) percent reduction by weight (annual average) of MSW is achieved as specified under processed MSW or RDF.

(52) [(54)] "Vehicle batteries" means a [any] wet lead-acid battery.

(53) [(55)] "Waste" has the meaning given it in KRS 224.005.

(54) [(56)] "Waste management district" has the meaning given it in KRS 224.005.

(55) [(57)] "Yard waste" means vegetative matter removed as a result of outdoor maintenance practices from residential and commercial yards, municipal parks, gardens, golf courses, and other similar areas, and includes, but is not limited to, grass trimmings, tree branches, straw, and leaves.

Section 2. Applicability. (1) This regulation shall apply to each affected facility which means each unit for which construction, modification, or reconstruction is commenced on or after the effective date of this regulation [December 20, 1989]. Affected facilities which combine and combust processed MSW, [medical waste,] hazardous waste, or solid waste with medical waste shall comply with this regulation. Affected facilities which combust only [processed] MSW [and solid waste] shall comply with 401 KAR 59:021.

(2) The physical or operational changes made to an existing unit to comply with 401 KAR 61:013 shall not be considered a modification or reconstruction and shall not subject the existing affected facility unit to this regulation.

(3) Emission limitations or control requirements imposed by another [any other] regulation of the Division for Air Quality or the Division of Waste Management may impose more stringent requirements than those imposed by this regulation.

(4) The permitting exemption for small incinerators in 401 KAR 50:035, Section 6(2) shall not apply to affected facilities.

(5) Siting criteria. No owner or operator of an affected facility subject to 401 KAR 47:030 shall construct or operate the affected facility in a manner that will violate the requirements of that regulation.

Section 3. Emission Standards. (1) On and after the date on which the initial performance test is completed or required to be completed by Section 6 of this regulation, no owner or operator of an affected facility with a plant capacity of 500 pounds per hour or less shall cause or allow to be discharged into the atmosphere from the affected facility:

(a) Particulate matter in excess of 183 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) of exhaust gas, corrected to seven (7) percent oxygen (dry basis);

(b) Carbon monoxide in excess of the standards for types of incinerators in Appendix A of this regulation;

(c) Hydrochloric acid (HCl) in excess of twenty (20) percent of the uncontrolled HCl emission rate (eighty (80) percent reduction) (by weight) on an hourly basis or four (4) pounds per hour, [corrected to seven (7) percent oxygen (dry basis),] whichever is less stringent;

(d) Dioxin or furan emissions in excess of seventy-five (75) nanograms per normal cubic meter (thirty (30) grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis); or

(e) Visible air contaminants in excess of ten (10) percent opacity.

(2) On and after the date on which the initial performance test is completed or required to be completed by Section 6 of this regulation, no owner or operator of an affected facility with a plant capacity greater than 500 pounds per hour but less than or equal to 250 tons per day, shall cause or allow to be discharged into the atmosphere from the affected facility:

(a) Particulate matter emissions in excess of thirty-four (34) milligrams per dry standard cubic meter (0.015 grains per dry standard cubic foot of exhaust gas), corrected to seven (7) percent oxygen (dry basis);

(b) Carbon monoxide emissions in excess of the standards for types of incinerators in Appendix A of this regulation;

(c) Hydrochloric acid (HCl) emissions in excess of ten (10) percent of the uncontrolled HCl emission rate (ninety (90) percent reduction) (by weight) on an hourly basis or twenty-five (25) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent;

(d) Sulfur dioxide (SO_2) emissions in excess of fifteen (15) percent of the uncontrolled

SO_2 emission rate **(eighty-five (85) percent reduction)** (by weight) on an hourly basis or thirty (30) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent;

(e) Dioxin or furan emissions in excess of seventy-five (75) nanograms per normal cubic meter (thirty (30) grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis); or

(f) Visible air contaminants in excess of ten (10) percent opacity.

(3) On and after the date on which the initial performance test is completed or required to be completed by Section 6 of this regulation, no owner or operator of an affected facility with a plant capacity greater than **250** [255] tons per day shall cause or allow to be discharged into the atmosphere:

(a) Particulate matter emissions in excess of thirty-four (34) milligrams per dry standard cubic meter (0.015 grains per dry standard cubic foot) of exhaust gas, corrected to seven (7) percent oxygen (dry basis);

(b) Carbon monoxide emissions in excess of the standards for types of incinerators in Appendix A of this regulation;

(c) Hydrochloric acid (HCl) emissions in excess of five (5) percent of the uncontrolled HCl emission rate **(ninety-five (95) percent reduction)** (by weight) on an hourly basis or twenty-five (25) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent;

(d) Sulfur dioxide (SO_2) emissions in excess of fifteen (15) percent of the uncontrolled SO_2 emission rate **(eighty-five (85) percent reduction)** (by weight) on an hourly basis or thirty (30) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent;

(e) Dioxin or furan emissions in excess of **thirty (30)** [five (5)] nanograms per normal cubic meter **(fourteen (14)** [(two (2)] grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis); or

(f) Visible air contaminants in excess of ten (10) percent opacity; or

(g) Nitrogen oxides emissions in excess of 120 parts per million by volume, corrected to seven (7) percent oxygen (dry basis).

Section 4. Standards for Operating Practices. (1) No owner or operator of an affected facility that generates steam shall cause the facility to operate at a load level greater than 100 percent of the maximum unit load. An owner or operator of an affected facility who wishes to operate at a load level greater than the maximum unit load may do so by conducting all applicable compliance tests to establish a higher maximum unit load.

(2) No owner or operator of an affected facility shall burn medical waste [or hazardous waste] except in a multiple-chamber incinerator with a solid hearth, or in a device found to be equally effective for the purpose of air contaminant control as determined by the cabinet.

(3) Temperature and residence time requirements **for affected facilities equipped with a secondary chamber, while the affected facility is combusting medical waste:** [.]

(a) The incinerator secondary chamber shall be maintained at a minimum temperature of 982 degrees Celsius (1800 degrees Fahrenheit);

(b) The minimum secondary chamber residence time shall be two (2.0) seconds; and

(c) The incinerator shall have interlocks or other process control devices to prevent operation of the incinerator until the conditions in paragraphs (a) and (b) of this subsection and subsection (4) of this section are assured.

(4) No owner or operator of an affected facility **other than a facility using a wet scrubber as a particulate matter control device** shall allow the temperature of the flue gases entering the particulate matter control device inlet to exceed 149 degrees Celsius (300 degrees Fahrenheit) **while the affected facility is combusting medical waste**.

(5) Owners or operators of affected facilities that choose to combine and combust processed MSW or RDF, [medical waste,] hazardous waste, **or** [and] solid waste **with medical waste** in a unit shall comply with:

(a) The emission standards of Section 3 of this regulation and operating practices of this section; and

(b) 401 KAR 59:021, Section 8[, 10, and 11] regarding material separation (percent reduction) **for the portion of the waste that is MSW or RDF**.

[(c) An owner or operator of an affected facility who knowingly or willfully avoids the material separation requirements of 401 KAR 59:021 shall be liable for permit revocation in accordance with 401 KAR 50:060.]

(6) Owners or operators of affected facilities may combust processed MSW or RDF, or solid waste which has not been combined with medical waste [or hazardous waste] in a unit and shall comply with 401 KAR 59:021.

(7) **Owners or operators of affected facilities shall cause ash from affected facilities to be tested to determine the toxicity of the ash, using tests required in Title 401, Chapter 31. Ash which is determined to be hazardous waste shall be disposed of according to the regulations of the Division of Waste Management. Ash which is determined to not be hazardous waste** [Ash from the combustion of hazardous waste exclusively, or in combination with medical waste, solid waste, processed MSW or RDF, shall be disposed of in accordance with Title 401, Chapter 34. Ash from the combustion of medical waste exclusively, or in combination with solid waste, or processed MSW,] shall be disposed of in a contained landfill.

(8) Owners or operators of affected facilities that receive medical waste from generators that are noncontiguous to the incineration site shall comply with the operating requirements for contained landfills in 401 KAR 48:090, Section 2.

(9) Owners or operators of affected facilities shall comply with the design requirements for contained landfills in 401 KAR 48:070, Section 15.

Section 5. Operator [Certification and] Training. (1) [Within twenty-four (24) months from the date that ASME adopts a certification program for municipal solid waste combustor (incinerator) unit operators,] Each chief facility operator and shift supervisor of an affected facility shall **successfully complete the U.S. EPA's "Hospital Incinerator Operator Training Course"** [obtain and keep current

either a provisional or operator certification from ASME].

(2) No [The] owner or operator of an affected facility shall cause or allow a unit to be operated unless the chief facility operator or shift supervisor who successfully completed the training course identified in subsection (1) of this section is [an ASME certified shift supervisor to be] on duty at the affected facility at all times during period of unit operation. [This requirement shall take effect twenty-four (24) months after the date that ASME adopts a certification program for municipal solid waste combustor (incinerator) unit operators.]

(3) The owner or operator of an affected facility shall develop and update on an annual basis a site-specific operation manual that shall at a minimum, address the following elements:

(a) Summary of the applicable standards under this regulation;

(b) Description of basic combustion theory applicable to a unit;

(c) Procedures for receiving, handling, and feeding the waste;

(d) Unit startup, shutdown, and malfunction procedures;

(e) Procedures for maintaining proper combustion air supply levels;

(f) Procedures for operating the unit within the standards established under this regulation;

(g) Procedures for responding to periodic upset or off-specification conditions;

(h) Procedures for minimizing particulate matter carryover;

(i) Procedures for monitoring [the degree of] burnout;

(j) Procedures for handling ash;

(k) Procedures for monitoring unit emissions; and

(l) Reporting and recordkeeping procedures.

(4) The owner or operator of an affected facility shall establish a program for reviewing the operating manual annually with each person who has responsibilities affecting the operation of an affected facility including, but not limited to, chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane or load handlers.

(5) The initial review of the operating manual, as specified under subsection (4) of this section, shall be conducted prior to assumption of responsibilities affecting unit operation by a [any] person required to undergo training under subsection (4) of this section. Subsequent reviews of the manual shall be carried out annually by each person required to undergo training.

(6) The operating manual shall be kept in a readily accessible location for all persons required to undergo training under subsection (4) of this section. The operating manual and records of training shall be available for inspection by the cabinet upon request.

(7) The owner or operator of each affected facility shall maintain documentation to support compliance with this section. The information shall be made available upon request, and shall include, at a minimum, a description of the instruction given, the date of the instruction, [and] the signature of the person receiving the instruction, and copies of the certificates issued to the chief facility operator and shift supervisor documenting successful completion of the training requirement in subsection (1) of this section.

Section 6. Compliance and Performance Testing. Within sixty (60) days after achieving the maximum production rate at which an affected facility will be operated, but not later than 180 days after initial start-up of the facility and at other times as may be required by the cabinet, the owner or operator of an affected facility shall conduct performance tests according to 401 KAR 50:045 and shall furnish the cabinet a written report of the performance tests. This section shall apply at all times, except a period of one (1) hour for the startup or shutdown of the affected facility and for a period not to exceed three (3) hours during the malfunction of an affected facility. Except as provided in 401 KAR 50:045, the following methods shall be used to determine compliance with Section 3 of this regulation. 40 CFR 60.13, Methods 1, 2, 3, 5, 6, 6A, 6C, 7, 7E, 9, 10, and 19, and Performance Specifications 1, 2, 3, and 4 are adopted without change in Section 8 [10] of this regulation. Kentucky Methods 23 and 26, Kentucky Specification 4A, and Kentucky Procedure 1 are incorporated by reference in Section 8 [10] of this regulation. For each performance test, an owner or operator may request that compliance be determined using carbon dioxide measurements corrected to an equivalent of seven (7) percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established during each initial performance test.

(1) Metals [Particulate matter]. The following procedures and test methods shall be used to determine compliance with the standards for metals [particulate matter] in Section 3 of this regulation.

(a) Method 1 shall be used to select sampling sites and the number of traverse points. Method 2 shall be used for determining stack gas velocity and volumetric flow rates.

(b) Method 3 shall be used for gas analysis.

(c) Method 5 shall be used for determining compliance with the particulate matter emission standard. The minimum sample volume shall be one and seven-tenths (1.7) [three and four-tenths (3.4)] cubic meters (sixty (60) [120] cubic feet). The temperature of the sample gas in the probe and filter holder shall be no greater than 120 [160] ± 14°C (248 [320] ± 25 [14]°F). An oxygen or carbon dioxide measurement shall be obtained simultaneously with each Method 5 run.

(d) Both Method 9 and CEMS shall be used for determining compliance with the opacity standard. However, Method 9 results shall take precedence over CEMS data if [in the event of] concurrent readings occur.

(e) The owner or operator of a affected facility with a unit capacity greater than 500 pounds per hour that does not have a wet scrubber, shall install, calibrate, maintain, and operate a CEMS for measuring opacity and shall record the output of the system.

(f) Following the date the initial performance test for the mass emission standard for particulate matter is completed by this section, the owner or operator of an affected facility shall conduct a performance test for particulate matter on an annual basis (no more than twelve (12) calendar months following the previous

compliance test).

(g) Following the date the initial performance test is completed or is required to be completed in this section, compliance with the opacity standard shall be determined by a six (6) minute average of the opacity readings obtained from the CEMS.

(2) **Organics** [Dioxin or furan]. The following procedures and test methods shall be used to determine compliance with the standards for **organics** [dioxin or furan emissions] in Section 3 of this regulation.

(a) Kentucky Method 23 shall be used for determining compliance with dioxin or furan emission standards. **The sampling time shall be four (4) hours and the sample volume shall be four (4.0) cubic meters (140 cubic feet).**

(b) Following the date of the initial performance test or the date on which the initial performance test is required to be completed by this section, the owner or operator of an affected facility shall conduct a performance test for dioxin or furan emissions on an annual basis (no more than twelve (12) calendar months following the previous performance test).

(3) Sulfur dioxide. The following procedures and test methods shall be used for determining compliance with the sulfur dioxide standards in Section 3 of this regulation.

(a) The percentage reduction in the uncontrolled sulfur dioxide emissions ($\%P_{SO2}$) shall be computed using the formula in Appendix B of this regulation.

(b) Methods 6, 6A, or 6C, and 19 shall be used for determining the sulfur dioxide emission rate.

(c) The sulfur dioxide performance test shall be conducted over twenty-four (24) consecutive unit operating hours at maximum unit load. Compliance with the sulfur dioxide standard shall be determined using a daily average.

(d) The owner or operator of an affected facility with a unit capacity greater than 500 pounds per hour shall install, calibrate, maintain, and operate a CEMS for measuring sulfur dioxide emissions discharged to the atmosphere and shall record the output of the system.

(e) Following the date of the initial performance test or the date on which the initial performance test is required to be completed by this section, compliance with the sulfur dioxide standard shall be determined based on the arithmetic average of the hourly emission rates during each twenty-four (24) hour daily period measured between 12 midnight and the following midnight using CEMS inlet and outlet data, if compliance is based on a percentage reduction; or outlet data only if compliance is based on an emission limit.

(f) The one (1) hour averages required under paragraph (e) of this subsection shall be expressed in nanograms per hour (pounds per hour) and shall be used to calculate the daily average emission rates. The one (1) hour averages shall be calculated using the data points required in 40 CFR 60.13(h).

(g) For affected facilities which shall install CEMS, the span value of the CEMS at the inlet to the sulfur dioxide control device shall be 125 percent of the maximum estimated hourly uncontrolled sulfur dioxide emissions of the unit, and the span value of the CEMS at the outlet to the sulfur dioxide control device shall be fifty (50) percent of the maximum estimated hourly uncontrolled sulfur dioxide emissions of the unit.

(4) Hydrogen chloride. The following procedures and test methods shall be used for determining compliance with the hydrogen chloride standards under Section 3 of this regulation.

(a) The percentage reduction in the uncontrolled hydrogen chloride emissions (P_{HCl}) shall be computed using the formula in Appendix C of this regulation.

(b) Kentucky Method 26 shall be used for determining the hydrogen chloride emission rate.

(c) Following the date of the initial performance test or the date on which the initial performance test is required by this section, the owner or operator of an affected facility shall conduct a performance test for hydrogen chloride on an annual basis (no more than twelve (12) calendar months following the previous performance test).

(5) Nitrogen oxides. The following procedures and test methods shall be used to determine compliance with the nitrogen oxides standard under Section 3 of this regulation.

(a) Methods 7 or 7E, and 19 shall be used for determining the nitrogen oxides emission rate.

(b) The owner or operator of an affected facility [with a unit capacity greater than 2000 pounds per hour] subject to the nitrogen oxides standard under Section 3 of this regulation shall conduct an initial performance test for nitrogen oxides as required by this section. The initial performance test for nitrogen oxides shall be conducted over twenty-four (24) consecutive hours of unit operation to determine compliance with the nitrogen oxides standard. CEMS data shall be used if required by paragraph (d) of this subsection. Compliance with the nitrogen oxides standard shall be determined using a daily average.

(c) The owner or operator of an affected facility **subject to the nitrogen oxides standard in Section 3 of this regulation** [with a unit capacity greater than 2000 pounds per hour] shall install, calibrate, maintain, and operate a CEMS for measuring nitrogen oxides discharged to the atmosphere and shall record the output of the system.

(d) Following the initial performance test or the date on which the initial performance test is required to be completed under this section, compliance with the emissinn limits for nitrogen oxides required under Section 3 of this regulation shall be determined based on the arithmetic average of the hourly emission rates during each twenty-four (24) hour daily period measured between 12 midnight and the following midnight using CEMS data.

(e) The one (1) hour averages required under paragraph (d) of this subsection shall be expressed in parts per million volume (dry basis) and shall be used to calculate the daily average emission rates under Section 3 of this regulation. The one (1) hour averages shall be calculated using the data points required under 40 CFR 60.13(h).

(6) Carbon monoxide. The following procedures shall be used for determining compliance with the carbon monoxide standards under Section 3 of this regulation.

(a) Compliance with the carbon monoxide emission limits listed in Appendix A of this regulation shall be determined using Method 10.

(b) The owner or operator of an affected facility with a unit capacity greater than 500 pounds per hour shall instal, calibrate, maintain, and operate a CEMS for measuring carbon monoxide at the incinerator outlet and shall record the output of the system.

(c) Following the initial performance test of the date on which the initial performance test is required to be completed by this section, compliance with the emission limits for carbon monoxide required under Section 3 of this regulation shall be determined based on the arithmetic average of the four (4) hour emission rates measured using CEMS data.

(7) The following procedures shall be used for determining compliance with the operating practices under Section 4 of this regulation.

(a) The owner or operator of an affected facility which generates steam shall install, calibrate, maintain, and operate a steam flow meter, shall measure steam flow in kilograms per hour (pounds per hour) steam on a continuous basis, and shall record the output of the monitor. Steam flow shall be calculated in one (1) hour block averages.

(b) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous monitoring system for measuring both secondary chamber temperature and the temperature of the flue gas stream at the inlet to the particulate matter air pollution control device and shall record the output of the device. Temperature shall be calculated in four (4) hour block averages.

(8) Additional CEMS or continuous monitoring systems requirements.

(a) CEMS **and continuous monitoring** data, if required, shall be used to determine compliance with emission standards **and operating practice standards**.

(b) At a minimum, CEMS or continuous monitoring system data, if required, shall be obtained for ninety (90) percent of the hours per day for ninety (90) percent of the days per month that the unit is operated and combusting medical waste [or hazardous waste].

(c) All valid CEMS or continuous monitoring system data, if required, shall be used in calculating emission rates and percent reductions even if the minimum CEMS or continuous monitoring system data requirements in paragraph (b) of this subsection are not met.

(d) The procedures under 40 CFR 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

(e) If emissions data from the CEMS or continuous monitoring systems are not obtained because of CEMS or monitoring system breakdown, repairs, calibration checks, **or** [and] zero and span adjustments, emission data shall be obtained by using other monitoring systems as approved by the cabinet or Methods 6, 6A, 6C, 7, 7E, 10, and 19, as appropriate, to provide necessary emission data for a minimum of ninety (90) percent of the hours per day for ninety (90) percent of the days per month the unit is operated and combusting medical waste [or hazardous waste].

(f) CEMS shall conform to the applicable performance specifications in 40 CFR Part 60, Appendix B or Kentucky Specification 4A.

(g) The requirements of Kentucky Procedure 1 shall be met in the operation of CEMS.

Section 7. Reporting and Recordkeeping Requirements. (1) The owner or operator of an affected facility subject to Sections 3 and 4 of this regulation shall maintain records of the following information for each affected facility:

(a) Calendar date that data from performance tests, CEMS, or continuous monitoring systems were obtained.

(b) Emission rates and parameters measured **using the units and time bases required for demonstrating compliance**.

(c) Identification of the operating periods that the calculated sulfur dioxide, nitrogen oxides, or carbon monoxide emission rates, opacity, or the operating parameters exceeded the applicable standards, with reasons for the exceedances and a description of corrective actions taken.

(d) Identification of operating periods for which sulfur dioxide, nitrogen oxides, or carbon monoxide emissions, opacity, or operational data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken.

(e) Identification of the times that sulfur dioxide, nitrogen oxides, or carbon monoxide emission, opacity, or operational data have been excluded from the calculation of average emission rates or parameters and the reasons for excluding the data.

(f) The results of daily sulfur dioxide, nitrogen oxides, and carbon monoxide, CEMS drift tests and accuracy assessments as required in Kentucky Procedure 1.

(g) The results of all applicable performance tests conducted to determine compliance with the mass particulate matter, dioxin or furan, and hydrogen chloride standards.

(h) Beginning the month after the date of the initial start-up, the amount (by weight) of medical waste [and hazardous waste] received and combusted on a monthly basis at the affected facility.

(2) If processed MSW or RDF is combusted in a unit, the recordkeeping requirements of 401 KAR 59:021, Section 11, regarding material separation shall apply **for the portion of the waste that is processed MSW or RDF**.

(3) The owner or operator of an affected facility shall submit the initial performance test data, the performance evaluation of the CEMS using the applicable performance specifications in 40 CFR, Part 60, Appendix B, and the maximum unit load within sixty (60) days of completing the test.

(4) The owner or operator of an affected facility shall submit quarterly compliance reports to the cabinet containing the information recorded under subsection (1) of this section and 401 KAR 59:005, Section 3(3) for all records required by this regulation which are applicable to the facility. Both a printed report and computer tape or discs shall be furnished in the format specified by the cabinet. The reports shall be postmarked by the 30th day following the end of each calendar quarter.

(5) Records of CEMS, steam flow, and temperature data shall be maintained for at least two (2) years after date of recording and shall be made available for inspection upon request.

(6) Records showing the names of persons who have completed review of the operating manual and the documentation required by Section 5(7)

[(4)] of this regulation, including the date of the initial review and all subsequent annual reviews, shall be maintained for at least two (2) years after date of manual review and shall be made available for inspection upon request.

(7) A description of the procedures employed for ensuring that unprocessed MSW or RDF is not combusted in an affected facility shall be maintained along with associated records to demonstrate use of the procedures, and shall be made available for inspection upon request.

(8) Documentation demonstrating that ash disposal from an affected facility complies with Section 4(7) of this regulation shall be submitted to the Division of Waste Management in the frequency required by the Division of Waste Management.

[Section 9. Procedures for Public Participation. The public participation procedures of KRS 224.855 shall apply to all affected facilities.]

Section **8.** [10.] Reference Materials. (1) The subject matter of this regulation relating to reference methods, CEMS, and testing shall be governed by 40 CFR 60.13 (1990), 40 CFR 60, Appendix A, Methods 1, **2,** 3, 5, 6, 6A, 6C, 7, 7E, **9,** 10, and 19, and 40 CFR 60, Appendix B, Performance Specifications 1, 2, 3, and 4.

(2) Incorporation by Reference. The following documents from the Kentucky Division for Air Quality are hereby incorporated by reference:

(a) Kentucky Method 23, effective **October** [July] 1990;

(b) Kentucky Method 26, effective July 1990;

(c) Kentucky Specification 4A, effective July 1990; and

(d) Kentucky Procedure 1, effective July 1990.

(3) The documents incorporated by reference in subsection (2) of this section are available for public inspection and copying at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time.

(a) Kentucky Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 13th Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

APPENDIX A TO 401 KAR 59:023
CARBON MONOXIDE STANDARDS
FOR MEDICAL WASTE [AND HAZARDOUS WASTE] INCINERATORS

Incinerator Technology	Carbon Monoxide Emission Limit (ppmv)*
Mass Burn Waterwall	100
Mass Burn Refractory	100
Mass burn Rotary Waterwall	150
Modular Starved Air	50
Modular Excess Air	50
Refuse Derived Fuel Spreader Stoker	150
Bubbling Fluidized Bed Incinerator	100
Circulating Fluidized Bed Incinerator	100
[Coal and] RDF Co-fired Incinerator	150
Other Technologies	150

*Measured at the incinerator outlet in conjunction with a measurement of oxygen concentration, corrected to seven (7) percent oxygen (dry basis) using a four (4) hour block average.

APPENDIX B TO 401 KAR 59:023
FORMULA FOR PERCENTAGE REDUCTION IN
UNCONTROLLED SULFUR DIOXIDE EMISSIONS

$$\%P_{SO2} = \frac{(E_i - E_o)}{E_i} \times 100$$

Where:

$\%P_{SO2}$ is the percentage reduction in uncontrolled sulfur dioxide emissions.

E_i is the daily uncontrolled sulfur dioxide emission rate.

E_o is the daily sulfur dioxide emission rate measured at the outlet of the acid gas control device.

APPENDIX C TO 401 KAR 59:023
FORMULA FOR PERCENTAGE REDUCTION IN
UNCONTROLLED HYDROGEN CHLORIDE EMISSIONS

$$\%P_{HCl} = \frac{(E_i - E_o)}{E_i} \times 100$$

Where:

$\%P_{HCl}$ is the percentage reduction in uncontrolled hydrogen chloride emissions.

E_i is the daily uncontrolled hydrogen chloride emission rate.

E_o is the daily hydrogen chloride emission rate measured at the outlet of the acid gas control device.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 14, 1990
FILED WITH LRC: September 14, 1990 at 11 a.m.

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

401 KAR 61:011. Existing municipal solid waste incinerators.

RELATES TO: KRS 224.320, 224.330, 224.340, [224.855,] E.O. 90-68
STATUTORY AUTHORITY: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides standards of performance for existing municipal solid waste incinerators.

Section 1. Definitions. As used in this regulation, all terms not defined in this section shall have the meaning given in 401 KAR 50:010.

(1) "Affected facility" means each municipal solid waste incinerator unit for which construction, modification, or reconstruction is commenced before December 20, 1989.

(2) "Municipal solid waste incinerator" or "municipal solid waste incinerator unit" or "MSWI" or "MSWI unit" means a device that combusts material, which if included in the waste stream, would be municipal solid waste. This includes but is [including, but] not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved air or excess air), boilers (i.e., steam generating units), and furnaces (whether suspension-fired, grate-fired, mass-fired, or fluidized bed-fired).

(3) "Afterburner" means an auxiliary burner for destroying unburned or partially burned combustion gases after they have passed from the combustion chamber.

(4) "Biologicals" means a biological product used in the prevention or treatment of disease [noxious organisms].

(5) "Bubbling fluidized bed incinerator" means a fluidized bed incinerator in which the majority of the bed material remains in the primary combustion zone.

(6) "Circulating fluidized bed incinerator" means a fluidized bed incinerator in which the majority of the bed material is carried out of the primary combustion zone and is transported back to the primary zone through a recirculation loop.

(7) "[Coal and] Refuse-derived fuel co-fired incinerator" or "[coal and] RDF co-fired incinerator" means an incinerator that is designed to fire [coal and] refuse-derived fuel simultaneously with other fuels.

(8) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household and industrial wastes. Commercial solid waste includes waste from medical facilities, schools, and other institutions that is not medical waste.

(9) "Dioxin or furan" means total tetra-through octa-chlorinated dibenzo-p-dioxins and tetra-through octa-chlorinated dibenzofurans.

(10) "Field-erected" means assembled from components at a final site of operation.

(11) "Four (4) hour block average" means the average of all hourly emission rates when the affected facility is operating and combusting municipal solid waste measured over four (4) hour periods of from 12 midnight to 4 a.m., 4 a.m. to 8 a.m., 8 a.m. to 12 noon, 12 noon to 4 p.m., 4 p.m. to 8 p.m., 8 p.m. to 12 midnight.

(12) "Hazardous waste" has the meaning given it in KRS 224.005 [means waste that has the characteristics identified in 401 KAR 31:030].

(13) "Household solid waste" means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunkhouses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and campgrounds.

(14) "Industrial waste" means a liquid, gaseous, or solid waste substance resulting from a process of industry, manufacture, trade, or business, or from the development, process, or recovery of a natural resource.

(15) "Large MSWI plant" means a MSWI plant with a MSWI plant capacity greater than 225 megagrams per day (250 tons per day) but less than or equal to 2,000 megagrams per day (2,200 tons per day) of municipal solid waste.

(16) "Mass burn refractory incinerator" means an incinerator that combusts waste in a refractory furnace.

(17) "Mass burn rotary waterwall incinerator" means an incinerator that combusts waste in a cylindrical rotary waterwall furnace.

(18) "Mass burn waterwall incinerator" means an incinerator that combusts waste in a conventional waterwall furnace.

(19) "Medical waste" means:

[(a) Wastes contaminated by patients who are isolated due to communicable disease;]

(a) [(b)] Cultures and stocks of infectious agents, including specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;

(b) [(c)] Waste human blood and blood products such as serum, plasma, and other blood components;

(c) [(d)] Pathological wastes, such as tissues, organs, body parts, and body fluids that are removed during surgery and autopsy;

(d) [(e)] All discarded sharps, including but not limited to [e.g.,] hypodermic needles, syringes, Pasteur pipettes, broken glass, scalpels, scalpel blades, glass vials, etc., used in patient care, embalming, autopsy, or which have come into contact with infectious agents during use in medical, research, or industrial laboratories;

(e) [(f)] Carcasses and [,] body parts[, and bedding] of animals that were exposed to pathogens in research, in the production of biologicals, or in the in vivo testing of pharmaceuticals; and

(f) [(g)] Other wastes as may be designated by a permit issued by the Division for Air Quality.

(20) "Modular excess air incinerator" means an incinerator that combusts waste and that is not field-erected and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in

excess of theoretical air requirements.

(21) "Modular starved air incinerator" means an incinerator that combusts waste and that is not field-erected and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

(22) "Multiple-chamber incinerator" means an incinerator consisting of at least two (2) refractory lined combustion chambers (primary and secondary) in series, physically separated by refractory walls, interconnected by gas passage ports or ducts.

(23) "Municipal solid waste" or "MSW" means household solid waste and commercial solid waste. Medical waste shall not be considered to be MSW, but may be regulated by other regulations of the Division for Air Quality, including but not limited to 401 KAR 61:013, or Title 401, Chapter 63.

[(24) "Municipal solid waste incinerator" or "MSWI" means a type of SWI which combusts MSW exclusively.]

(24) [(25)] "Particulate matter" means total particulate matter emitted from MSWI units.

(25) [(26)] "Refuse-derived fuel" or "RDF" means a type of MSW produced by processing MSW through shredding and size classification. This shall include all classes of RDF including low density fluff RDF through densified RDF fuel pellets.

(26) [(27)] "RDF spreader stoker" means a steam generating unit that combusts RDF in a semi-suspension firing mode using air-fed distributors.

(27) [(28)] "Regional MSWI plant" means a MSWI plant with a MSWI plant capacity greater than 2,000 megagrams per day (2,200 tons per day) of MSW [solid waste].

(28) [(29)] "Small MSWI plant" means a MSWI plant with a MSWI plant capacity of greater than 500 lb per hr but less than or equal to 225 megagrams per day (250 tons per day) of MSW [solid waste].

(29) [(30)] "Solid waste" has the meaning given it in KRS 224.005.

(30) [(31)] "MSWI acid gases" means sulfur dioxide and hydrogen chloride gases emitted from MSWI units.

(31) [(32)] "MSWI metals" means condensible metals emitted from MSWI units. For the purpose of this regulation, particular matter shall serve as a surrogate for the measurement and control of MSWI metals.

(32) [(33)] "MSWI organics" means organic compounds emitted from MSWI units and includes dioxins or furans. For the purpose of this regulation, dioxin or furan shall serve as a surrogate for the measurement and control of MSWI organics.

(33) [(34)] "MSWI plant" means one (1) or more MSWI units at the same location for which construction, modification, or reconstruction is commenced before December 20, 1989.

(34) [(35)] "MSWI plant capacity" means the aggregate MSWI unit capacity of all MSWI units at a MSWI plant for which construction, modification, or reconstruction is commenced before December 20, 1989.

(35) [(36)] "MSWI unit capacity" means the maximum designed charging rate of the waste for an individual MSWI unit.

(36) [(37)] "Uncontrolled hydrogen chloride emission rate" means the hydrogen chloride emission rate that would occur from combustion of solid waste in the absence of hydrogen chloride emissions control.

(37) [(38)] "Uncontrolled sulfur dioxide emission rate" means the sulfur dioxide emission rate that would occur from combustion of solid waste in the absence of sulfur dioxide emissions control.

Section 2. Applicability. (1) This regulation shall apply to each affected facility which means each MSWI unit for which construction, modification, or reconstruction is commenced before December 20, 1989. [Coal and] RDF co-fired incinerators which combust less than or equal to twenty (20) percent RDF shall be exempt from this regulation. Incinerators which combine and combust MSW [solid waste, hazardous waste,] and medical waste shall be regulated by 401 KAR 61:013.

(2) Physical or operational changes made to an existing MSWI unit to comply with this regulation shall not be considered a modification or reconstruction and shall not subject an existing MSWI unit to 401 KAR 59:021.

(3) Owners or operators of MSWI plants with a plant capacity of 500 lb per hr or less shall be exempt from Sections 3 to 9 of this regulation. However, these facilities shall comply with the following requirements:

(a) Emissions discharged into the atmosphere shall not exhibit greater than ten (10) percent opacity. Method 9, which has been filed by reference in 401 KAR 50:015, shall be used to determine compliance with the opacity standard.

(b) Other regulatory requirements including but not limited to 401 KAR 53:010 and Title 401, Chapter 63.

[(4) Owners or operators of SWI units which combust untreated or kiln-dried wood wastes or coal wastes exclusively as fuel shall be exempt from this regulation.]

(4) [(5)] Emission limitations or control requirements imposed by any other regulation of the Division for Air Quality or the Division of Waste Management may impose more stringent requirements than those imposed by this regulation.

(5) Citing criteria. No owner or operator of an affected facility subject to 401 KAR 47:030 shall construct or operate the affected facility in a manner which will violate the requirements of that regulation.

Section 3. Emission Standards. (1) Standards for MSWI metals.

(a) On or after the date upon which the initial performance test is completed or is required to be completed by Section 6 of this regulation, no owner or operator of an affected facility located within either a small or large MSWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions that contain particulate matter in excess of sixty-nine (69) milligrams per dry standard cubic meter (0.030 grains per dry standard cubic foot), corrected to seven (7) percent oxygen (dry basis).

(b) On or after the date upon which the initial performance test is completed or is required to be completed by Section 6 of this regulation, no owner or operator of an affected facility located within a regional MSWI plant

shall cause or allow to be discharged into the atmosphere from that affected facility emissions that contain particulate matter in excess of thirty-four (34) milligrams per dry standard cubic meter (0.015 grains per dry standard cubic foot), corrected to seven (7) percent oxygen (dry basis).

(c) On or after the date upon which the initial performance test is completed or is required to be completed by Section 6 of this regulation, no owner or operator of an affected facility shall cause or allow to be discharged into the atmosphere from that affected facility emissions which exhibit greater than ten (10) percent opacity (six (6) minute average).

(2) Standards for MSWI organics.

(a) On or after the date upon which the initial performance test is completed or is required to be completed by Section 6 of this regulation, no owner or operator of an affected facility located within a small MSWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions that contain dioxin or furan emissions in excess of seventy-five (75) [500] nanograms per normal cubic meter (thirty (30) [200] grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis)[, except as provided under paragraph (b) of this subsection].

[(b) On or after the date upon which the initial performance test is completed or is required to be completed by Section 6 of this regulation, no owner or operator of an affected facility combusting RDF and located within a small SWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions that contain dioxin or furan emissions in excess of 1000 nanograms per normal cubic meter (400 grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis).]

(b) [(c)] On or after the date upon which the initial performance test is completed or is required to be completed by Section 6 of this regulation, no owner or operator of an affected facility located within a large MSWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions that contain dioxin or furan emissions in excess of seventy-five (75) [125] nanograms per normal cubic meter (thirty (30) [fifty (50)] grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis)[, except as provided under paragraph (d) of this subsection].

[(d) On or after the date upon which the initial performance test is completed or is required to be completed by Section 6 of this regulation, no owner or operator of an affected facility combusting RDF and located within a large SWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions that contain dioxin or furan emissions in excess of 250 nanograms per normal cubic meter (100 grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis).]

(c) [(e)] On or after the date upon which the initial performance test is completed or is required to be completed by Section 6 of this regulation, no owner or operator of an affected facility located within a regional MSWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions that contain dioxin or furan emissions in excess of thirty (30) [five (5)] nanograms per normal cubic meter (fourteen (14) [two (2)] grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis).

(3) Standards for MSWI acid gases.

(a) On or after the date upon which the initial performance test is completed or is required to be completed by Section 6 of this regulation, no owner or operator of an affected facility located within a large MSWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions which contain sulfur dioxide in excess of fifty (50) percent of the uncontrolled sulfur dioxide emission rate (fifty (50) percent reduction by weight) or thirty (30) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent.

(b) On or after the date upon which the initial performance test is completed or is required to be completed by Section 6 of this regulation, no owner or operator of an affected facility located within a large MSWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions which contain hydrogen chloride in excess of fifty (50) percent of the uncontrolled hydrogen chloride emission rate (fifty (50) percent reduction by weight) or twenty-five (25) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent.

(c) On or after the date upon which the initial performance test is completed or is required to be completed by Section 6 of this regulation, no owner or operator of an affected facility located within a regional MSWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions which contain sulfur dioxide in excess of fifteen (15) percent of the uncontrolled sulfur dioxide emission rate (eighty-five (85) percent reduction by weight) or thirty (30) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent.

(d) On or after the date upon which the initial performance test is completed or is required to be completed by Section 6 of this regulation, no owner or operator of an affected facility located within a regional MSWI plant shall cause or allow to be discharged into the atmosphere from that affected facility emissions which contain hydrogen chloride in excess of five (5) percent of the uncontrolled hydrogen chloride emission rate (ninety-five (95) percent reduction by weight) or twenty-five (25) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent.

(4) Standards for carbon monoxide. On or after the date upon which the initial performance test is completed or is required to be completed by Section 6 of this regulation, no owner or operator of an affected facility shall cause or allow to be discharged into the atmosphere from that affected facility emissions which contain carbon monoxide in excess of the standards in Appendix A to this regulation, for the indicated incinerator technology.

Section 4. MSWI Operating Practices. (1) The requirements for MSWI operating practices

listed in 401 KAR 59:021, Section 8, shall apply to all MSWIs, except as provided in subsection (2) [and (3)] of this section.

(2) Owners or operators of affected facilities which have an incinerator without a secondary chamber but are equipped with an afterburner operated at a minimum temperature of 982 degrees Celsius (1800 degrees Fahrenheit) may choose to meet a more restrictive visible emission standard of zero percent opacity in lieu of meeting the secondary chamber requirement **while combusting MSW**. All other emission standards listed in Section 3 of this regulation, and the operating practices in 401 KAR 59:021, Section 8, shall apply.

[(3) Owners or operators of affected facilities which combust MSW in order to recover energy may request a reduction in the percent reduction requirements of 401 KAR 59:021, Section 8(5). The request shall demonstrate that a forty (40) percent material reduction will significantly decrease the amount of energy recovered in the combustion process, thereby rendering the MSW-to-energy operation technologically and economically infeasible. The request shall propose and justify a site-specific alternative percent reduction. If the request is approved by the cabinet, the owner or operator shall comply with the site-specific alternative.]

Section 5. Operator Certification and Training. The requirements for MSWI operator certification and training in 401 KAR 59:021, Section 9 shall apply to all MSWIs.

Section 6. Compliance and Performance Testing. On or before the completion of the compliance timetable in Section 9 of this regulation for an affected facility and at other times as may be required by the cabinet, the owner or operator of an affected facility shall conduct performance tests according to 401 KAR 50:045 and this section and shall furnish the cabinet a written report of the results of the performance tests. For all existing MSWIs, the compliance and performance testing methods listed in 401 KAR 59:021, Section 10 for small plants shall apply**, except that the length of time allowed for start-ups and shutdowns shall be three (3) hours**.

Section 7. Reporting and Recordkeeping. The reporting and recordkeeping requirements in 401 KAR 59:021, Section 11 shall apply to all affected facilities.

[Section 8. Public Participation. KRS 224.855 shall apply for all permit applications for the construction, modification, reconstruction, or operation of an affected facility.]

Section **8.** [9.] Compliance Timetable. (1) Except as provided in subsection (2) of this section, planning, awarding of contracts, and installation of equipment capable of attaining the level of the emission standards established in this regulation shall be completed within three (3) years after the effective date of this regulation. Final compliance with this regulation, except as provided in subsection (2) of this section shall be demonstrated no later than four (4) years after the effective date of this regulation.

(2) Planning, awarding of contracts, and installation of equipment and procedures capable of attaining the level materials separation specified in 401 KAR 59:021, Section 8 shall be completed by December 31, 1992. The initial demonstration of compliance with the materials separation provisions specified in 401 KAR 59:021, Section 10 shall be completed by December 31, 1994.

[Section 10. 401 KAR 61:010, Existing incinerators, is hereby repealed.]

APPENDIX A TO 401 KAR 61:011

CARBON MONOXIDE STANDARDS FOR
MUNICIPAL SOLID WASTE INCINERATORS

Municipal Solid Waste Incinerator Technology	Carbon Monoxide Emission Limit (ppmv)*
Mass burn waterwall	100
Mass burn refractory	100
Mass burn rotary waterwall	150
Modular starved air	50
Modular excess air	50
Refuse-derived fuel spreader stoker	150
Bubbling fluidized bed incinerator	100
Circulating fluidized bed incinerator	100
[Coal or] RDF co-fired incinerator	150
Other technologies	150

*Measured at the incinerator outlet in conjunction with a measurement of oxygen concentration, corrected to seven (7) percent oxygen (dry basis) using a four (4) hour block average.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: September 14, 1990
FILED WITH LRC: September 14, 1990 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Division for Air Quality
(Amended After Hearing)

401 KAR 61:013. Existing medical waste [and hazardous waste] incinerators.

RELATES TO: KRS 224.320, 224.330, 224.340, [224.855,] E.O. 90-68
STATUTORY AUTHORITY: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for standards of performance for existing medical waste [and hazardous waste] incinerators.

Section 1. Definitions. As used in this regulation, all terms not defined in this section shall have the meaning given them in 401 KAR 50:010.

(1) "Affected facility" means **a** [any] device for which construction, modification, or reconstruction commenced before **the effective date of this regulation** [December 20, 1989], that combusts material which, if included in the waste stream, would be medical waste [or hazardous waste].

(2) "Afterburner" means an auxiliary burner

for destroying unburned or partially burned combustion gases after they have passed from the combustion chamber.

(3) "Biologicals" means a biological product used in the prevention or treatment of disease [noxious organisms].

(4) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household and industrial wastes. Commercial solid waste includes waste from medical facilities, schools, and other institutions that is not medical waste.

(5) [(4)] "Hazardous waste" has the meaning given it in KRS 224.005 [means waste that has the characteristics identified in 401 KAR 31:030].

(6) [(5)] "Household solid waste" means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunkhouses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and campgrounds.

(7) [(6)] "Industrial waste" means a [any] liquid, gaseous, or solid waste substance resulting from a [any] process of industry, manufacture, trade, or business, or from the development, processing, or recovery of a natural resource.

(8) [(7)] "Mass burn rotary waterwall incinerator" means an incinerator that combusts waste in a cylindrical rotary waterwall furnace.

(9) [(8)] "Mass burn waterwall incinerator" means an incinerator that combusts waste in a conventional waterwall furnace.

(10) [(9)] "Medical waste" means:

[(a) Wastes contaminated by patients who are isolated due to communicable disease;]

(a) [(b)] Cultures and stocks of infectious agents, including specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;

(b) [(c)] Waste human blood and blood products such as serum, plasma, and other blood components;

(c) [(d)] Pathological wastes, such as tissues, organs, body parts, and body fluids that are removed during surgery and autopsy;

(d) [(e)] All discarded sharps, including but not limited to [e.g.,] hypodermic needles, syringes, Pasteur pipettes, broken glass, scalpels, scalpel blades, glass vials, etc., used in patient care, autopsy, embalming, or which have come into contact with infectious agents during use in medical, research, or industrial laboratories;

(e) [(f)] Carcasses and [,] body parts[, and bedding] of animals that were exposed to pathogens in research, in the production of biologicals, or in the in vivo testing of pharmaceuticals; and

(f) [(g)] Other wastes as may be designated by a permit issued by the Division for Air Quality.

(11) [(10)] "Metals" means condensible metals emitted from units. For the purpose of this regulation, particulate matter shall serve as a surrogate for the measurement and control of metals.

(12) [(11)] "Modular excess air incinerator" means an incinerator that combusts waste and that is not field-erected and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

(13) [(12)] "Modular starved air incinerator" means an incinerator that combusts waste and that is not field-erected and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

(14) [(13)] "Multiple-chamber incinerator" means an incinerator consisting of at least two (2) refractory lined combustion chambers (primary and secondary) in series, physically separated by refractory walls, and interconnected by gas passage ports or ducts.

(15) [(14)] "Municipal solid waste" or "MSW" means household solid waste and commercial solid waste.

(16) [(15)] "Organics" means organic compounds emitted from units and includes dioxins or furans. For the purpose of this regulation, dioxin or furan shall serve as a surrogate for the measurement and control of organics.

(17) [(16)] "Particulate matter" means total particulate matter emitted from affected facilities.

(18) [(17)] "Plant" means one (1) or more units at the same location for which construction, modification, or reconstruction is commenced before the effective date of this regulation [December 20, 1989].

(19) [(18)] "Plant capacity" means the aggregate unit capacity of all units at a plant for which construction, modification, or reconstruction is commenced before the effective date of this regulation [December 20, 1989].

(20) [(19)] "Same location" means the same or contiguous property that is under common ownership or control, including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or a [any] combination thereof, including a [any] municipality or other governmental unit, or a [any] quasi-governmental authority (e.g., a public utility district or waste management district).

(21) [(20)] "Uncontrolled hydrogen chloride emission rate" means the hydrogen chloride emission rate that would occur from the combustion of medical waste [or hazardous waste], or other wastes combined with medical waste [or hazardous waste].

(22) [(21)] "Uncontrolled sulfur dioxide emission rate" means the sulfur dioxide emission rate that would occur from the combustion of medical waste [or hazardous waste,] or other wastes combined with medical waste [or hazardous waste].

(23) [(22)] "Unit" means a [any] device that combusts medical waste [and hazardous waste] including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved air or excess air), boilers (i.e., steam generating units), and furnaces (whether suspension-fired, grate-fired, mass-fired, or fluidized bed-fired).

(24) [(23)] "Unit capacity" means the maximum designed charging rate of the waste for an individual unit.

(25) [(24)] "Waste" has the meaning given it in KRS 224.005.

(26) [(25)] "Waste management district" has the meaning given it in KRS 224.005.

Section 2. Applicability. (1) This regulation shall apply to each affected facility which means each unit for which construction, modification, or reconstruction commenced before the effective date of this regulation [December 20, 1989]. Affected facilities which combine and combust MSW, solid waste, or hazardous waste with [, and] medical waste shall be subject to this regulation. Affected facilities which combust only MSW [solid waste] shall be subject to 401 KAR 61:011.

(2) Physical or operational changes made to an existing unit to comply with this regulation shall be considered a modification or reconstruction and shall not subject an existing unit to 401 KAR 59:023.

(3) The permitting exemption for small incinerators in 401 KAR 50:035, Section 6(2) shall not apply to affected facilities.

(4) Siting criteria. No owner or operator of an affected facility subject to 401 KAR 47:030 shall construct or operate the affected facility in a manner that will violate the requirements of that regulation.

Section 3. Emission Standards. (1) On and after the date on which the initial performance test is completed or required to be completed by Section 6 of this regulation, no owner or operator of an affected facility with a plant capacity of 500 pounds per hour or less shall cause or allow to be discharged into the atmosphere from the affected facility:

(a) Particulate matter in excess of 183 miligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) of exhaust gas, corrected to seven (7) percent oxygen (dry basis);

(b) Carbon monoxide in excess of the standards for types of incinerators in Appendix A of 401 KAR 59:023;

(c) Hydrochloric acid (HCl) in excess of twenty (20) percent of the uncontrolled HCl emission rate (eighty (80) percent reduction) (by weight) on an hourly basis or four (4) pounds per hour[, corrected to seven (7) oxygen (dry basis),] whichever is less stringent;

(d) Dioxin or furan emissions in excess of seventy-five (75) nanograms per normal cubic meter (thirty (30) grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis); or

(e) Visible air contaminants in excess of ten (10) percent opacity.

(2) On and after the date on which the initial performance test is completed or required to be completed by Section 6 of this regulation, no owner or operator of an affected facility with a plant capacity greater than 500 pounds per hour but less than or equal to 250 tons per day, shall cause or allow to be discharged into the atmosphere from the affected facility:

(a) Particulate matter emissions in excess of thirty-four (34) miligrams per dry standard cubic meter (0.015 grains per dry standard cubic foot) of exhaust gas, corrected to seven (7) percent oxygen (dry basis);

(b) Carbon monoxide emissions in excess of the standards for types of incinerators in 401 KAR 59:023, Appendix A;

(c) Hydrochloric acid (HCl) emissions in excess of ten (10) percent of the uncontrolled HC l emission rate (ninety (90) percent reduction) (by weight) on an hourly basis or twenty-five (25) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent;

(d) Sulfur dioxide (SO_2) emissions in excess of fifteen (15) percent of the uncontrolled SO_2 emission rate (eighty-five (85) percent reduction) (by weight) on an hourly basis or thirty (30) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent;

(e) Dioxin or furan emissions in excess of seventy-five (75) nanograms per normal cubic meter (thirty (30) grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis); or

(f) Visible air contaminants in excess of ten (10) percent opacity.

(3) On and after the date on which the initial performance test is completed or required to be completed by Section 6 of this regulation, no owner or operator of an affected facility with a plant capacity greater than 250 tons per day shall cause or allow to be discharged into the atmosphere:

(a) Particulate matter emissions in excess of thirty-four (34) miligrams per dry standard cubic meter (0.015 grains per dry standard cubic foot) of exhaust gas, corrected to seven (7) percent oxygen (dry basis).

(b) Carbon monoxide emissions in excess of the standards for types of incinerators shown in 401 KAR 59:023, Appendix A.

(c) Hydrochloric acid (HCl) emissions in excess of five (5) percent of the uncontrolled HCl emission rate (ninety-five (95) percent reduction) (by weight) on an hourly basis; or twenty-five (25) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent;

(d) Sulfur dioxide (SO_2) emissions in excess of fifteen (15) percent of the uncontrolled SO_2 emission rate (eighty-five (85) percent reduction) (by weight) on an hourly basis or thirty (30) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent;

(e) Dioxin or furan emissions in excess of thirty (30) [five (5)] nanograms per normal cubic meter (fourteen (14) [two (2)] grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis);

(f) Visible air contaminants in excess of ten (10) percent opacity.

Section 4. Standards for Operating Practices. (1) The requirements for unit operating practices listed in 401 KAR 59:023, Section 4, shall apply to all units, except as provided in subsection (2) of this section.

(2) Owners or operators of affected facilities which have an incinerator without a secondary chamber but are equipped with an afterburner operated at a minimum temperature of 982 degrees Celsius (1800 degrees Fahrenheit) may choose to meet a more restrictive opacity standard of zero (0) percent in lieu of meeting the secondary chamber requirement while the affected facility

is combusting medical waste. All other emission standards listed in 401 KAR 59:023, Section 3 and the operating practices listed in 401 KAR 59:023, Section 4 shall apply.

Section 5. Operator [Certification and] Training. The requirements for operator [certification and] training listed in 401 KAR 59:023, Section 5, shall apply to all units.

Section 6. Compliance and Performance Testing. [(1)] On or before the completion of the compliance timetable in Section 8 of this regulation for an affected facility and at other times as may be required by the cabinet, the owner or operator of an affected facility shall conduct performance tests according to 401 KAR 50:045 and this section and shall furnish the cabinet a written report of the results of the performance tests. For standards listed in Sections 3 and 4 of this regulation, the corresponding compliance and test methods listed in 401 KAR 59:023, Section 6, shall apply, except that the length of time allowed for start-ups and shutdowns shall be three (3) hours.

Section 7. Reporting and Recordkeeping Requirements. For standards listed in Section 3 and 4 of this regulation, the corresponding reporting and recordkeeping requirements listed in 401 KAR 59:023, Section 7, shall apply.

Section 8. Compliance Timetable. (1) Except as provided in subsection (2) of this section, planning, awarding of contracts, and installation of equipment capable of attaining the level of the emission standards and operating standards established in this regulation shall be completed within three (3) years after the effective date of this regulation. Final compliance with this regulation, except as provided in subsection (2) of this section, shall be demonstrated no later than December 31, 1994.

(2) Planning, awarding of contracts, and installation of equipment and procedures capable of attaining the level of materials separation specified in 401 KAR 59:021, Section 8 shall be completed by December 31, 1992. The initial demonstration of compliance with the materials separation provisions (percent reduction) specified in 401 KAR 59:021, Section 10 shall be completed by December 31, 1994. The training requirement in Section 5 of this regulation shall be completed within one (1) year from the effective date of this regulation.

[Section 9. Procedures for Public Participation. The public participation procedures of KRS 224.855 shall apply to all affected facilities.]

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: September 14, 1990
FILED WITH LRC: September 14, 1990 at 11 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(Amended After Hearing)

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

RELATES TO: KRS 156.031, 156.070
STATUTORY AUTHORITY: KRS 156.070
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and 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, 1990-91 [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. through 4:30 p.m., Monday through Friday.

Section 3. (1) Any pupil who is retained in the sixth, seventh or eighth grade for documented academic deficiences, in compliance with a local school district's adopted grading and retention policy, may appeal any year of ineligibility under KHSAA's By-Law 4, Section 1(a), pursuant to KHSAA's due process procedures incorporated by reference as a part of this regulation.

(2) The burden of proof that retention was based upon bona fide academic deficiencies, and not any desire for athletic advantage, shall rest with the pupil.

(3) In no event shall any waiver be available to allow a pupil eligibility once he has been enrolled in grades nine (9) through twelve (12) for eight (8) semesters.

(4) Any appeal under this section may be pursued either immediately after the pupil's retention or at any time prior to the year of ineligibility.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.

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

704 KAR 3:035. Annual professional development [in-service] plan.

RELATES TO: KRS 156.095, [157.390,] 158.070, HB 940 §13 (1990 RS)
STATUTORY AUTHORITY: KRS 156.070, 156.095, [157.390,] 158.070
NECESSITY AND FUNCTION: KRS 156.095 and HB 940 §13 authorize[s] the Department of Education to establish, direct, and maintain a statewide program of professional development [in-service teacher] training, with the relevant purpose[s] of such a program being the improvement of [the leadership qualities and professional competence of principals and supervisors and for such other services designated by the State Board of Education for the improvement of] instruction in the public schools [. KRS 157.390(2)(a) allows the state board to approve the use of extended employment days]; and KRS 158.070 requires the state board to adopt regulations setting forth guidelines and procedures to be followed for the approval of the four (4) days of the minimum school term which are mandated to be utilized by each local school district for professional development [in-service] activities for the professional staff. This regulation implements these duties and powers by interpreting what professional development [in-service education] consists of and by requiring each local district or consortium of districts to have approved annually a master professional development [in-service education] plan by which it is to be guided in providing suitable professional development [in-service] training programs and in requiring all instructional leaders to participate in the statewide training program implemented under KRS 156.101.

Section 1. Professional development [In-service education] shall mean any training of school personnel to assist them in acquiring the knowledge and skills needed for instructional improvement [prepare them to satisfy a need of the school system]. The data, skills, and concepts comprising the substance of the training programs shall be [are] determined by deficiencies in the instructional, administrative and support services of the school system.

Section 2. Each local district board of education shall [annually], by July 30, 1990 [15], submit to the State Department of Education for approval a master professional development [in-service education] plan. The plan shall include the following components:

(1) Name of local school district;

(2) Name of professional development coordinator [in-service education director];

(3) Names of local school district's professional development [in-service education] committee, which shall be a representative body of all areas or levels of educational personnel within the local school district;

(4) Description of needs assessment, including a brief description of procedures implemented to determine how the district's professional development [in-service education] needs were assessed;

(5) Statement of district's instructional improvement goal(s), which shall be based on identified needs and which shall include but shall not be limited to the completion of the requisite training hours by all instructional leaders, as defined by KRS 156.101, regardless of the date of initial certification of such instructional leaders. Such training hours for instructional leaders may be completed as a part of the statewide program for such, either during the regular school term or during the summer [as an approved use of extended employment];

(6) Statement of district's professional development [in-service education] objectives, which shall provide direction for education personnel in the attainment of the district's instructional improvement goals and shall include but shall not be limited to the completion of the above-defined requisite training hours for all instructional leaders;

(7) A listing of specific professional development activities [and providers of training, and a completed training approval checklist for all training activities other than those provided by the Department of Education] and a justification [to justify compliance] of such activities [training] with respect to [the law and] the local professional development plan and KRS 156.095 [Description of recordkeeping system and procedures, including an indication of the participation of educational personnel in in-service education activities]; and

(8) Description of evaluation, including:

(a) A summary of how professional development [in-service education] programs implemented and operated by individual local school districts shall [will] be evaluated; and

(b) A summary of how the implementation of the master professional development [in-service education] plan shall [will] be evaluated.

Section 3. (1) During the 1990-91 school year, the master professional development [in-service] plan shall address any local district instructional improvement or training needs that are in accordance with the mandated areas listed in KRS 156.095 and 704 KAR 3:005.

(2) Professional development [In-service] activities shall be related to teachers' instructional assignments and administrators' professional responsibilities. Activities shall [must] support the local school district's instructional improvement goals and objectives identified in the master professional development [in-service] plan.

(3) Activities for professional development [in-service] credit of classroom teachers shall not supplant any of the six (6) hour instructional day [on days when children are in attendance].

(4) Professional development [In-service education] activities shall not occur on snow days. Districts may, however, report flexible professional development activities [in-service] on snow days. This situation involves a calendar change only; it does not result in activities on snow days.

(5) Professional development [In-service] credit shall not be awarded for college graduate courses that lead to a change in rank or certification status. Exceptions may be made for university courses that are clearly supportive of the participating district's master professional development [in-service] plan.

(6) Professional development [In-service] credit shall not be awarded for those activities that provide remuneration for time served.

(7) Districts implementing a flexible professional development [in-service] schedule shall award professional development [in-service] credit for any given academic school year within the date limitations of the master professional development [in-service] plan.

[(8) Sick leave may not be applied to in-service days scheduled in a flexible format. For those districts electing to use flexible in-service, the school board shall promulgate appropriate policy regulating such use.]

(8) [(9)] During school years 1990-91 and 1991-92, approvable professional development [in-service] activities are those which address instructional improvement for the school district, an individual school or a group of teachers in the areas required by KRS 156.095. Activities which are not approvable for professional development [in-service] credit include, but are not limited to, the following: organizational business meetings, compiling class rosters, scheduling, textbook adoption committee meetings [counting textbooks], writing lesson plans, housekeeping duties, faculty meetings, extracurricular activities; PTA/PTO meetings, sporting events, [and] field trips, parent-teacher conferences, CPR training, and Kentucky Teacher Internship Program update training [etc].

Section 4. (1) Each superintendent [local board of education] shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator [an in-service education director].

[(2) The in-service education director shall be appointed by the local board of education upon the recommendation of the local superintendent of schools.]

(2) [(3)] The minimum qualifications for the appointment shall be a valid Kentucky certificate as a principal or supervisor.

(3) [(4)] The duties of the professional development coordinator [in-service education director are] as follows:

(a) Conducts needs assessments for professional development [in-service education] and assists in the establishment of [establishes] goals and objectives for training programs and projects. Beginning in July, 1991, needs assessments and establishment of goals and objectives shall be carried out in conjunction with the school council of each school.

(b) Completes master professional development [In-service education] plan for inclusion in the Master Educational Improvement Plan.

(c) Serves as chairperson of district's Master Professional Development [In-service Education] Committee.

(d) Plans, organizes and [/]implements professional development [in-service] projects and training for the 1990-91 school year. Beginning in July, 1991, organization and implementation of professional development activities shall be a function of the consortium to which the district belongs.

(e) Meets regularly with administrators and [/]teachers to establish future goals and [,] identify specific training needs of the district's personnel.

(f) Coordinates the establishment of procedures, timetables, preparation of necessary forms and letters, selection of school coordinators, assignment of workshop sites and all other practical elements of professional development [in-service] training.

(g) Maintains all professional development [in-service education] records, documentations, and other pertinent records.

(h) Conducts evaluation of all professional development [in-service] training programs in the district in a manner which determines their effectiveness in improving teaching and management.

(i) Interprets the professional development [in-service] programs' objectives, results, and needs to district staff, the board, civic and parent groups, teacher training institutions and[/or] others as appropriate.

[(j) Prepares for approval and monitors the in-service program budget.]

(j) [(k)] Keeps updated on current professional development [in-service education] trends.

(k) [(l)] Maintains continuous liaison with Kentucky Department of Education, the consortium to which district belongs and other agencies involved with the district in the provision of professional development [in-service education] activities.

Section 5. By July 30, 1991, each local school district shall submit to the Department of Education a preliminary long-range plan for professional development. This plan shall describe tentative training activities which the district wishes to provide for its certified staff using the services of the Department of Education during the 1991-92 school year and the services of its consortium during the 1992-95 school years.

Section 6. Beginning in July, 1992, each consortium formed shall submit to the Department of Education an annual professional development plan describing training activities for its member districts. This plan shall be based upon the member district's needs as reported to the consortium by each district's professional development coordinator.

Section 7. [5.] When implementing professional development [in-service education] programs under KRS 158.070, each local school district or consortium of districts shall adhere to its approved master professional development [in-service education] plan as developed with technical assistance provided from the Department of Education.

Section 8. Any local district not complying with Sections 1 through 7 of this regulation shall be required to personally appear before the State Board for Elementary and Secondary Education in order to offer explanation for any noncompliance.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 12, 1990
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EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Amended After Hearing)

704 KAR 3:410. Preschool education program for four year old children

RELATES TO: 156.160, HB 940, §16 (1990 RS)
STATUTORY AUTHORITY: KRS 156.070, 156.160, HB 940, §16 (1990 RS)
NECESSITY AND FUNCTION: KRS 156.160 authorizes the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which school districts must meet in student, program, service and operational performance; and Section 16 of HB 940 (1990 RS) authorizes preschool education programs for "at risk" four (4) year old children and authorizes that administrative regulations be promulgated to establish eligibility criteria, program guidelines, and standards for personnel. This regulation sets forth the criteria for the preschool education program for "at risk" four (4) year old children, including procedures for a grant allocation system, eligibility criteria for children to be served, guidelines for program operation, and standards for personnel.

Section 1. Definitions. (1) Children eligible for enrollment in the preschool program shall include children who are:
(a) Residents of the district;
(b) Four (4) years old by October 1 of the school year; and
(c) Approved for free lunch based on federal free lunch criteria.
(2) Resident children who are four (4) years old by October 1 but who are not eligible for the free lunch program may be served if space is available.
(3) [(2)] The following definitions apply to this regulation:
(a) "Developmentally appropriate preschool program" means a program as defined by Section 16(a) of H.B. 940 (1990 R.S.).
(b) "Day care" means a program which is designed to supplement but not substitute for the parent's responsibility for the child's protection, development and supervision, when it is necessary or desirable for the parent or child to be out of the home for all or part of the day or night.
(c) "Screening" means a systematic process for determining which children from the general population may need further evaluation in a particular area.
(d) "Double session" means a variation of the program that operates with one (1) teacher who works with a group of children in a morning session and a different group of children in the afternoon session.

Section 2. Grant Allocation System. (1) Local school districts shall submit proposals to the Kentucky Department of Education to operate or oversee the operation of developmentally appropriate preschool education programs for eligible children. Each proposal shall include at a minimum the requirements set forth in House Bill 940, Section 16(5)(a) - (p).
(2) The chief state school officer shall receive and review proposals from local school districts for the preschool program for eligible children. Programs shall be implemented only on the basis of an approved preschool proposal.
(3) In developing the proposal for the program, the district shall work with existing preschool programs to avoid duplication of programs and services to the same children.
(4) The proposal may include activities to implement new services to be operated by the district, enhance existing preschool services, contract for services, or any combination of the above strategies which will enable the district to assure that a developmentally appropriate program is available for each eligible child.
(5) Funding for districts initiating the preschool program in 1990-91 shall be based on the number of eligible children enrolled in the program on December 1, 1990. Funding for districts initiating the program in 1991-92 shall be based on the number of eligible children enrolled in the program on September 30, 1991.
(6) After the initial year of a district's participation in the preschool program, funding shall be based on the district's number of eligible children enrolled on December 1 of the prior year.
(7) Eligible children who are enrolled by parent choice in other preschool programs providing educational services through state or federal funds at no cost to parents shall not be included in the count of eligible children used to generate funds under this preschool program.
(8) If the state funds allocated are not sufficient, it will be necessary to restrict the number of children participating and/or adjust the funding formula.

Section 3. Interagency Agreements. (1) Any preschool facilities or services provided by a local school district, either directly or by contract or cooperative agreement with another provider, shall meet the requirements of this regulation and all other applicable school laws and administrative regulations.
(2) Contracts or cooperative agreements for operating the preschool program may be negotiated with another school district, another public agency, private school or preschool program. All nonpublic school programs providing preschool services shall be approved for that purpose by the State Board for Elementary and Secondary Education.
(3) All contracts and cooperative agreements shall be in writing and shall include at a minimum the contents set forth in KRS 65.250.
(4) State preschool funds may be used in private programs only if a signed contract or cooperative agreement is on file in the district which documents that:
(a) The program is separately incorporated from any religious institution;
(b) The program maintains a nonsectarian board of directors;
(c) All proceeds and debts are the property of that corporation;
(d) The program pays only reasonable rent; and
(e) No part of the program's curriculum is religious in nature.

Section 4. Enrollment. (1) Enrollment of children in the preschool program is at the discretion of the parent or legal guardian. Each local school district shall establish and maintain a recruitment process which systematically assures enrollment of eligible

children. This process shall be outlined in a written plan which includes procedures for:

(a) Notification of the right to participate, presented in the parent's primary language or natural mode of communication;

(b) Recruitment of eligible children regardless of race, sex, creed, color, national origin or handicapping condition; and

(c) Contact to agencies and programs serving local preschool children or their families to encourage participation in the recruitment process, taking into account the demographic makeup of the community and the needs of the children and their families.

(2) Prior to enrollment, each child shall have on file at a minimum:

(a) A copy of a legal birth certificate;

(b) A Kentucky Certificate of Immunization;

(c) A Social Security number; and

(d) A completed application form for the National School Lunch Program.

(3) All educational records shall be kept confidential according to the requirements of the Family Education Rights and Privacy Act.

(4) Daily attendance records shall be maintained and submitted through the district's standard attendance reports or an approved, verifiable alternative method. Parents or legal guardians shall be contacted with respect to an enrolled child whose participation in the program is irregular or who has been absent for four (4) consecutive program days.

Section 5. Program Operation. (1) The local school district may select any of the following program options:

(a) Standard half-day, five (5) day a week program (single session only);

(b) Half-day, four (4) day a week program in single or double session, with the fifth day for services to children and their families, such as home visits, special experiences for children, parent training, or coordination of medical or social services;

(c) Locally-designed programs approved by the chief state school officer.

(2) If a double session program is utilized, the following provisions must be made:

(a) Time shall be allotted prior to each session to allow staff to prepare for the session as well as give individual attention to children entering and leaving the program;

(b) Adequate break time shall be provided for staff during the course of the day;

(c) Staff assignments shall provide time for parent involvement activities and coordination of services described in Section 5(5) through (8) of this regulation; and

(d) Maximum number of children assigned to one (1) lead teacher shall be limited to the guidelines in Section 6(4) of this regulation.

(3) The hours of operation of the half-day program may vary but shall provide a minimum of two and one-half (2 1/2) hours of classroom time per day, which does not include the time required to provide breakfast or lunch. The program shall provide direct services for children or parents for the minimum number of teaching days set by the local school district for the school year.

(4) Maximum group size for eligible children is twenty (20) children. The staff ratio in the classroom shall consist of one (1) adult for a maximum of ten (10) children pursuant to staff qualifications described in Section 6 of this regulation: Personnel. Consideration shall be given to increasing the number of staff or decreasing the group size depending upon the needs of the children, including but not limited to the needs of children with handicapping conditions. An adult shall never be left alone with more than ten (10) preschool children, and the local school district shall have a written policy for assistance from another adult whenever only one (1) adult is repsonsible for a group of children.

(5) The program shall allow for active parental involvement. Consideration of the different types of family structures, such as the single parent, foster parent and extended family, shall be made when planning activities. At least the following opportunities shall be made available to parents:

(a) Participation in classroom and other preschool activities as volunteers or observers;

(b) Parent training, education or other activities which the parent has helped to develop;

(c) Working with the child in cooperation with preschool staff;

(d) Meeting with preschool and other appropriate staff regarding the child's individual needs and progress or other two (2) way communication systems developed with the parent;

(e) Periodic home visits by preschool staff, with a minimum of two (2) visits per child per year and with the first visit conducted within sixty (60) school days after enrollment.

(6) In order to meet the comprehensive needs of children, the program shall collaborate with medical, health, mental health and social service agencies. Information about community services, resources and facilities shall be made available to parents. Program staff shall assist parents in coordinating interagency services for children and families.

(7) Each local school district shall assure through coordination with existing medical and social services that all children participating in the program receive child development and health screening.

(a) Health screening shall include, at a minimum, growth assessment, vision and hearing screening, assessment of current immunization status, and general health status.

(b) Child development screening shall include, at a minimum, screening [assessment] of gross and fine motor skills, cognitive functioning, communication skills, self-help skills and social-emotional skills.

(c) Child development screening may be accomplished through various means, including but not limited to, systematic observation in the classroom or other natural settings. Screening results shall not be used for determining placement or planning the curriculum.

(d) Child development and health screening shall be completed within thirty (30) school days of enrollment by personnel trained in the procedures utilized.

(e) Contact shall be made with the parent or legal guardian if screening results indicate a need for further assessment by a specialist, follow-up, or referral for special education and related services or other appropriate resources.

(8) Each local school shall assist the parent or legal guardian as needed through cooperation with existing medical and social services to

obtain the physical examination required of all children prior to kindergarten enrollment.

(9) The preschool program shall include developmentally appropriate experiences in cognitive, communication, social, physical, and emotional development as well as creative expression. The preschool program shall assist young children with their intrapersonal and interpersonal skills and in maximizing self-management and independence. The program shall include appropriate learning activities and teaching techniques in accordance with each child's level of comprehension and maturation.

(10) The program shall provided a supportive social and emotional climate which:

(a) Enhances children's understanding of themselves as individuals, and in relation to others, by providing for individual, small group, and large group activities;

(b) Gives children many opportunities for success through developmentally appropriate program activities;

(c) Provides an environment of acceptance which helps each child develop a positive self-concept, enhance his or her individual strengths, build ethnic pride, and facilitate social relationships.

(11) The program shall promote the development of intellectual skills by:

(a) Encouraging children to solve problems, initiate activities, explore, experiment, question, and gain mastery through learning by doing (concrete experiential learning);

(b) Promoting language understanding and use in an atmosphere that encourages each communication among children and between children and adults;

(c) Utilizing a curriculum in which a variety of skills are integrated into activities targeted toward the interests of children;

(d) Encouraging children to organize their experiences and understand concepts;

(e) Utilizing a language experience approach to introduce printed materials according to the individual developmental level of the child; and

(f) Providing a daily balance of activities in the following dimensions:

1. Indoor/outdoor;
2. Quiet/active;
3. Individual/group;
4. Large/small group;
5. Child/staff initiated; and
6. Structured/spontaneous.

(12) The program shall promote physical growth by:

(a) Providing adequate indoor and outdoor space pursuant to Section 7;

(b) Providing developmentally appropriate materials and equipment, in sufficient quantity to allow choice, and providing supervised time for children to use large and small muscles to increase their physical skills;

(c) Providing appropriate guidance while children use equipment and materials which promote children's physical growth;

(d) Providing breakfast or lunch to each eligible child, pursuant to the requirements of the National School Breakfast Program/National School Lunch Program;

(e) Providing developmentally appropriate information regarding nutrition, [and] involving children as feasible in the planning and preparation of snacks and meals, and providing appropriate supervision during meals to develop language, under-standing and problem-solving skills; and

(f) Providing developmentally appropriate information about health as an integral part of program activities.

(13) The program shall promote social skills and social interactions by:

(a) Providing positive guidance with consistent, clear rules presented in developmentally appropriate ways; and

(b) Providing positive adult and peer role models, focusing on the level of the child.

(14) The program shall be individualized to meet the special needs of children by:

(a) Having a curriculum which is relevant and reflective of the needs of the population served (such as, bilingual/bicultural, multicultural, rural, urban, or migrant);

(b) Having staff and program resources reflective of the racial and ethnic population of the children in the program; and

(c) Providing adaptations for children with special needs.

(15) The program shall utilize developmentally appropriate materials and equipment:

(a) Furniture, equipment and materials shall be of sufficient quantity, quality and variety to meet the needs of the children and shall be arranged in such a way as to facilitate learning, assure a balanced program of spontaneous and structured activities, and encourage self-reliance in the children. Test sheets, workbooks and ditto sheets are not developmentally appropriate for use with preschool children.

(b) The equipment and materials shall be:

1. Consistent with the specific educational objectives of the local program;
2. Consistent with he cultural and ethnic background of the children;
3. Geared to the age, ability, and developmental needs of the children;
4. Safe, durable, and kept in good condition;
5. Stored in a safe and orderly fashion when not in use;
6. Accessible, attractive, and inviting to the children; and
7. Designed to provide a variety of learning experiences and to encourage experimentation and exploration.

(16) Space shall be arranged so that children can work individually, together in small groups, and in a large group. Space shall be arranged to provide clear pathways for children to move from one area to another.

(17) Centers or areas in the classroom shall include space for such activities as art, blockbuilding, cooking, gross motor, housekeeping/dramatic play, language arts/library, manipulative materials, math/problem solving, multimedia, music, science/social studies, and wood working.

(18) Assessment of children within the preschool program shall be for the purpose of planning activities and evaluating progress, and shall not be used to restrict entry into or exit from the preschool program. The program shall include developmentally appropriate assessment of children which:

(a) Provides for ongoing observation, recording and evaluation of each child's growth and development for the purpose of planning activities to suit individual needs;

(b) Is accomplished by observation or activity with the child in familiar structured and informal situations;

(c) Includes information from parents;
(d) Is used to inform parents on a regular basis regarding the child's progress in physical, intellectual, communication, social, emotional, intrapersonal, and interpersonal skills and development; and
(e) considers the cultural background of the child.
(19) Children shall not be retained in the preschool program.
(20) The preschool program shall provide developmentally appropriate instruction to children regarding safety procedures, such as riding the bus and emergency procedures.
(21) The preschool program shall utilize the local school district's safety policies regarding accident records, medical emergency plans, fire and disaster plans, first aid, dispensing of medications, and reporting of child abuse and neglect, with modification, as needed, to current policy to accommodate young children.

Section 6. Personnel. (1) Instructional staff in the preschool shall include, but not be limited to, the following types of personnel:
(a) A lead teacher who meets the qualifications set forth in the Interim Early childhood Personnel Policy (May 1990), pursuant to 704 KAR 20:165, or as determined by the Professional Standards Board. This interim approval will be issued in accordance with the following criteria:
1. Level I approved preschool instructional personnel include:
a. Personnel with a degree in child development or early childhood education;
b. Personnel with kindergarten certification;
c. Personnel with special education certification valid for primary grades;
d. Personnel with a master's degree, bachelor's degree or licensure in communication disorders, speech and language, or speech pathology.
2. If Level I personnel are not available, the local board may request approval for Level II personnel. These individuals must complete training activities in early childhood education as specified by the Kentucky Department of Education. Level II approved preschool instructional personnel include individuals with a minimum of one (1) year of early childhood training or experience and a degree in family studies, social work, psychology, nursing, or other related area, **including education if not specified under Level I**.
3. Local boards may also request approval for Level III personnel. These individuals must:
a. Be supervised by Level I preschool instructional personnel or by local school district staff currently directing special education and/or kindergarten programs; and
b. Complete training activities in early childhood education as specified by the Kentucky Department of Education. Level III approved preschool instructional personnel include individuals with the following:
(i) An associate (AA) degree in early childhood;
(ii) A child development associate credential (CDA); [or]
(iii) Completion of a vocational child care worker training program; or
(iv) [(iii)] A high school diploma or GED and minimum one (1) year early childhood training or experience.
(b) A teaching associate, such being an instructional aide meeting the qualifications required under 704 KAR 15:080.
(2) Every preschool classroom shall have at least one (1) lead teacher. Teaching associates or other professional personnel shall be used in addition to the lead teacher to provide an appropriate adult-child ratio in each classroom, pursuant to Section 5(5) of this regulation. Each lead teacher shall provide instructional services to a maximum of twenty (20) children, within the parameters of subsection (4) of this section.
(3) The lead teacher is responsible for organizing the classroom, providing a developmentally appropriate curriculum, and supervising and assigning the activities of teaching associates, student helpers, and other non-certified staff in the preschool class. The lead teacher is also responsible for at least the following parental activities, described in Section 5**(5)** [(6)] of this regulation:
(a) Parent participation in the classroom;
(b) Parent-teacher conferences; and
(c) **A minimum of** two (2) home visits **per child** per year.
(4) The local school district shall assign professional staff, including but not limited to the lead teacher, to conduct parental involvement activities and coordination with health and social services, pursuant to Section 5(5) through (8) of this regulation. Lead teachers who have been assigned coordination responsibilities **related to parent involvement activities and health and social services** [beyond those set out in subsection (3) of this section] and who operate double sessions **are considered to be going beyond responsibilities set out in subsection (3) of this section and** shall provide services to a maximum of thirty-four (34) children total, within the guidelines for the adult-child ratio per classroom in Section 5(5) of this regulation.
(5) Lead teachers shall participate in the required number of professional development days applicable to certified personnel in the local school district. Teaching associates shall participate annually in a minimum of eighteen (18) hours of professional development. Professional development activities shall be related to the nature and needs of young children and their families, including those with special needs. Records shall be kept for all personnel documenting attendance and participation in professional development training.
(6) At all times, the program shall have a staff person on the premises who is trained in emergency first aid and cardiopulmonary resuscitation (CPR).

Section 7. Facilities and Transportation. (1) The preschool program shall operate in compliance with administrative regulations promulgated by the State Board of Elementary and Secondary Education in areas including, but not limited to, facilities, safety, health, and transportation.
(2) A school district may apply to the chief state school officer for an exemption to delay implementation of the preschool program until 1991-92. In the application for the exemption, the district shall certify that existing school facilities are not available which meet the

requirements set forth in subsection (1) of this section. The district shall also provide a written plan of the procedures it will implement during the 1990-91 to develop or secure facilities for 1991-92 which meet the requirements set forth in subsection (1) of this section.

(3) If the program is extended to provide child care before or after the standard operating hours of the preschool program, then that portion of the program is considered day care and shall meet the standards for day care facilities promulgated by the Cabinet for Human Resources and set forth in 905 KAR 2:010.

(4) The local school district may provide transportation to preschool children. If a local school district transports preschool children, such services shall be operated in conformance with administrative regulations pertaining to the transportation of school children, as set forth in 702 KAR Chapter 5.

(5) Regardless of whether transportation is provided, the local school district shall make provisions for safe arrival and departure of all children, with a procedure for ensuring that preschool children are released only to the parent or person(s) authorized by the parent.

Section 8. Program Evaluation. (1) At least annually, parents, staff and other professionals shall be involved in evaluating the local preschool program's effectiveness in meeting the needs of participating children.

(2) The program evaluation shall address at a minimum:

(a) Rate of participation by eligible children;

(b) Parental satisfaction with services provided; and

(c) Success of participating children as they complete the preschool program and progress through the primary school program; and

(d) Adherence to state regulations and to other quality indicators of effective, developmentally appropriate, early childhood programs as identified in the literature.

(3) The local school district shall provide data on the preschool program according to guidelines determined by the chief state school officer for evaluating the effectiveness of the statewide preschool program.

(4) Monitoring of the preschool program shall occur in conjunction with the monitoring of the local school district's educational program, as deemed necessary by the State Board for Elementary and Secondary Education.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.

CABINET FOR WORKFORCE DEVELOPMENT
Department of Vocational Rehabilitation
(Amended After Hearing)

781 KAR 1:010. Department of Vocational Rehabilitation appeal procedures.

RELATES TO: 29 U.S.C. §722, HB 814, §§35 to 41 (1990 RS)

STATUTORY AUTHORITY: HB 814, §§35 to 41 (1990 RS)

NECESSITY AND FUNCTION: 29 USC §722(d) requires state procedures for the review of determinations made by rehabilitation personnel for basic rehabilitation and independent living services; HB 814, §§35 to 41 (1990 RS) accepts and agrees to comply with federal vocational rehabilitation Acts; and HB 814, §38 [§35 to 41] (1990 RS) sets forth rulemaking authority with respect to the state vocational rehabilitation agency. This regulation establishes the necessary appeals procedures.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361, which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

Section 2. Right of Appeal and Information. An applicant or client who is dissatisfied with any action concerning the furnishing or denial of vocational rehabilitation services shall have the right to appeal that action. All applicants or clients shall be informed of entitlements available under this regulation, including the names and addresses of such individuals with whom an appeal shall be filed.

Section 3. Client Assistance Program. The Department of Vocational Rehabilitation shall advise all applicants and clients of the existence of the Client Assistance Program, the services provided by the program, and how to contact the program representatives.

Section 4. Notification of Appeal Rights Regarding Eligibility. The Department of Vocational Rehabilitation shall provide each applicant or client with written notification of any agency decision concerning eligibility or ineligibility for services pursuant to federal guidelines.

Section 5. Notification of Appeal Rights Regarding an Individualized Written Rehabilitation Program. Each client with an Individualized Written Rehabilitation Program (IWRP), shall receive notification of the means for appealing any IWRP decisions through an administrative review or impartial hearing.

Section 6. Choice of Appeal Procedures. (1) Within sixty (60) days of becoming aware, through the exercise of due diligence of agency action or inaction, an applicant or client may appeal [any action taken by the agency].

(2) The request for review or hearing shall be made in writing.

(3) Applicants or clients may initially request an administrative review, or a more formal hearing before an impartial hearing officer as a means to resolve issues of dissatisfaction.

(4) The administrative review or expedited administrative review shall not delay an

impartial hearing and its time frames, unless both the agency and the applicant or client agree to the delay.

(5) When both parties have agreed to delay time frames established by federal regulation, the applicant or client, if still dissatisfied, may request an impartial hearing no later than forty-five (45) days after receiving written notice of the administrative review decision or the expedited administrative review decision.

(6) An applicant or client who is dissatisfied with any determination made by agency staff concerning the furnishing or denial of services may request a review of that determination before an impartial hearing officer by writing the Commissioner, Department of Vocational Rehabilitation.

Section 7. Procedures for an Administrative Review. The following procedures shall be followed in an administrative review:

(1) The regional administrator shall designate a branch manager from a district not involved in the action in question to conduct the administrative review. The director of Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) shall designate the review officer **who has not been involved in the action or inaction being appealed** for reviews involving CDPCRC.

(2) The administrative review shall be held within fifteen (15) working days of receipt of the request.

(3) When practicable, the review shall be at a time and place convenient to the applicant or client requesting the review, and the individual shall be notified in writing as to the time and place of the review and the right to be represented at the review by counsel or a designated advocate.

(4) A report of the findings of the review shall be sent to the involved individual within fifteen (15) working days from the completion date of the review.

Section 8. Expedited Administrative Review. When there is an agency initiated change resulting in a discontinuation of a service set forth in an IWRP, the following procedures shall be observed:

(1) The client shall be notified in writing at least ten (10) working days before the effective date of the proposed change; and

(2) The client's request for a review shall be made before the effective date of the proposed change. Should the client request an expedited administrative review, services shall continue until the review determination is received in writing, but in any case, no longer than thirty (30) days from the effective date of the proposed change.

Section 9. Hearing. Should an applicant or client be dissatisfied with any determinations made by the agency staff concerning the furnishing or denial of services or the findings and decision of an administrative review, the affected applicant or client may request a hearing by writing the Commissioner, Department of Vocational Rehabilitation. The following procedures shall be followed:

(1) An impartial hearing officer who has a background and experience in, and knowledge of, the delivery of vocational rehabilitation services; who has not taken part in the action under consideration; who is not an employee of the Department of Vocational Rehabilitation; and who has no personal or financial investment in the outcome of the hearing shall conduct a formal hearing.

(2) The hearing shall be held within forty-five (45) days after receipt of the initial request for appeal. Reasonable time extensions may be made for good cause shown by a party or at the request of both parties.

(3) When practicable, the hearing shall be held at a time and place convenient to the applicant or client requesting the hearing; and the applicant or client shall be notified by the hearing officer in writing as to the time and place of the hearing and the right to be represented at the hearing by counsel or by a designated advocate.

(4) Agency staff involved in the action in dispute shall be present at the hearing. The applicant or client or a designated representative and the agency representative shall have the opportunity for cross-examination; to present evidence, information and witnesses; to examine all documents submitted by the Department of Vocational Rehabilitation and to examine all documents submitted by the applicant or client or a representative.

(5) The decision of the impartial hearing officer shall set forth the issues, relevant facts brought forth at the hearing, the pertinent provisions in the state plan and the Rehabilitation Act on which the decision is based and the reasoning that led to the decision.

(6) The verbatim transcript of the testimony presented during the hearing, together with all exhibits filed in the proceedings, shall constitute the exclusive record for the decision.

(7) The individual or designated representative and the Commissioner, Department of Vocational Rehabilitation shall be sent the decision within thirty (30) days from the completion of the hearing, unless both parties agree to a reasonable time extension to allow the hearing officer to review the transcript before finalizing the decision.

(8) If the commissioner elects not to review the impartial hearing officer's decision, that decision becomes the final state agency action.

(9) If the commissioner elects to review the impartial hearing officer's decision, within twenty (20) days of the mailing of the decision to the individual, the client or applicant shall be informed in writing of the intent to review the decision in whole or in part.

(10) The decision of the commissioner to review any impartial hearing officer's decision shall be based on the following standards:

(a) Whether the hearing officer's decision was arbitrary, capricious, an abuse of discretion, or otherwise unreasonable.

(b) Whether the hearing officer's decision was supported by substantial evidence, i.e., consistent with facts and applicable federal and state laws and regulations.

(c) Whether, in reaching the decision, the impartial hearing officer gave appropriate and adequate interpretation to such factors as:

1. The federal regulations and policies as they apply to the specific issue(s) in question;

2. State laws and regulations as they relate to the issue(s) in question;

3. The state plan as it applies to the specific issue(s) in question;

4. The state procedures manual as it may apply

to the specific issue(s) in question;
5. Key portions of conflicting testimony;
6. State agency options in the delivery of services where such options are permissible by the federal regulations; and
7. Restrictions in federal regulations with regard to such supportive services as maintenance and transportation.

(11) If the commissioner elects to review the decision of the impartial hearing officer, the applicant or client shall be provided an opportunity for the timely submission of additional evidence and information relevant to a final decision.

(12) The commissioner's review shall be limited to the findings with which the commissioner took issue and shall be a paper review of the transcript of testimony and exhibits presented at the hearing, the hearing officer's written decision, and any additional relevant written documentation submitted by the applicant or client or a representative.

(13) A final decision stating the findings and grounds for the decision shall be made in writing by the commissioner within thirty (30) days of the commissioner's decision to review the decision of the impartial hearing officer. The applicant or client may request a delay in order to submit additional evidence bearing on the final decision if the commissioner agrees to a reasonable time extension.

(14) When a final decision is made, a copy of that decision shall be provided to the applicant or client or a representative.

(15) The commissioner shall not delegate responsibility to make any such final decision to any other officer or employee of the Department of Vocational Rehabilitation.

(16) The decision of the commissioner shall be the final state agency action.

Section 10. Legal Counsel. The Department of Vocational Rehabilitation shall not provide legal counsel or reimburse the costs of legal counsel for an applicant or client who appeals an action concerning the furnishing or denial of services.

CARROLL BURCHETT, Acting Commissioner
APPROVED BY AGENCY: August 30, 1990
FILED WITH LRC: August 30, 1990 at 11 a.m.

CABINET FOR WORKFORCE DEVELOPMENT
Department of Vocational Rehabilitation
(Amended After Hearing)

781 KAR 1:020. General provisions for operation of the Department of Vocational Rehabilitation.

RELATES TO: HB 814, §§35 to 41 (1990 RS)
STATUTORY AUTHORITY: HB 814, §§35 to 41 (1990 RS)
NECESSITY AND FUNCTION: HB 814, §§35 to 41 (1990 RS) agree to comply with federal vocational rehabilitation acts, provide for a state rehabilitation agency, set eligibility criteria for vocational rehabilitation services. Section 38 [, and] directs the Commissioner, Department of Vocational Rehabilitation to promulgate regulations governing services, personnel, and administration of the state rehabilitation agency. This regulation prescribes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for such purpose, and the general criteria set forth herein cover the regulatory policies.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

(5) "Relative" means an individual related to another individual by blood, marriage, or adoption, including spouses, parents, grandparents, brothers, sisters, sons, daughters, grandchildren, aunts, uncles, nieces, nephews and first cousins.

(6) "Visual impairment" means an individual has a condition of the eye which constitutes or results for the individual in a substantial handicap to employment, as defined by KRS Chapter 163.

(7) "Legally blind" means an individual has a visual acuity of 20/200 or less in the better eye with correction or a visual field of twenty (20) degrees or less, as defined by KRS Chapter 163.

(8) "Occupational equipment" means equipment essential to perform the job duties at the job site and required as a condition of employment.

Section 2. Comparable Benefits. Except as provided in **this section, the agency shall fully consider** [781 KAR 1:030, the following shall apply:]

[(1) Comparable benefits application shall be required as follows:]

[(a) Full consideration shall be given to] any comparable benefits available under any other program to an individual with a handicap **or to members of that individual's family,** to meet, in whole or in part, the cost of **vocational rehabilitation.** [physical and mental restoration] services.

(1) Services for which consideration of comparable benefits shall not be required include:

(a) Evaluation of rehabilitation potential;

(b) Counseling, guidance and referral;

(c) Vocational and other training services including personal and vocational adjustment training, books, tools, and other training materials that are not provided in institutions of higher education;

(d) Placement;

(e) Rehabilitation engineering services;

(f) Services listed in paragraphs (a) through (e) of this subsection when provided as postemployment services.

(2) Consideration of comparable benefits shall

not be required if such consideration would place the applicant or client at extreme medical risk. A determination of extreme medical risk shall be based upon medical evidence provided by an appropriate licensed medical professional. [and maintenance, unless it would significantly delay the provision of services to the individual who is at extreme medical risk; and]

[(b) When an individual is eligible for comparable benefits, such benefits shall be utilized insofar as they are adequate and do not interfere with achieving the rehabilitation objective of the individual.]

(3) [(2)] The agency shall not supplant a service that is covered by Medicaid, Medicare, private insurance or any other health services programs. If a vendor of medical services refuses to accept a client's public or private medical coverage for any services covered under such programs, referral and assistance shall be provided by the agency in locating and securing the needed medical services through vendors who will accept the client's medical coverage.

(4) [(3)] The application for and use of comparable benefits shall be used if available at any time during the period that the individual is receiving agency services.

(5) [(4)] If the individual who has a handicap refuses to apply for or to accept comparable benefits, the agency shall not provide the service using agency funds.

Section 3. Confidentiality. (1) The Department of Vocational Rehabilitation shall safeguard the confidentiality of all personal information, including photographs and lists of names to assure that:

(a) Specific safeguards protect current and stored personal information;

(b) All applicants, clients, representatives of applicants or clients, and as appropriate, service providers, cooperating agencies, and interested persons shall be informed of the confidentiality of personal information and, upon request, the conditions for accessing and releasing this information;

(c) All applicants and clients or their representatives shall be informed about the department's need to collect personal information and policies governing its use including as appropriate:

1. Identification of the authority under which information is collected;

2. Explanation of the principal purposes for which the department intends to use or release the information;

3. Explanation of whether provisions of the information by the individuals is mandatory or voluntary and the effects of not providing requested information to the department;

4. Identification of those situations where the department requires or does not require informed written consent of the individual before information may be released; and

5. Identification of other agencies to which information is routinely released.

(d) Persons who are unable to communicate in English or who rely on special modes of communication shall be provided explanations about state policies and procedures affecting information through methods they can adequately understand.

(2) All personal information in the possession of the department shall be used only for purposes directly connected with the administration of the vocational rehabilitation program. Identifiable personal information shall not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program the department may obtain personal information from service providers and cooperating agencies under assurances that the information shall not be further divulged, except as otherwise provided under this section.

(3) The department may release information to involved individuals under the following conditions:

(a) When requested in writing by the involved individual or the individual's representative, the department shall make all information in the case record accessible to the individual or release it through a representative in a timely manner. Medical, psychological, or other information which the department believes may be harmful to the individual shall not be released directly to the individual, but shall be provided through a representative, a physician or a licensed or certified psychologist;

(b) When personal information has been obtained from another agency or organization, it may be released only by or under the conditions established by the other agency or organization.

(c) A written request from an applicant or client to a member of the congressional delegation requesting assistance or intercession with regard to vocational rehabilitation services shall be construed by the agency to fulfill the requirements of this section.

(4) Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for persons with disabilities and only if the organization, agency, or individual assures that:

(a) The information shall be used only for the purposes for which it is being provided;

(b) The information shall be released only to persons officially connected with the audit, evaluation or research;

(c) The information shall not be released to the involved individual;

(d) The information shall be managed in a manner to safeguard confidentiality; and

(e) The final product shall not reveal any personal identifying information without the informed written consent of the involved applicant or client or a representative.

(5) Information may be released to other programs or authorities under the following conditions:

(a) Upon receiving the informed written consent of the individual, the department may release to another agency or organization for its program purposes only, that personal information which may be released to the involved individual under subsection (3) of this section, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological information which the department believes may be harmful to the individual may be released when the other agency or organization assures the department that the information shall be used only for the purpose for which it is being provided and shall

not be further released to the involved individual;

(b) The department may release personal information if required by federal law;

(c) The department may release personal information in response to investigations in connection with law enforcement, fraud, abuse (except where expressly prohibited by federal or state laws or regulations), and in response to judicial order; and

(d) The department may also release personal information in order to protect the individual or others when the health or safety of the individual or others is threatened.

Section 4. Employability Evaluation. Substantial physical restoration services (e.g., surgery or physical therapy) shall not be provided in employability evaluation. Major or extensive restoration services shall not be provided to determine if the applicant meets the reasonable expectation criteria of eligibility.

Section 5. Employees' Application for Services. (1) In order to provide agency employees fair and equal access to agency services and to avoid the appearance of impropriety or conflict of interest, an applicant who is an agency employee and the agency shall adhere to the following procedures when such an employee wishes to apply for rehabilitation services:

(a) The employee shall advise the regional administrator of the intent to apply.

(b) The regional administrator shall select a counselor to take the application. Whenever practicable, the counselor shall be located in an adjacent district.

(2) The employee shall be informed of eligibility or ineligibility for services.

(3) Any employee-applicant who is dissatisfied with any action or inaction may appeal pursuant to 781 KAR 1:010.

Section 6. Employees' Relatives' Applications for Services. An employee shall not take an application or provide vocational rehabilitation services to a relative. The relative shall be referred to the branch manager. The branch manager shall assign a staff member who is not a relative to take the application and to provide services as deemed appropriate.

Section 7. Hearing Impairments. (1) All applicants or clients with a diagnosis of hearing impairment or deafness and determined to be severely disabled shall be provided with a visual evaluation by a physician skilled in diseases of the eye or by an optometrist.

(2) An audiological evaluation shall be used to document hearing impairment or deafness.

(3) An ear, nose and throat (ENT) specialist evaluation of the auditory system shall be provided when symptoms of ear pathology or conductive hearing loss are present.

Section 8. Legal Fees. The agency shall not be responsible for any fees incurred by an applicant or client for legal services.

Section 9. Maintenance. The agency shall not subsidize a client's home.

Section 10. Payment Rates for Purchased Services. (1) The department shall maintain, in accessible form, information on current rates of payment for services provided by the agency. A written record of the effective date of adoption of fee schedules or rates of payment shall be maintained.

(2) The department shall ensure that physicians or other vendors of services agree not to charge or accept from the applicant or client or a family member any payment for services unless the amount of such charge or payment is previously known to and, where applicable, approved by the agency.

(3) The establishment, maintenance, and revision of fee schedules and rates of payment for services shall be guided by: review of existing Medicaid, Medicare, or private health care insurance fee schedules; review and consultation with other state rehabilitation agencies; review and consultation with Veteran's Administration or other federal agencies that maintain rate schedules; or consultation with physicians and other vendors of services. Consultation for the purpose of establishing rates of payment may be secured on a fee for service basis.

(4) The rates of payment shall not exceed the maximum established by the agency. A lesser rate may be negotiated between the agency with the service provider.

(5) The agency shall not approve payment for services provided to an individual when the agency has made no prior authorization.

Section 11. Physical or Mental Restoration. Physical or mental restoration services shall be authorized to out-of-state vendors only as follows:

(1) In geographical areas routinely used for the convenience of the individual; or

(2) When it will be economically beneficial to the agency; or

(3) If particular procedure or mode of treatment is not available in state. In this case, the schedule of payment shall be governed by the rates established by the vocational rehabilitation agency in the state where services are to be provided.

Section 12. Placement. The agency shall not pay for job placement services from a private for profit employment or placement agency.

Section 13. Postemployment Services. (1) The expenses of treating acute conditions during postemployment services shall not be borne by the agency.

(2) Postemployment services shall not be provided solely to upgrade a client's financial status.

(3) Support services such as maintenance, transportation, and attendant care shall be provided only in conjunction with other rehabilitation services and shall not be provided solely to support an individual in employment.

(4) If postemployment services are initiated and it becomes obvious that the client cannot or will not remain in or return to employment, the case shall be terminated. The case shall not be reopened for postemployment services.

Section 14. Potentially Terminal Illness. (1) Services shall not be provided to individuals with a potentially terminal illness unless:

(a) There is a favorable medical prognosis for

recovery; or
(b) There is a prospect of survival for a reasonable period of time, allowing a return to work for at least twelve (12) months (work life expectancy).
(2) The following guidelines shall be followed in making a determination:
(a) If surgery or ancillary medical services, such as chemotherapy or nuclear medical treatment is expected to cure the condition, then these services may be provided as if it were any other medical problem.
(b) If the attending physician feels the prognosis is guarded, the agency staff shall request a letter indicating the client's work life expectancy. For those individuals with a twelve (12) month work life expectancy services may be served.

Section 15. Prescription Drugs. Current Medicaid rates shall be used to establish payment for prescribed drugs.

Section 16. Second Opinions. The agency may seek a second opinion from a qualified practitioner before determining the eligibility of an applicant or before authorizing services for a client.

Section 17. Self-employment Enterprises. (1) The following shall be met prior to planning for self-employment for clients of the agency:
(a) Clients shall agree to undergo appropriate evaluation to determine work potential, including mental and physical abilities, and interests, abilities, aptitudes, personality traits and other pertinent characteristics.
(b) There shall be evidence that the client is expected to have approximately five (5) years of work expectancy.
(c) Clients shall demonstrate that they can work with minimal or no supervision.
(d) The agency may require clients to undergo prevocational training, as needed, to gain skills and knowledge and to complete small business training.
(e) Clients shall obtain the required licenses, permits, certificates, leases, and in all instances be in conformity with all federal and state laws, and local ordinances in order to commence an enterprise.
(f) The agency may review recordkeeping systems prior to the establishment of the business and periodically thereafter until the case is closed or until liens on any agency purchased equipment expire.
(2) The Director of Field Services or a designee may approve proposed self-employment enterprises requiring expenditures in excess of $5,000 through review of the following:
(a) Impact on total agency goals:
1. Fiscal considerations;
2. Applicability of statewideness; and
3. Numerical requirements necessary to demonstrate maintenance of effort and program integrity.
(b) Anticipated cost/benefit ratio and return on investment. Savings derived through increased taxes paid, cessation of benefits, etc., should equal agency expenditure within five (5) years.
(c) Potential for recovery of expenditures from other sources (e.g., Social Security Administration, Workers' Compensation).

Section 18. Sex Change. Agency funds shall not be used to pay for sex change surgery.

Section 19. Sheltered Employment. In addition to the federal requirements for a successful closure, a sheltered employee shall maintain suitable employment for the required sixty (60) days at a minimum of twenty-five (25) percent production of a nonhandicapped worker.

Section 20. Supported Employment. Supported employment services exceeding $3500 per client served in individual placements and $1750 per client served in group placements shall require approval of the Director of Support Services or a designee.

Section 21. Tools and Equipment. The agency may recover tools, equipment, and supplies if the client ceases to use the equipment for the pursuit and practice intended or upon the death of the client.

Section 22. Training. (1) Postsecondary training may be provided for clients pursuant to this section.
(a) Tuition and initial registration fees provided to the training institution of the client's choice shall not exceed those of the highest rate charged by a state-supported institution in Kentucky that offers similar vocational preparation. The Director of Field Services or a designee may make exceptions only when it is clearly demonstrated that such exceptions are financially advantageous to the agency, or are otherwise in the best interests of the agency's achievement of stated goals.
(b) The agency may provide tuition and initial registration fees for postsecondary programs for the deaf recognized by the U.S. Congress as national programs due to the provision of essential support services (e.g., interpreting services, note-taking services, tutoring services).
(c) Other agency approved postsecondary programs for the deaf offering interpreting services, note-taking services, and tutoring services may be utilized for clients who are deaf if the total cost of attendance does not exceed the total cost of provision of tuition, fees and interpreting services, note-taking services, and tutoring services at the highest rate charged by a state-supported institution in Kentucky that offers similar vocational preparation.
(d) Institutional training shall be purchased only from those schools that are accredited or licensed by appropriate accrediting or licensing bodies and which comply with all state and federal requirements applicable to their use by the agency.
(e) Training shall be provided only to the entrance level of the vocational objective.
(f) Clients planning to attend a postsecondary institution in Kentucky shall file the Kentucky Financial Aid Form and other need analysis forms as required by the school.
(g) Agency sponsored clients shall maintain full-time student status, as that status is described by the school attended. An exception may be made only in cases where such exception is essential to the achievement of an individual's vocational objective.
(h) Clients shall maintain a "C" average. The agency may continue funding a client for one (1)

additional term when this requirement is not met. The agency may require a higher grade point average if such is necessary for satisfactory achievement of the vocational objective.

(i) Termination of agency sponsorship for training shall result in cessation of all support services related to training, e.g., interpreter services, note-taking, attendant care, maintenance, and transportation.

(j) The client shall furnish the counselor with a grade transcript for each semester or quarter.

(k) Cost of attendant services for clients in training shall not exceed the cost of attendant services in the agency sponsored attendant care program at the University of Kentucky.

(2) On-the-job training may be provided pursuant to this subsection.

(a) On-the-job training for unskilled and semiskilled labor positions shall not exceed three (3) months in duration.

(b) On-the-job training for skilled occupations shall not exceed six (6) months in duration.

(c) The vendor or employer shall have made a written commitment to hire the client-trainee upon successful completion of the on-the-job training.

(d) The client in on-the-job training shall be paid the legal minimum wage for occupations covered by such statute or the prevailing rate for occupations not covered.

(e) The client in on-the-job training shall receive the compensation coverage, privileges, and other benefits that accrue to other employees.

(f) The agency shall not pay in excess of the legal minimum wage for occupations covered by statute or the prevailing rate for occupations not covered.

(3) Correspondence training may be provided to clients subject to the provision of this subsection.

(a) Correspondence training may be provided only if it is the best available method by which the client can receive the necessary training.

(b) The agency shall not sponsor correspondence courses in subjects such as heavy equipment operation, truck driving, depot agent, detective, or airline employee if practical experience is not provided.

(4) Training outside the contiguous United States may be provided to clients pursuant to this subsection.

(a) Training institutions located outside the contiguous United States shall be considered only if all of the following conditions are met:

1. The client is enrolled in a program in the contiguous United States that requires study abroad to satisfy degree requirements for graduation;

2. The study abroad does not lengthen the total program;

3. The client maintains full-time student status while studying abroad;

4. The client is in good academic standing; and

5. The client's successful achievement of the vocational goal is contingent on participation in the study abroad as a part of the approved curriculum.

(b) If the preceding conditions are met, the agency may provide financial assistance only up to the amount normally authorized for in-state training, excluding transportation costs.

Section 23. Transplants or Implants. Transplant or implant procedures which are experimental or which do not have a consistent record of significant improvement in vocational functioning in better than fifty (50) percent of the subjects shall not be provided by the agency.

Section 24. Vehicle Purchase. The agency shall not purchase vehicles except when the occupation of the client will require a vehicle as occupational equipment.

Section 25. Visual Impairments. (1) Pursuant to KRS Chapter 163, individuals with a reported or diagnosed primary disability of visual impairment shall not be served by the department.

(2) Clients with a secondary disability of visual impairment may be served only if another impairment, other than visual, poses the more substantial handicap to employment. The agency shall secure, in all cases of visual impairment, an evaluation of visual loss provided by a physician skilled in the diseases of the eye or by an optometrist.

(3) The agency shall secure, in all cases of blindness, a screening for hearing loss from a physician skilled in the diseases of the ear or from an audiologist licensed or certified in accordance with state laws or regulations.

(4) Individuals with deaf-blindness shall be served by the agency that can most appropriately meet the specific and individual needs of the applicant or client who is deaf-blind.

CARROLL BURCHETT, Acting Commissioner
APPROVED BY AGENCY: August 30, 1990
FILED WITH LRC: August 30, 1990 at 11 a.m.

CABINET FOR WORKFORCE DEVELOPMENT
Department of Vocational Rehabilitation
(Amended After Hearing)

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

RELATES TO: HB 814, §§35 to 41 (1990 RS)

STATUTORY AUTHORITY: HB 814, §§35 to 41 (1990 RS)

NECESSITY AND FUNCTION: HB 814, §38 [§35 to 41] (1990 RS) directs the Commissioner, Department of Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Department of Vocational Rehabilitation. This regulation sets forth when an order of selection and an economic need test will be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible clients.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Permanent functional limitation" means an

impairment in activity or function imposed by a disability that is not readily amenable to - or likely to be corrected through - surgical intervention and/or medical treatment. Use of the term permanent functional limitation in the agency's order of selection seeks to differentiate between those mental or physical conditions that are usually remedied through the provision of a physical or mental restoration service(s) and those other conditions or disabilities that impose or are likely to impose a permanent loss or substantial reduction in functioning regardless of surgical and/or medical intervention.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

(5) "Competitive employment" means that an individual performs significant physical or mental activities in work for remuneration or profit in the public, private, or self-employment sector. Such employment will be the primary means of enabling an individual to remain or become financially self-sufficient.

Section 2. Economic Need. Vocational rehabilitation services may be provided subject to economic need, as follows and with consideration of applicable comparable benefits as provided in 781 KAR 1:020, Section 2:

(1) An economic needs test shall be applied as a condition for furnishing the following vocational rehabilitation services:

(a) Physical and mental restoration services;

(b) Books, supplies, tools and equipment for vocational and other training;

(c) Maintenance other than diagnostic;

(d) Transportation other than diagnostic;

(e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual who is handicapped;

(f) Telecommunications, sensory, and other technological aids and devices;

(g) Occupational licenses, tools, equipment, and initial stock (including livestock) and supplies;

(h) Postemployment services;

(i) Tuition and initial registration fees for training beyond the baccalaureate level;

(j) Interpreter services for the deaf except as provided in subsection (2)(f) of this section;

(k) Reader services for the blind;

(l) Rehabilitation engineering except as provided in subsection (2)(e) and (f) of this section; and

(m) Other goods and services which can reasonably be expected to benefit an individual who is handicapped in terms of employability.

(2) The following services shall be excluded from an economic needs test:

(a) Diagnosis and evaluation of rehabilitation potential;

(b) Counseling and guidance;

(c) Services provided by staff at state-owned and operated rehabilitation facilities;

(d) Placement;

(e) Professional rehabilitation engineering services;

(f) Rehabilitation engineering devices necessary for evaluation of rehabilitation potential;

(g) Communication assistance in the individual's native language, including interpreters for individuals who are deaf for purposes of providing services set forth in paragraph (a), (b), (c), (d) or (e) of this subsection.

(h) Tuition and initial registration fees for vocational and college training up to and including the baccalaureate level;

(i) Adjustment training, driver training, on-the-job training; and

(j) Supported employment services.

(3) Except as provided in 781 KAR 1:060, those clients who do not meet total financial need criteria shall apply 100 percent of the monthly excess income to their rehabilitation program.

(4) Ninety (90) percent of the 1990 Kentucky median gross income as adjusted to family size shall be used as the criterion for the agency economic needs test.

Section 3. Order of Selection. When the commissioner determines that the agency shall be unable to provide services to all eligible applicants who are handicapped, the agency shall implement the order of selection.

(1) Any agency previously declared eligible for vocational rehabilitation services shall in no way be affected when the agency implements an order of selection.

(2) The order of selection shall not be applicable for clients whose needs are for nonpurchased services only (counseling, guidance, placement, referral services, coordination of comparable benefits, and/or third party payments).

(3) The order of selection shall not be applicable for clients whose needs are for services at agency owned and operated rehabilitation facilities or for services at CARS contracted private not-for-profit rehabilitation facilities.

(4) On implementation of the order of selection, the agency shall continue to accept referrals of and applications from persons with disabilities.

(5) The order of selection shall in no way regulate the provision or authorization of diagnostic and evaluation services.

(6) All applicants shall be declared eligible or ineligible as appropriate on a timely basis.

(7) Any client entering accepted status after implementation of the order of selection shall be assigned to a priority category. If the priority category is open, the individual may be served. If, however, the priority category is closed, the individual's case shall be held in accepted status until such time as the priority category assigned is opened or the order of selection is lifted.

(8) The order of selection policy shall permit immediate reclassification into a higher priority category whenever circumstances justify the reclassification.

(9) The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

(10) The order of selection system shall have six (6) priority categories as follows:

(a) Priority Category I - eligible clients with a severe handicapping condition.

(b) Priority Category II - eligible public safety officers with a nonsevere handicap whose handicapping condition arose from disability sustained in the line of duty.

(c) Priority Category III - eligible clients with a nonsevere handicap whose disability results in permanent functional limitations and

who will have a vocational objective of competitive employment.

(d) Priority Category IV - all other eligible clients with a nonsevere handicap whose disability results in permanent functional limitations. [limits or if not treated will limit one (1) or more major functional capacities, and who will have a vocational objective of competitive employment.]

(e) Priority Category V - eligible clients with a nonsevere handicap whose disability limits or if not treated will limit one (1) or more major functional capacities [results in permanent functional limitations].

(f) Priority Category VI - any other eligible clients whose handicap is nonsevere.

CARROLL BURCHETT, Acting Commissioner
APPROVED BY AGENCY: August 30, 1990
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CABINET FOR WORKFORCE DEVELOPMENT
Department of Vocational Rehabilitation
(Amended After Hearing)

781 KAR 2:010. Department of Vocational Rehabilitation, independent living rehabilitation services appeal procedures.

RELATES TO: 29 U.S.C. §722, HB 814, §§35 to 41 (1990 RS)

STATUTORY AUTHORITY: HB 814, §§35 to 41 (1990 RS)

NECESSITY AND FUNCTION: 29 USC §722(d) requires state procedures for the review of determinations made by independent living program/rehabilitation personnel for basic rehabilitation and independent living services; HB 814, §§35 to 41 (1990 RS) accepts and agrees to comply with federal vocational rehabilitation Acts; and HB 814, §38 [§35 to 41] (1990 RS) sets forth rulemaking authority with respect to the state vocational rehabilitation agency. This regulation establishes the necessary appeals procedures.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for independent living rehabilitation services as defined in 34 CFR Part 365, which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting independent living rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan for independent living and its supplement.

Section 2. Right of Appeal and Information. An applicant or client who is dissatisfied with any action concerning the furnishing or denial of independent living rehabilitation services shall have the right to appeal that action. All applicants or clients shall be informed of entitlements available under this regulation, including the names and addresses of such individuals with whom an appeal shall be filed.

Section 3. Client Assistance Program. The Department of Vocational Rehabilitation shall advise all applicants and clients of the existence of the Client Assistance Program, the services provided by the program, and how to contact the program representatives.

Section 4. Notification of Appeal Rights Regarding Eligibility. The Department of Vocational Rehabilitation shall provide each applicant or client with written notification of any agency decision concerning eligibility or ineligibility for services pursuant to federal guidelines.

Section 5. Notification of Appeal Rights Regarding an Individualized Written Independent Living Rehabilitation Program. Each client with an Individualized Written Independent Living Rehabilitation Program (IWILRP), shall receive notification of the means for appealing any IWILRP decisions through an administrative review or impartial hearing.

Section 6. Choice of Appeal Procedures. (1) Within sixty (60) days of becoming aware, through the exercise of due diligence of an agency action or inaction, an applicant or client may appeal [any action or inaction taken by the agency].

(2) The request for review or hearing shall be made in writing.

(3) Applicants or clients may initially request an administrative review, or a more formal hearing before an impartial hearing officer as a means to resolve issues of dissatisfaction.

(4) The administrative review or expedited administrative review shall not delay an impartial hearing and its time frames, unless both the agency and the applicant or client agree to the delay.

(5) When both parties have agreed to delay time frames established by federal regulation, the applicant or client, if still dissatisfied, may request an impartial hearing no later than forty-five (45) days after receiving written notice of the administrative review decision or the expedited administrative review decision.

(6) An applicant or client who is dissatisfied with any determination made by agency staff concerning the furnishing or denial of services may request a review of that determination before an impartial hearing officer by writing the Commissioner, Department of Vocational Rehabilitation.

Section 7. Procedures for an Administrative Review. The following procedures shall be followed in an administrative review:

(1) The Director of Support Services or designee [program administrator for the independent living rehabilitation services program] shall conduct the administrative review. The director of Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) or designee shall designate the review officer for reviews involving CDPCRC. Neither of the review officers shall have been involved in the action or inaction being appealed.

(2) The administrative review shall be held within fifteen (15) working days of receipt of

the request.

(3) When practicable, the review shall be at a time and place convenient to the applicant or client requesting the review, and the individual shall be notified in writing as to the time and place of the review and the right to be represented at the review by counsel or a designated advocate.

(4) A report of the findings of the review shall be sent to the involved individual within fifteen (15) working days from the completion date of the review.

Section 8. Expedited Administrative Review. When there is an agency initiated change resulting in a discontinuation of a service set forth in an IWILRP, the following procedures shall be observed:

(1) The client shall be notified in writing at least ten (10) working days before the effective date of the proposed change; and

(2) The client's request for a review shall be made before the effective date of the proposed change. Should the client request an expedited administrative review, services shall continue until the review determination is received in writing, but in any case, no longer than thirty (30) days from the effective date of the proposed change.

Section 9. Hearing. Should an applicant or client be dissatisfied with any determinations made by the agency staff concerning the furnishing or denial of services or the findings and decision of an administrative review, the affected applicant or client may request a hearing by writing the Commissioner, Department of Vocational Rehabilitation. The following procedures shall be followed:

(1) An impartial hearing officer who has a background and experience in, and knowledge of, the delivery of independent living rehabilitation services; who has not taken part in the action under consideration; who is not an employee of the Department of Vocational Rehabilitation; and who has no personal or financial investment in the outcome of the hearing shall conduct a formal hearing.

(2) The hearing shall be held within forty-five (45) days after receipt of the initial request. Reasonable time extensions may be made for good cause shown by a party or at the request of both parties.

(3) When practicable, the hearing shall be held at a time and place convenient to the applicant or client requesting the hearing; and the applicant or client shall be notified by the hearing officer in writing as to the time and place of the hearing and the right to be represented at the hearing by counsel or by a designated advocate.

(4) Agency staff involved in the action in dispute shall be present at the hearing. The applicant or client or a designated representative and the agency representative shall have the opportunity for cross-examination; to present evidence, information and witnesses; to examine all documents submitted by the Department of Vocational Rehabilitation and to examine all documents submitted by the applicant or client or a representative.

(5) The decision of the impartial hearing officer shall set forth the issues, relevant facts brought forth at the hearing, the pertinent provisions in the state plan and the Rehabilitation Act on which the decision is based and the reasoning that led to the decision.

(6) The verbatim transcript of the testimony presented during the hearing, together with all exhibits filed in the proceedings, shall constitute the exclusive record for the decision.

(7) The individual or designated representative and the Commissioner, Department of Vocational Rehabilitation shall be sent the decision within thirty (30) days from the completion of the hearing, unless both parties agree to a reasonable time extension to allow the hearing officer to review the transcript before finalizing the decision.

(8) If the commissioner elects not to review the impartial hearing officer's decision, that decision becomes the final state agency action.

(9) If the commissioner elects to review the impartial hearing officer's decision, within twenty (20) days of the mailing of the decision to the individual, the client or applicant shall be informed in writing of the intent to review the decision in whole or in part.

(10) The decision of the commissioner to review any impartial hearing officer's decision shall be based on the following standards:

(a) Whether the hearing officer's decision was arbitrary, capricious, an abuse of discretion, or otherwise unreasonable.

(b) Whether the hearing officer's decision was supported by substantial evidence, i.e., consistent with facts and applicable federal and state laws and regulations.

(c) Whether, in reaching the decision, the impartial hearing officer gave appropriate and adequate interpretation to such factors as:

1. The federal regulations and policies as they apply to the specific issue(s) in question;
2. State laws and regulations as they relate to the issue(s) in question;
3. The independent living rehabilitation services state plan as it applies to the specific issue(s) in question;
4. The state independent living rehabilitation services procedures manual as it may apply to the specific issue(s) in question;
5. Key portions of conflicting testimony;
6. State agency options in the delivery of independent living services where such options are permissible by the federal regulations; and
7. Restrictions in federal regulations with regard to such supportive services as maintenance and transportation.

(11) If the commissioner elects to review the decision of the impartial hearing officer, the applicant or client shall be provided an opportunity for the timely submission of additional evidence and information relevant to a final decision.

(12) The commissioner's review shall be limited to the findings with which the commissioner took issue and shall be a paper review of the transcript of testimony and exhibits presented at the hearing, the hearing officer's written decision, and any additional relevant written documentation submitted by the applicant or client or a representative.

(13) A final decision stating the findings and grounds for the decision shall be made in writing by the commissioner within thirty (30) days of the commissioner's decision to review the decision of the impartial hearing officer. The applicant or client may request a delay in order to submit additional evidence bearing on

the final decision if the commissioner agrees to a reasonable time extension.

(14) When a final decision is made, a copy of that decision shall be provided to the applicant or client or a representative.

(15) The commissioner shall not delegate responsibility to make any such final decision to any other officer or employee of the Department of Vocational Rehabilitation.

(16) The decision of the commissioner shall be the final state agency action.

[Section 10. Legal Counsel. The Department of Vocational Rehabilitation shall not provide legal counsel or reimburse the costs of legal counsel for an applicant or client who appeals an action concerning the furnishing or denial of services.]

CARROLL BURCHETT, Acting Commissioner
APPROVED BY AGENCY: August 30, 1990
FILED WITH LRC: August 30, 1990 at 11 a.m.

CABINET FOR WORKFORCE DEVELOPMENT
Department of Vocational Rehabilitation
(Amended After Hearing)

781 KAR 2:020. General provision for operation of the Department of Vocational Rehabilitation independent living program.

RELATES TO: HB 814, §§35 to 41 (1990 RS)

STATUTORY AUTHORITY: HB 814, §§35 to 41 (1990 RS)

NECESSITY AND FUNCTION: HB 814, §§35 to 41 (1990 RS) agrees to comply with federal vocational rehabilitation acts for basic rehabilitation and independent living services and Section 38 directs the Commissioner, Department of Vocational Rehabilitation to promulgate regulations governing services, personnel and administration of the independent living rehabilitation services program. This regulation prescribes general criteria for the provision of independent living rehabilitation services and is necessary to distribute limited funds available for that purpose. The general criteria set forth herein cover the regulatory policies currently in the three (3) year plan for independent living rehabilitation services.

Section 1. Definitions. (1) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the independent living rehabilitation services state plan and its supplement.

(2) "Applicant" means an individual who has [completed and] signed a letter or document requesting [an application for] independent living rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

(4) "Eligibility" means the basic conditions for program eligibility as defined in 34 CFR Part 365.

(5) "Homebound individual" means an individual who because of the severity of a disability, is unable to participate in the [normalized] activities of the community outside of the household, excluding professional appointments.

(6) "Institution" means a residential facility or home which provides care and/or protection to individuals who are unable, due to the severity of their disabilities, to secure these services in their homes. (Acute care facilities and facilities which are primarily educational in nature are excluded.)

(7) "Institutionalized" means an individual residing in a residential facility for one (1) of the following reasons:

(a) The individual is unable to receive needed care in the home.

(b) The situation in the individual's home constitutes a threat to the safety or well-being of the individual or of others in the individual's family or community.

(c) The home environment (architectural barriers, stairs, available space, etc.) is such that it prohibits the individual from residing in the home.

(d) The severity of the disability prevents the individual from living in the family or community.

(8) "At risk for institutionalization" means that the individual's condition and/or living arrangements are such that there is danger that the individual will be institutionalized in the near future.

(9) "Order of selection" means an organized, equitable method to be followed in selecting groups of individuals with severe handicaps to be provided independent living rehabilitation services when services cannot be provided to all eligible persons who apply.

(10) "Priority category" means the classification of eligible clients listed according to priority for receipt of independent living rehabilitation services under an order of selection.

(11) "Relative" means an individual related to another individual by blood, marriage, or adoption, including spouses, parents, grandparents, brothers, sisters, sons, daughters, grandchildren, aunts, uncles, nieces, nephews and first cousins.

(12) "Individual with severe handicaps" means an individual whose ability to function independently in family or community, or whose ability to engage or continue in employment is so limited by the severity of his or her physical or mental disability that it has been determined that independent living rehabilitation services are required in order to enable achieving a greater level of independence in functioning in family or community or engaging or continuing in employment.

(13) "Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

(14) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with handicaps in areas that include education, rehabilitation, employment, transportation, independent living, and recreation.

Section 2. Administrative Review, Fair Hearing. Applicants or eligible individuals who are dissatisfied with any action or inaction of [or] the independent living program may

request a review or hearing pursuant to 781 KAR 2:010.

Section 3. Authorizations for Services. (1) Authorizations shall comply with the agency's approved schedules of fees or rates of payment.

(2) The agency shall [not] approve payment for services provided to an individual only when the agency has made [no] prior authorization.

(3) The agency shall ensure that services rendered are validated before payment is made.

(4) The agency shall ensure that physicians or other vendors of services agree not to charge or accept from the applicant/client or a family member any payment for services unless the amount is previously known, and where applicable, approved by the agency.

(5) The independent living program administrator shall review all authorizations when the expenditure amount is $10,000 or more.

Section 4. Case Closure. (1) An individual's case shall be closed when no further agency services are justified, required or anticipated in the immediate future for the independent living rehabilitation of the individual.

(2) When an individual found eligible becomes ineligible due to changing conditions, the case shall be closed.

Section 5. Comparable Benefits. (1) Except as provided in this section, the independent living program shall fully consider any comparable benefits available to the individual to meet, in whole or in part, the cost of independent living services provided to the individual.

(2) Services for which consideration of comparable benefits shall not be required include:

(a) Evaluation of independent living rehabilitation potential;

(b) Counseling, guidance, and referral;

(c) Vocational and other training services including personal and vocational adjustment training, books, tools, and other training materials which are not provided in institutions of higher education;

(d) Placement;

(e) Rehabilitation engineering services [evaluation]; and

(f) Services listed in paragraphs (a) through (e) of this subsection when provided as postclosure services.

(3) Consideration of comparable benefits shall not be required [provisional] when[:

(a)] the determination of the availability of comparable services and benefits under any other program would delay the provision of independent living rehabilitation services to any individual with handicaps who is at extreme medical risk. A determination of extreme medical risk shall be based upon medical evidence provided by an appropriate licensed medical professional. [;]

[(b) The use of comparable benefits would be inadequate and/or would interfere with the achievement of the independent living goals of the individual.]

Section 6. Cooperative Agreements. The agency may enter into cooperative agreements with other agencies to provide independent living rehabilitation services.

Section 7. Disabling Condition, Basis for Determination. (1) The physical or mental condition, impairment or disease most responsible for the individual's limited ability to engage or continue in employment or to function independently in his/her family or community can be determined by the staff's perception of the client's impairment or from what the client tells staff about the cause of his/her functional limitations.

(2) Medical records or documents prepared by physicians may be used but are not required in the determination of a disabling condition.

Section 8. Economic Need. (1) The provision of independent living rehabilitation services other than diagnostic, counseling, guidance, referral services, and placement, shall be contingent on economic need.

(2) Ninety (90) percent of the 1990 Kentucky Median Gross Income as adjusted to family size shall be used as the criterion for the economic needs test.

Section 9. Evaluation. Applicants for independent living services shall be evaluated to determine eligibility or ineligibility.

Section 10. Facilities. (1) Any facility entering into an agreement to provide services for the agency shall maintain an accounting system with the capacity to identify cost by program and shall make all fiscal and client documents available for audit and/or examination by the agency.

(2) The agency may negotiate fees for occasional purchase of services from facilities not covered by a client services agreement.

Section 11. Family Members. (1) The independent living program staff members shall not take an application or provide independent living services to a relative.

(2) The relative shall be referred to the independent living program administrator.

(3) To avoid conflict of interest or the appearance of impropriety, the program administrator shall assign a staff member who is not a relative to take an application and provide services as deemed appropriate.

Section 12. Legal Counsel Fees. The agency shall not be responsible for any fees incurred by an applicant or client for legal services [provide legal counsel or reimburse the costs of legal counsel for an individual who appeals an action concerning the furnishing or denial of independent living rehabilitation services].

Section 13. Order of Selection. (1) The order of selection for independent living rehabilitation services shall be imposed when the commissioner determines that services cannot be provided to all persons who apply and who are determined to be eligible.

(2) When imposed, the order of selection shall not preclude the delivery of nonpurchased services to any eligible individual.

(3) Services being authorized or provided to any eligible individual under the terms and conditions of an individualized written independent living plan shall not be disrupted as a result of the closing of a priority category.

(4) When eligibility has been determined, the

eligible individual shall be assigned to the highest possible category.

(5) Eligible individuals may be immediately reclassified into either a higher or lower priority category under justifiable circumstances.

(6) The order of selection system shall have two (2) categories:

(a) Priority Category I - individuals with severe disabilities, including homebound individuals, who are not presently receiving vocational rehabilitation services under the state vocational rehabilitation service program under Part 361 because of the severity of their physical or mental disability, and those individuals with severe disabilities who are institutionalized, who have been institutionalized in the past, or who are at risk of becoming institutionalized.

(b) Priority Category II - all other eligible individuals.

Section 14. Personal and Confidential Information. Personal and confidential information shall be released pursuant to 781 KAR 1:020.

Section 15. Prepaid Services. (1) Except as provided in this section, no service shall be paid by authorization to any vendor if [a comparable prepaid] service is availble prepaid.

(2) The agency may authorize for services without regard to prepaid services upon any of the following conditions:

(a) The provision of prepaid services would result in undue hardship.

(b) A substantial delay necessary to access prepaid services would be detrimental to the planned independent living rehabilitation process.

(c) The exception would be advantageous economically or otherwise to the efficient administration of the independent living rehabilitation program.

Section 16. Recovery and Transfer of Tools, Equipment and Supplies. (1) Tools, equipment and supplies may be recovered by the agency if, prior to expiration of the lien, the individual ceases to use the equipment for the pursuit and practice intended or upon the death of the individual.

(2) The agency may transfer equipment based on individual need.

Section 17. Technical Assistance. The agency may provide technical assistance to individuals, public and nonprofit agencies, private businesses, and organizations located in urban or rural poverty areas to develop the capability of providing independent living services.

CARROLL BURCHETT, Acting Commissioner
APPROVED BY AGENCY: August 30, 1990
FILED WITH LRC: August 30, 1990 at 11 p.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance
(Amended After Hearing)

806 KAR 12:092. Unfair life and health insurance claims settlement practices.

RELATES TO: KRS 304.2-165, 304.3-200, 304.3-210, 304.12-010, 304.12-220, 304.12-230, 304.12-235, 304.29-341, 304.32-270, 304.38-200, 304.43-130, 342.325

STATUTORY AUTHORITY: KRS 304.2-110, 304.32-250, 304.38-150

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky insurance code. KRS 304.32-250 provides that the commissioner may promulgate reasonable regulations which he deems necessary for the proper administration of KRS Chapter 304.32. KRS 304.38-150 provides that the Commissioner of Insurance may promulgate reasonable regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This regulation defines unfair life and health insurance claims settlement practices.

Section 1. Definitions. As used in this regulation:

(1) "Agent" means any person authorized to represent an insurer with respect to a claim;

(2) "Beneficiary" means, for the purpose of life and health insurance, the party entitled to receive the proceeds or benefits occurring under the policy in lieu of the insured;

(3) "Claimant" means an insured,the beneficiary, or legal representative (e.g., administrator, executor, guardian, or similar person) of the insured, including a member of the insured's immediate family designated by the insured (the insurer may require written proof of the designation), making the claim under a policy;

(4) "Claim file" shall mean any retrievable electronic file, paper file, or combination of both;

(5) "Commissioner" means the Commissioner of the Kentucky Department of Insurance;

(6) "Documentation" includes, but is not limited to, all pertinent communications, transactions, notes, work papers, claim forms, bills and, explanation of benefits forms relative to the claim;

(7) "Good faith" means an honest intention to abstain from taking any unconscientious advantage of another, [even through technicalities of law,] together with absence of all information, notice, or benefit or belief of facts which render a transaction unconscientious;

(8) "Insured" means, for the purpose of life or health insurance, the party named on a policy, certificate, or contract as the individual with legal rights to the benefits provided by the policy, certificate, or contract;

(9) "Insurer" means any insurer, fraternal benefit society, nonprofit hospital, medical, surgical, dental, and health service corporations and prepaid dental plan organization, including agents and third party administrators;

(10) "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages

afforded by a policy, certificate or contract;

(11) "Notification of claim" means a notice to the insurer that a loss has occurred or is about to be incurred;

(12) "Policy", "certificate" or "contract" include any contract of an insurer providing indemnity or other coverage for medical, health or hospital goods and services, but do not include contracts of workers' compensation;

(13) "Proof of loss" means written proofs, such as claim forms, medical bills, medical authorizations, or other reasonable evidence of the claim that is ordinarily required of all insureds or beneficiaries submitting the claims;

(14) "Reasonable explanation" means that sufficient information shall be included in the explanation of benefits as to enable the insured or beneficiary to compare the allowable benefits with policy provisions and determine whether proper payment has been made;

(15) Delay or denial of a claim is "without reasonable foundation" when there is no rational relationship between the reasons for the delay or denial of a claim and the policy, certificate, or contract, applicable law, or applicable facts;

(16) "Written communications" include all correspondence, regardless of source or type, that is materially related to the handling of the claim.

Section 2. Scope and Purpose of This Regulation. (1) This regulation sets forth minimum standards for the investigation and disposition of life and health insurance claims arising under policies, certificates, and contracts. It is not intended to cover claims involving workers' compensation insurance since all questions arising under KRS Chapter 342 shall be resolved by workers' compensation administrative law judges. This regulation is intended to define procedures and practices which constitute unfair claims settlement practices.

(2) The National Association of Insurance Commissioners, which created the model regulation on which this regulation is based, has stated that its model regulation is not appropriate for a state which allows a private cause of action. Accordingly, the sole purpose of this regulation is to provide guidance to the commissioner and his designees in their investigations, examinations, and administrative adjudication and appeals therefrom.

Section 3. Claim Practices. (1) Every insurer, upon receiving due notification of a claim shall, within fifteen (15) calendar days of the notification, provide necessary claim forms, instructions,and reasonable assistance so the insured can properly comply with insurer requirements for the filing of a claim.

(2) Upon receipt of proof of loss from a claimant, the insurer shall begin any necessary investigation of the claim within fifteen (15) calendar days.

(3) The insurer's standards for claims processing shall require that notice of claim or proofs of loss submitted against one (1) policy issued by that insurer shall fulfill the insured's obligation under any and all similar policies issued by that insurer and specifically identified by the insured to the insurer to the same degree that the same form would be required under any similar policy. If additional information is required to fulfill the insured's obligation under similar policies, the insurer may request the additional information. When it is apparent to the insurer that additional benefits would be payable under an insured's policy upon additional proofs of loss, the insurer shall communicate to and cooperate with the insured in determining the extent of the insurer's additional liability.

(4) The insurer shall affirm or deny any liability on claims within a reasonable time and shall offer payment within thirty (30) calendar days of receipt of due proof of loss. If the insurer fails to pay the claim within thirty (30) days of receipt of due proof of loss, and the delay or denial is due to lack of a good faith attempt to settle the claim, the claim bears interest at the rate of twelve (12) percent per annum from the expiration of thirty (30) days from the receipt of due proof of loss. If the delay or denial is without reasonable foundation, the insured shall be reimbursed for reasonable attorney's fees incurred in collecting the claim. If a portion or portions of the claim are in dispute, the insurer shall tender payment for any portion or portions of the claim which are not in dispute within thirty (30) days of receipt of due proof of loss.

(5) With each claim payment, the insurer shall provide to the insured an explanation of benefits which shall include the name of the provider of health care services covered, dates of service, and a reasonable explanation of the computation of benefits.

(6) An insurer shall not impose a penalty on any insured for noncompliance with insurer requirements for precertification unless the penalties are specifically and clearly set forth in writing in the policy.

(7) If a claim remains unresolved for thirty (30) days from the receipt of due proof of loss, the insurer shall provide the insured or, when applicable, the insured's beneficiary, with a reasonable written explanation of the delay. In credit, mortgage, and assigned health insurance claims, the notice shall also be provided to the debtor who is the insured or health care provider in addition to the insured. If the investigation remains incomplete, the insurer shall, forty-five (45) days from the date of initial notification and every forty-five (45) days thereafter, send to the claimant a letter setting forth the reasons additional time is needed for the investigation. The notice shall also describe to the insured the availability of interest and attorney's fees specified in subsection (4) of this section.

(8) The insurer shall acknowledge and respond within fifteen (15) calendar days to any written communications relating to a chain.

(9) When a claim is denied, written notice of denial shall be sent to the claimant within fifteen (15) calendar days of the determination. The notice shall refer to the policy provision, condition, or exclusion upon which the denial is based.

(10) Insurers shall not deny a claim based on information obtained in a telephone conversation or personal interview with any source unless the telephone conversation or personal interview is documented in the claim file.

(11) Insurers shall not refuse to settle claims on the basis that responsibility for payment should be assumed by others except as provided by policy, certificate, or contract

provisions.

(12) All insurers offering cash settlements of first party long term disability income claims (except in cases where there is a bona fide dispute as to the coverage for, or amount of, the disability) shall develop a present value calculation of future benefits (with probability corrections for mortality and morbidity) utilizing contingencies such as mortality, morbidity, and interest rate assumptions, and other facts appropriate to the risk. A copy of the amount so calculated shall be given to the insured and signed by the insured at the time a settlement is entered into.

(13) No insurer shall indicate to a first party claimant on a payment draft, check, or in any accompanying letter that the payment is "final" or "a release" of any claim unless the policy limit has been paid or there has been a compromise settlement agreed to by the first party claimant and the insurer as to coverage and amount payable under the contract.

(14) Insurers shall not withhold any portion of any benefit payable as a result of a claim on the basis that the settlement held is an adjustment or correction for an overpayment made on a prior claim arising under the same policy unless:

(a) The insurer has within its files clear, documented evidence of an overpayment and written authorization from the insured permitting the withholding procedure; or

(b) The insurer has within its files clear, documented evidence of the following:

1. The overpayment was clearly erroneous under the provisions of the policy. If the overpayment is the subject of a reasonable dispute as to facts, the procedure specified in this paragraph shall not be used;

2. The error which resulted in the payment is not a mistake of the law;

3. The insurer notifies the insured within six (6) months of the date of the error, except that in instances of error prompted by representations or nondisclosures of claimants or third parties, the insurer notifies the insured within fifteen (15) calendar days after the date that clear, documented evidence of discovery of such error is included in its file. For the purpose of this subparagraph, the date of the error shall be the day on which the draft, check, or other claim payment is issued; and

4. The notice states clearly the nature of the error and states the amount of the overpayment.

(15) Insurers shall not continue negotiations with a claimant who has no legal representation until the claimant's rights may be affected by a statute of limitations or a time limitation in a policy, certificate, or contract without giving the claimant written notice that the time limitation may be expiring. The notice shall be mailed or delivered to the claimant at least thirty (30) days prior to the date on which the time limit may expire.

[(16) If, after a rejection of a claim by the insurer, the claimant objects to the rejection, the insurer shall notify the claimant in writing that the claimant may have the matter reviewed by the Department of Insurance by submitting a written complaint to the Department of Insurance and giving the mailing address of the Department of Insurance.]

Section 4. File and Record Documentation. Each insurer's claim files are subject to examination by the Commissioner or the commissioner's designees. To aid in an examination:

(1) The insurer shall maintain claim data that are accessible and retrievable for examination. An insurer shall be able to provide the claim number, line of coverage, date of loss and date of payment of the claim, and date of denial or date closed without payment. This data shall be available for all open and closed files for the current year and the five (5) preceding years.

(2) Documentation shall be contained in each claim file to permit reconstruction of the insurer's activities relative to each claim.

(3) Each document within the claim file shall be noted as to date received, date processed, or date mailed.

(4) For those insurers which do not maintain hard copy files, claim files shall be accessible from a computer terminal available to examiners or micrographics and be capable of duplication to hard copy.

Section 5. Severability. If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected thereby.

Section 6. Effective Date. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: August 23, 1990
FILED WITH LRC: August 28, 1990 at 1 p.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance
(Amended After Hearing)

806 KAR 12:094. Unfair property and casualty insurance claims settlement practices.

RELATES TO: KRS 304.3-200, 304.2-210, 304.12-010, 304.12-220, 304.12-230, 304.12-235, 304.14-400, 304.20-070, 304.20-150 to 304.20-180, 342.325

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation defines unfair property and casualty insurance claims settlement practices.

Section 1. Definitions. As used in this regulation:

(1) "Agent" means any person authorized to represent an insurer with respect to a claim;

(2) "Claimant" means either a first party claimant, a third party claimant, or both and includes the claimant's designated legal representative <u>(e.g., administrator, executor, guardian, or similar person)</u> and includes a member of the insured's immediate family designated by the claimant <u>(the insurer may require written proof of designation)</u>;

(3) "Claim file" shall mean any retrievable

electronic file, paper file, or combination of both;

(4) "Commissioner" means the Commissioner of the Kentucky Department of Insurance;

(5) "First party claimant" means a person asserting a right to payment under an insurance policy, certificate, or contract arising out of the occurrence of the contingency or loss covered by the policy, certificate, or contract;

(6) "Good faith" means an honest intention to abstain from taking any unconscientious advantage of another, [even through technicalities of law,] together with absence of all information, notice, or benefit or belief of facts which render a transaction unconscientious;

(7) "Insurer" means any person transacting property or casualty insurance, including, but not limited to, reciprocal insurers and Lloyd's plan insurers. "Insurer" also means agents and third party administrators;

(8) "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by a policy, certificate or contract;

(9) "Notification of claim" means any notification, whether in writing or other means acceptable under the terms of the policy, certificate, or contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;

(10) "Policy", "certificate", or "contract", mean any contract of insurance or indemnity, but do not include contracts of workers' compensation insurance (except to the extent provided in Section 2 of this regulation), fidelity, suretyship, or boiler and machinery insurance;

(11) ""Replacement cash part" means sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels;

(12) "Third party claimant" means any person asserting a claim against any person under a policy, contract, or certificate of an insurer; and

(13) Delay or denial of a claim is "without reasonable foundation" when there is no rational relationship between the reasons for the delay or denial of a claim and the insurance policy, contract, or certificate, applicable law, or applicable facts.

Section 2. Scope and Purpose of this Regulation. (1) This regulation is to set forth minimum standards for the investigation and disposition of property and casualty insurance claims arising under policies, certificates, and contracts. This regulation is not intended to cover claims involving fidelity, suretyship, or boiler and machinery insurance. This regulation is not intended to cover claims involving workers' compensation to the extent those questions arise under KRS Chapter 342 since those questions shall be resolved by workers' compensation administrative law judges. However, this regulation does apply to claims for unearned premium refunds under workers' compensation policies since workers' compensation administrative law judges do not have jurisdiction over a claim of this type. This regulation is intended to define procedures and practices which constitute unfair claims settlement practices.

(2) The National Association of Insurance Commissioners, which created the model regulation on which this regulation is based, has stated that its model regulation is not appropriate for a state which allows a private cause of action. Accordingly, the sole purpose of this regulation is to provide guidance to the commissioner and his designees in their investigations, examinations, and administrative adjudication and appeals therefrom.

Section 3. File and Record Documentation. Each insurer's claim files for policies, certificates, or contracts are subject to examination by the Commissioner or the commissioner's designees. To aid in an examination:

(1) The insurer shall maintain claim data that are accessible and retrievable for examination. An insurer shall be able to provide the claim number, line of coverage, date of loss and date of payment of the claim, and date of denial or date closed without payment. This data shall be available for all open and closed files for the current year and the five (5) preceding years.

(2) Documentation shall be contained in each claim file to permit reconstruction of the insurer's activities relative to each claim.

(3) Each relevant document within the claim file shall be noted as to date received, date processed, or date mailed.

(4) For those insurers which do not maintain hard copy files, claim files shall be accessible from a computer terminal available to examiners or micrographics and be capable of duplication to hard copy.

Section 4. Misrepresentation of Policy Provisions. (1) Insurers shall not fail to disclose fully to first party claimants all pertinent benefits, coverages, or other provisions of a policy, certificate, or contract under which a claim is presented.

(2) Agents shall not conceal from first party claimants benefits, coverages, or other provisions of any policy, certificate, or contract when the benefits, coverages, or other provisions are pertinent to a claim.

(3) A claim shall not be denied on the basis of failure to exhibit property unless there is documentation in the claim file of breach of the policy provisions.

(4) Insurers shall not deny a claim based upon the failure of a first party claimant to give written notice of loss within a specified time limit unless written notice of loss is a written condition in the policy, certificate, or contract or the claimant's failure to give written notice after being requested to do so is unreasonable as to constitute a breach of claimant's duty to cooperate with the insurer.

(5) Insurers shall not indicate to a first party claimant on a payment draft, check, or in an accompanying letter that payment is "final" or "a release" of any claim unless the policy limit has been paid or there has been a compromise settlement agreed to by the first party claimant and the insurer as to coverage and amount payable under the policy, certificate, or contract.

(6) Insurers shall not issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which release the insurer or its insured from its total liability.

Section 5. Failure to Acknowledge Pertinent Communications. (1) Every insurer, upon receiving notification of a claim shall, within fifteen (15) calendar days, acknowledge the receipt of the notice unless payment is made within that period of time. If an acknowledgment is made by means other than writing, an appropriate notation of the acknowledgment shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.

(2) Every insurer, upon receipt of any inquiry from the Department of Insurance respecting a claim shall, within twenty-one (21) calendar days of receipt of the inquiry, furnish the Department of Insurance with an adequate response to the inquiry in duplicate.

(3) An appropriate reply shall be made within fifteen (15) calendar days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

(4) Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance to first party claimants so that they can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this subsection within fifteen (15) calendar days of notification of a claim shall constitute compliance with subsection (1) of this section.

Section 6. Standards for Prompt, Fair, and Equitable Settlements Applicable to All Insurers. (1)(a) The insurer shall affirm or deny any liability on claims within a reasonable time and shall offer any payment due within thirty (30) calendar days of receipt of due proof of loss. If the insurer fails to pay the claim within thirty (30) days of receipt of due proof of loss, and the delay or denial is due to lack of a good faith attempt to settle the claim, the claim bears interest at the rate of twelve (12) percent per annum from the expiration of thirty (30) days from the receipt of due proof of loss. If the delay or denial is without reasonable foundation, the insured shall be reimbursed for reasonable attorney's fees incurred in collecting the claim. In claims where multiple coverages are involved, payments which are not in dispute shall be tendered [If a portion or portions of the claim are in dispute, the insurer shall tender payment for any portion or portions of the claim which are not in dispute] within thirty (30) days of receipt of due proof of loss.

(b) Where there is a reasonable basis supported by specific information available for review by the commissioner that the first party claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subsection, but the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(2)(a) If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within thirty (30) calendar days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, forty-five (45) calendar days from the date of the initial notification and every forty-five (45) calendar days thereafter, send to the first party claimant a letter setting forth the reasons additional time is needed for investigation. The letter shall also describe to the insured the availability of interest and attorney's fees specified in subsection (1)(a) of this section.

(b) Where there is a reasonable basis supported by specific information available for review by the commissioner for suspecting that the first party claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subsection, but the first party claimant shall be advised of the acceptance or denial of the claim by the insurer with a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(3) Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

(4) Insurers shall not continue negotiations for settlement of a claim directly with a claimant who is not legally represented if the claimant's rights may be affected by a statute of limitations or a time limit in a policy, certificate, or contract, unless the insurer has given the claimant written notice of the limitation. The notice shall be given to first party claimants at least thirty (30) calendar days and to third party claimants at least sixty (60) calendar days before the date on which the time limit may expire.

(5) Insurers shall not make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

(6) Subject to subsection (1)(a) of this section relating to first party claims, insurers shall affirm or deny liability on claims within a reasonable time and shall tender payment within thirty (30) days of affirmation of liability, if the amount of the claim is determined and not in dispute. In claims where multiple coverages are involved, payments which are not in dispute and where the payee is known shall be tendered within thirty (30) calendar days of the payment would terminate the insurer's known liability under that individual coverage.

(7) Insurers shall not request or require any insured to submit to a polygraph examination unelss authorized under the applicable policy, certificate, or contract and applicable law.

[(8) If, after rejection of a claim by the insurer, the claimant objects to the rejection, the insurer shall notify the claimant in writing that the claimant may have the matter reviewed by the Department of Insurance by submitting a written complaint to the Department of Insurance and giving the mailing address of the Department of Insurance.]

Section 7. Standards for Prompt, Fair, and Equitable Settlements Applicable to Motor Vehicle Insurance. (1) When the policy, certificate, or contract provides for the adjustment and settlement of first party motor vehicle total losses on the basis of actual cash value or replacement with another of like kind and quality, one (1) of the following methods

shall apply:

(a) The insurer may elect to offer a replacement motor vehicle which is a specific comparable motor vehicle available to the insured, with all applicable taxes, license fees (if such fees cannot be refunded by the Transportation Cabinet) and other fees incident to transfer of evidence of ownership of the motor vehicle paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof shall be documented in the claim file.

(b) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable motor vehicle including all applicable taxes, license fees (if such fees cannot be refunded by the Transportation Cabinet), and other fees incident to transfer of evidence of ownership of a comparable motor vehicle. The cost may be determined by:

1. The cost of a comparable motor vehicle in the local market area when a comparable motor vehicle is available in the local market area; or

2. If a comparable motor vehicle is not available in the local market area, one (1) of two (2) or more quotations obtained by the insurer from two (2) or more qualified and licensed dealers (i.e., dealers which engage in the buying and selling of comparable motor vehicles in the ordinary course of their business) located within the local market area.

(c) When a first party motor vehicle's total loss is settled on a basis which deviates from the methods described in subsection (1)(a) and (b) of this section, the deviation shall be supported by documentation giving particulars of the motor vehicle's condition. Any deductions from the cost, including deduction for salvage, shall be measurable, discernible, itemized, and specified as to dollar amount and shall be appropriate in amount. The basis for the alternative method of settlement shall be explained fully to the first party claimant.

(2) The measure of damages in a third party motor vehicle loss is the difference between the fair market value of the motor vehicle immediately before and after the loss, proportioned by the third party's contributory negligence, if any. Repair estimates or appraisers' reports may be used to indicate the difference in fair market value.

(3) Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claims under their own policies, certificates, or contracts solely to avoid paying claims under such insurers' policies, contracts, or certificates.

(4) Insurers shall not require a claimant to travel an unreasonable distance to inspect a replacement motor vehicle, to obtain a repair estimate, or to have the motor vehicle repaired at a specific repair shop.

(5) Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction shall then be for only a pro rata share of the allocated loss adjustment expense.

(6) If losses involving motor vehicle parts are settled on the basis of a written estimate prepared by or for the insurer, the insurer shall supply the insured a copy of the estimate upon which the settlement is based. The estimate prepared by or for the insurer shall be reasonable, in accordance with applicable policy provisions, and of an amount which will allow for repairs to be made in a workerlike manner. If the insured subsequently claims, based upon a written estimate which the insured obtains, that necessary repairs will exceed the written estimate prepared by or for the insurer, the insurer shall pay the difference between the written estimate and a higher estimate obtained by the insured, or promptly provide the insured with the name of at least one (1) repair shop that will make the repairs for the amount of the written estimate. If the insurer designates only one (1) or two (2) repair shops, the insurer shall assure that the repairs are performed in a workerlike manner. The insurer shall maintain documentation of all of these communications.

(7) When the amount claimed is reduced because of betterment or depreciation, all information for the reduction shall be contained in the claim file. These deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

(8)(a) Betterment deductions are allowable only if the deductions **reflect a measurable decrease in the market value and general overall condition of the motor vehicle.** [:]

[(a) 1. Reflect a measurable decrease in market value attributable to the poor condition of, or prior damage to, the motor vehicle; and]

[2. Reflect the general overall condition of the motor vehicle, considering its age, for:]

[a. Wear and tear or rust, limited to no more than a deduction of $1,000; or]

[b. Missing parts, limited to no more of a deduction than the replacement cost of the missing part or parts.]

(b) The deductions set forth in paragraph (a) of this subsection shall be measurable, itemized, specified as to dollar amount, and documented in the claim file.

(c) No insurer shall require the insured or claimant to supply parts for replacement.

(9) No insurer shall require the use of replacement crash parts in the repair of a motor vehicle unless the replacement crash part is at least equal in kind and quality to the original part in terms of fit, quality, and performance. Insurers specifying the use of replacement crash parts shall consider the cost of any modifications which may be necessary when making the repair.

Section 8. Standards for prompt, fair, and equitable settlements applicable to fire and extended coverage type policies with replacement cost coverage.

(1) When the policy, contract, or certificate provides for the adjustment and settlement of first party losses based on replacement cost, the following shall apply:

(a) When a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making the repair or replacement not otherwise excluded by the policy shall be included in the loss. The insured shall not have to pay for betterment nor any other cost **to the extent of replacement cost,** except for the applicable deductible.

(b) When a loss requires replacement of items and the replaced items do not match in quality, color, or size, the insurer shall replace all items in the area so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured shall not bear any cost over the applicable deductible.

(2) Actual cash value:

(a) When the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine actual cash value as follows: replacement cost of property at the time of the loss less depreciation, if any. Upon the insured's request, the insurer shall provide a copy of the claim file worksheets showing any and all deductions for depreciation.

(b) In cases in which the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value as set forth in paragraph (a) of this subsection is not required. In these cases, the insurer shall provide, upon the insured's request, a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

Section 9. Severability. If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected thereby.

Section 10. Repeal of 806 KAR 12:090; Effective Date. (1) 806 KAR 12:090, Unfair claims settlement practices, is repealed.

(2) This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: August 23, 1990
FILED WITH LRC: August 28, 1990 at 1 p.m.

CABINET FOR HUMAN RESOURCES
Commission for Health Economics Control in Kentucky
(Amended After Hearing)

902 KAR 20:006. Certificate of need process.

RELATES TO: KRS 216B.010 to 216B.130 [216B.131], 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 13A.350, 216B.040, [216B.070,] 216B.075

NECESSITY AND FUNCTION: KRS 216B.040, [216B.070,] and KRS 216B.075 authorize the Commission for Health Economics Control in Kentucky to promulgate administrative regulations respecting application and review procedures. This regulation sets forth the application and review procedures and requirements for [exemptions of health maintenance organizations,] batching, issuing advisory opinions, [review of substantial changes in projects and] cost escalations and progress reports. This regulation incorporates sections of 902 KAR 20:127, Certificate of need hearings, making the regulation no longer necessary; therefore, 902 KAR 20:127, Certificate of need hearings, is hereby repealed.

Section 1. Definitions. Except as otherwise provided, for purposes of this regulation, the following definitions shall apply:

(1) "Capital expenditure authorized" means the amount of the capital expenditure approved by the commission to implement the proposal.

(2) "Chairman" means the chairman of the Commission for Health Economics Control in Kentucky.

(3) "Cost escalation" means an increase in the capital expenditure authorized on a certificate of need which has not been obligated as prescribed in KRS 216B.015(28).

(4) "Cost overrun" means an increase in the capital expenditure authorized on a certificate of need which has been obligated without commission approval.

(5) [(3)] "Public Information channels" means the Office of Communications [and Council Affairs] in the Cabinet for Human Resources.

(6) [(4)] "Review commences" means the date of public notice of the appropriate batching cycle for the particular application after it is deemed complete.

Section 2. Criteria. In determining whether to issue or deny a certificate of need, the commission [and the cabinet] shall utilize the following criteria:

(1) Consistency with plans. [The proposal should be consistent with the state health plan. Consideration should be given to the other applicable appropriately adopted plans developed by local health planning agencies. In case of inconsistency between the state health plan and other plans considered, the state health plan shall prevail. The fact that the state health plan does not address the specific type of proposal being reviewed does not constitute grounds for disapproval of the proposal.] To determine conformance with this criterion the applicant shall address and the commission shall consider the relationship of the proposal to the state health plan. [:]

[(a) The state health plan;]

[(b) The applicable appropriately adopted plans developed by local health planning agencies.]

(2) Need and accessibility. [The proposal should meet an identified need in a defined geographic area and be accessible to all residents of the area.] To determine conformance with this criterion the applicant shall address and the commission [and the cabinet] shall consider:

(a) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons and other underserved groups are likely to have access to those services.

[(b) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service; the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements; and the effect of the reduction, elimination, or relocation of the

service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups to obtain needed health care.]

(b) [(c)] The contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women and handicapped persons), particularly those needs identified in [the applicable appropriately adopted plans developed by local health planning agencies and] the state health plan [as deserving of priority]. In this regard, the commission [and the cabinet] shall consider:

1. The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations will use the proposed services if approved; and

[2. The past performance of the applicant in meeting its obligation, if any, under any applicable federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal financial assistance (including the existence of any civil rights access complaints against the applicant);]

[3. The extent to which physicians with admitting privileges at the applicant's facility admit Medicare and Medicaid patients; and]

2. [4.] The extent to which the applicant offers alternative means, other than through admission by a physician, by which a person will have access to its services (e.g., admission through a clinic or emergency room).

(c) [(d)] The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

(d) [(e)] If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.

(e) [(f)] Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. These entities may include medical or other health professions schools, multidisciplinary clinics and specialty centers.

[(g) The special needs and circumstances of biomedical-behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.]

(3) Interrelationships and linkages. [The proposal should serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state accompanied by assurance of effort to achieve comprehensive care, proper utilization of services and efficient functioning of the health care system.] To determine conformance with this criterion the applicant shall address and the commission [and the cabinet] shall consider:

(a) The relationship of the services to be provided to the existing health care system of the area in which the services are proposed to be provided.

(b) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

(c) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

(4) Costs, economic feasibility, and resource availability. [The proposal when measured against the cost of alternatives for meeting needs, is judged to be an effective and economical use of resources, not only in terms of capital investment, but also in terms of ongoing requirements for health manpower and operational financing.] To determine conformance with this criterion the applicant shall address and the commission [and the cabinet] shall consider:

(a) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded or [, reduced,] relocated[, or eliminated].

(b) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the cost of and charges for providing health services by the person proposing the service.

(c) The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of these resources for the provision of other health services.

(d) In the case of construction or renovation projects:

1. The costs and methods of the proposed construction or renovation, including the costs and methods of energy provision; and

2. The probable impact of the construction or renovation project reviewed on the costs of providing health services by the persons proposing the construction or renovation project and on the costs and charges to the public of providing health services by other persons.

[(e) The special circumstances of health care facilities with respect to the need for conserving energy.]

(e) [(f)] The factors which affect the effect of competition on the supply of the health services being reviewed.

(f) [(g)] Improvements or innovations in the financing and delivery of health services which foster competition, and serve to promote quality assurance and cost effectiveness.

(5) Quality of services. [The applicant should be prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements assuring the provision of quality health care services.] To determine conformance with this criterion the applicant shall address and the commission [and the cabinet] shall consider the quality of care provided by the applicant in the past or the qualifications of the principals who will provide the health service which would assure that quality care will be provided and any perceivable detrimental effects of the proposal on the quality of similar services in the area.

[(6) Special needs and circumstances of health maintenance organizations. In the case of a health maintenance organization (HMO) or an ambulatory care facility or health care facility controlled directly or indirectly by an HMO, the proposal should be consistent with the special need and circumstances of HMOs. The applicant shall address and the commission and the cabinet shall consider:]

[(a) The needs of enrolled members and reasonably anticipated new members of the health maintenance organizations for the health services proposed to be provided by the organization; and]

[(b) The availability of the proposed health services from nonhealth maintenance organization providers or other health maintenance organizations in a reasonable and cost effective manner which is consistent with the basic method of operation of the health maintenance organization.]

[Section 3. Health Maintenance Organizations. (1) Before any person establishes a health maintenance organization or before an existing health maintenance organization establishes a health facility or acquires major medical equipment or obligates a capital expenditure for the provision of health service, an original application for exemption, as prescribed by KRS 216B.070, and four (4) copies shall be submitted to the chairman. The application for exemption shall be filed on a prescribed form.]

[(a) Within fifteen (15) days of receipt of the application for exemption the chairman shall acknowledge receipt in writing to the applicant and the respective local health planning agency, if any, and shall notify the applicant whether or not the application is complete.]

[(b) If the application for exemption is not complete, the notice to the applicant shall give the applicant the option of submitting the additional information or of notifying the chairman, upon receipt of the request for additional information, that he elects for the application for exemption to be processed as originally submitted.]

[(c) Upon receipt of the requested additional information by the chairman, or upon receipt of a letter from the applicant stating that he elects for the application for exemption to be processed as originally submitted, the chairman shall declare the application for exemption to be filed.]

[(d) A public hearing pursuant to the application for exemption shall be conducted within thirty (30) days of its having been declared filed. The hearing shall utilize the format described in 902 KAR 20:127.]

[(e) Within thirty (30) days of the conclusion of the hearing, findings of fact and conclusions shall be issued.]

[(f) A decision as to the granting or denial of the exemption shall be made at the next regularly scheduled meeting following the issuance of findings of fact and conclusions.]

[(2) An application for exemption shall be approved if the health maintenance organization meets the definition contained in KRS 216B.015(12).]

[(3) An application for exemption shall be approved if the health facility or the major medical equipment or the health service is to be used exclusively by the members of the health maintenance organization as defined in KRS 216B.015(12).]

[(4) If the exemption is not granted, a certificate of need application shall be required.]

[(5) If an exemption is granted, pursuant to KRS 216B.070, the health care facility, or portion thereof, or the major medical equipment may not be sold or leased, a controlling interest in the facility or equipment or in a lease of the facility or equipment may not be acquired, and the health care facility shall not be used by any person other than the one which was granted the exemption unless the notice of intent to acquire prescribed by KRS 216B.065 is duly filed.]

Section 3. [4.] Proposed New Use. A certificate of need shall not be required for any project which meets the applicable requirements of KRS 216B.065 and 216B.066. If a person acquires major medical equipment not located in a health facility without a certificate of need and proposes at any time to use that equipment to serve inpatients of a health care facility, the proposed new use must be reviewed unless the equipment will be used to provide services to inpatients of a health care facility only on a temporary basis in the case of an emergency, a natural disaster, a major accident, or an equipment failure. For the purposes of this section "temporary basis" means on an occasional and irregular basis or until the applicant's proposal for permanent acquisition or regular use by a health care facility is reviewed under the formal or nonsubstantive review process.

Section 4. [5.] Formal Review. (1) At least thirty (30) days prior to submitting a certificate of need application [for a construction project], a letter of intent shall be filed with the chairman. No letter of intent is required when an applicant proposes to alter an outstanding certificate of need [for a construction project]. The letter of intent shall be filed on a form provided by the commission.

(2) A letter of intent is valid for a period of one (1) year. If an application is denied, a new letter of intent must be submitted in order to resubmit the application. However, if an application is withdrawn prior to a commission decision, the same letter may be used to resubmit the same application as long as the letter of intent is not over one (1) year old.

(3) The chairman of the commission shall acknowledge receipt of the letter of intent[, send a copy to the respective local health planning agency, if any,] and send appropriate forms and instruction sheets to the applicant.

(4) The original certificate of need application and four (4) copies shall be submitted to the chairman [and two (2) copies shall be submitted to the respective local health planning agency, if any].

(5) [Within] Fifteen (15) days after [of] receipt of the application the chairman shall acknowledge receipt in writing to the applicant [and the respective local health planning systems agency, if any,] and shall notify the applicant whether or not the application is complete.

(6) If the application is not complete, the notice to the applicant shall give the applicant the option of submitting the additional

information or of notifying the chairman, upon receiving the request for additional information, that he elects for the application to be processed as originally submitted.

(7) Upon receipt of the requested additional information by the chairman, or upon receipt of a letter from the applicant stating that he elects for the application to be processed as originally submitted, the chairman shall declare the application to be complete [filed] and to be placed on the next appropriate public notice in accordance with the batching review cycles. In order to submit additional information to be made a part of the record after the application has been declared complete, it must be introduced at a public hearing.

(8) Applications not declared complete [filed] within a year from the date the application was received shall not be retained by the commission.

(9) The chairman shall notify the applicant of the date the application was declared complete [filed] and the date public notice has been given of the commencement of the review process. Applications must be declared complete [filed] at least six (6) working days prior to the date of public notice in order to be included in such notice.

(10) The chairman shall give written notice to affected persons of the beginning of a review. The notice shall include the schedule for the review and the period within which a public hearing may be requested by affected persons. The review notice to members of the public and third party payors shall be provided through public information channels. Notice to all other affected persons shall be by mail.

(11) [The review period shall commence on the date of public notice.] No review shall take longer than ninety (90) days from the commencement of the review unless the applicant requests [agrees to] a deferral of action in writing and the commission agrees to a deferral. [Applications proposing the same or similar types of services, equipment, or facilities affecting the same health service area shall be batched in the review cycles so they can be given comparative review, if applicable.]

(12) Batching review cycles [commencing with the March, 1987 meeting] shall be as follows:

TYPE OF PROPOSAL	MONTH OF PUBLIC NOTICE, NINETY (90) DAYS PRIOR TO DECISION [MEETING] DATE	MONTH OF COMMISSION DECISION [CERTIFICATE OF NEED BOARD MEETING], 3RD WEDNESDAY OF:
(a) Acute, Psychiatric, Rehab, Chemical Dependency facilities and other related components in the SHP (except Specialized Equipment and Services) such as IC/CC, Neonatal, and Surgical Services (including Freestanding Ambulatory Surgical Center) and [ESRD. Also] Birthing Centers.	November, February, May, August	February, May, August November
(b) [Long Term Care (]Skilled Nursing, Nursing Home, Intermediate Care or Nursing Facility[, IC MR/DD, Personal Care, Swing Beds), and Home Health or Home Health/Hospice].	December[, March, June, September]	March[, June, September, December]
(c) Personal Care or IC MR/DD	December, [January] March, June, September	March [April], June, September, December
(d) [(c)] Transplantation, Magnetic Resonance Imaging, Lithotripter, Radiation Therapy, C.T. Scanner, Cardiac Catheterization, Open Heart Surgery, and new Technological Developments.	January, July	April, October
(e) [(d)] Day Health Care Center, Ambulatory Care Clinic, [Primary Care Center, Rural Health Clinic, Group Home,] Rehab Agency, Hospice, Home Health or Home Health/Hospice [only].	November, [December,] February, June, August	February [March], May, September, November
(f) [(e)] Ambulance, NE Health Transportation, and Air Ambulance Services.	[November,] December, [January,] February, [March,] May, [June,] July, [August,] September	[February,] March, [April,] May, [June,] August, [September,] October, [November,] December
(g) [(f)] All Mobile Services except those covered under Specialized Equipment and Services.	November, January, March, May, July, September	February, April, June, August, October, December
[(g) Relocation of existing facility that does not involve a change of capacity or health service.	November, December, January, February, March, May, June, July, August, September	February, March, April, May, June, August, September, October, November, December]
[(h) Capital expenditure only that exceeds the threshold that does not qualify for nonsubstantive review.	November, December, January, February, March, May, June, July, August, September	February, March, April, May, June, August, September, October, November, December]

(h) [(i)] Any proposals not listed above will be placed in the most appropriate cycle as determined by the commission.

(i) [(j)] Any proposal granted nonsubstantive review status as specified in KRS 216B.095(3)(a) through (g), **plus technical modifications (CON)** [, plus a change of location (CON), technical modifications (CON), cost escalations that cannot be adjusted administratively, cost overrun, change of ownership when applicable, and industrial ambulance service,] will be processed in accordance with KRS 216B.095(1).

[(12) Any person directly affected by the proposal may request a public hearing within thirty (30) days of the date of public notice.]

[(13) The local health planning agency shall notify the chairman of its recommendation for approval or disapproval within sixty (60) days from the date of public notice. The recommendation shall set forth the basis for the recommendation and findings with respect to the criteria. In the event that no recommendation is received from the local health planning agency, the commission shall proceed without a recommendation.]

(13) [(14)] The chairman of the commission shall notify the applicant[, the local health planning agency] and any party to the proceeding of the commission's final action on a certificate of need application by certified mail.

(14) The written notification shall include:

[(a) If the application is approved, the written notification shall include:]

(a) [1.] Verification that the criteria [for determining need] have been met or, if the application is inconsistent with any criteria, the reasons for approval notwithstanding the inconsistency. [and that the current accessibility of the facility as a whole has been taken into account, if applicable, as specified in the federal certificate of need regulation, except in the following cases:]

[a. Where the application is approved pursuant to the requirements of Section 2(6) of this regulation. In such case, the written findings shall verify that the conditions for required approvals under Section 3 of this regulation have been met; or]

(b) If the commission's action on a certificate of need application is inconsistent with the recommendation made in the hearing report, the chairman shall include a statement of the reasons for the inconsistency.

[b. Where the project is a proposed capital expenditure not directly related to the provision of health services or to beds or major medical equipment.]

(c) [2.] Amount of capital expenditure authorized, where applicable.

(d) [(b)] If the application is disapproved, the reasons for the disapproval; and [written notification shall include:]

[1. The decision of the commission.]

(e) [2.] Notice of appeal rights.

[(c) If the commission's action on a certificate of need application is inconsistent with a recommendation made by the local health planning agency, the chairman shall submit to the local health planning agency and to the applicant a written detailed statement of the reasons for the inconsistency.]

Section 5. Certificate of Need Hearings. (1) Notice of the date, time and location of the hearing shall be mailed to all affected persons except third party payors and members of the public at least ten (10) days before the date of the hearing. Notice to third party payors and members of the public shall be provided through public information channels.

(2) Hearing requests may be withdrawn by officially notifying the chairman in writing at least **three (3)** [five (5)] working days in advance of the scheduled hearing date. In order for a public hearing to be cancelled, all persons who requested the hearing must withdraw the hearing requests in writing.

(3) The commission or its designated hearing officer may conduct a prehearing conference to resolve issues not in dispute or not requiring an evidentiary record and may issue prehearing orders which shall determine the form and the manner in which the evidentiary hearing is conducted.

(4) The commission or hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument, and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(5) After the conclusion of the hearing, the hearing officer or the commission shall prepare written findings of fact, conclusions of law and recommendations.

(6) The chairman shall transmit a copy of the findings, conclusions and recommendations to each member of the commission, the person requesting the hearing and all persons deemed parties to the proceedings.

(7) Each party to the proceedings may file exceptions with the chairman within **ten (10)** [seven (7)] days of [receipt of] the **date of the** commission's recommended hearing report.

(8) In addition to the requirements of KRS 216B.015(18), the record shall also include any exceptions timely filed.

(9) Failure to file exceptions shall not constitute a failure to exhaust administrative remedies.

Section 6. Nonsubstantive Review. **(1) In addition to the projects specified in KRS 216B.095(3)(a) through (g), nonsubstantive review status will be granted to applications for technical modifications to an approved certificate of need.** [(1) An applicant may waive the procedures for formal review of an application for a certificate of need and request a nonsubstantive review. In addition to the projects specified in KRS 216B.095(3)(a through f), nonsubstantive review status will be granted to applications for a change of location of a proposed health facility, technical modifications to an approved certificate of need, cost overruns, changes of ownership when applicable, and industrial ambulance services.]

[(2) Procedures.] **(2)** Procedures for nonsubstantive review shall be as follows:

(a) [(1)] [(a)] The original certificate of need application and four (4) copies, with a request for nonsubstantive review shall be submitted to the chairman [and two (2) copies of the application shall be submitted to the respective local health planning agency, if any].

(b) [(2)] [(b)] Within fifteen (15) days of the receipt of the application, the chairman

shall acknowledge receipt of the application in writing to the applicant, [and the local health planning agency, if any,] and shall notify the applicant whether or not the application is complete.

(c) [(3)] [(c)] If the application is not complete, the notice to the applicant shall give the applicant the option of submitting the additional information or of notifying the chairman, upon receipt of the request for additional information, that he elects for the application to be processed as originally submitted.

(d) [(4)] [(d)] Upon receipt of the requested additional information by the chairman, or upon receipt of a letter from the applicant that he elects for the application to be processed as originally submitted, the chairman shall declare the application to be deemed complete [filed].

(e) [(5)] [(e)] The chairman's notice to grant or deny nonsubstantive review status shall be provided to the applicant and notice of the decision to conduct a nonsubstantive review shall be provided to affected persons by mail no later than the tenth day after the application has been deemed complete. [Within fifteen (15) days after the application is declared filed, the chairman functioning as the representative of the cabinet shall determine whether the application meets the criteria for nonsubstantive review and shall notify affected persons of the decision to grant or deny nonsubstantive review status.] The notice of the review to members of the public and third party payors shall be provided through public information channels. [Notice to all other affected persons shall be by mail.]

[(f) Within fifteen (15) days of the cabinet's notice to conduct a nonsubstantive review any affected person other than the applicant may request a public hearing before the cabinet on an application granted nonsubstantive review status.]

[(g) The local health planning agency, if any, shall recommend approval or disapproval of applications granted nonsubstantive review status within thirty (30) days of the date of public notice. In the event that no recommendation is received from the local health planning agency, the cabinet shall proceed without a recommendation.]

[(h) The cabinet shall approve or disapprove applications for certificates of need within forty-five (45) days from the date of public notice to conduct a nonsubstantive review.]

[(i) If the applicant's proposed project is denied nonsubstantive review status the application will automatically be placed in the next appropriate batching cycle of the formal review process.]

(f) [(6)] [(j)] If a certificate of need is denied following a nonsubstantive review and [, the applicant may request that the application be placed in the next appropriate batching cycle of the formal review process or may pursue a judicial appeal. If] a formal review is requested, no letter of intent shall be required, but the filing of the request for nonsubstantive review shall be considered compliance with any requirement for a letter of intent.

Section 7. Conditions Relative to a Certificate of Need. (1) No person shall transfer from one legal applicant to another an approved certificate of need for the establishment of a new health facility or the replacement of an existing facility without first obtaining a certificate of need. All other certificates of need may be transferred to the new owner of the facility or service if a change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) A certificate of need approved [issued] for establishment of a new health facility or the replacement of an existing facility and is issued only for the location stated on the certificate.

(3) A certificate of need holder shall notify the commission of any reduction or termination of a health service or a reduction in bed capacity for an approved project no later than the first progress report after the change has been determined.

(4) [(3)] Cost escalations or cost overruns.

(a) A certificate of need shall not be required for an escalation or cost overrun of the capital expenditure authorized provided that the scope of the project as approved is not altered[, the excess capital expenditure has not been obligated] and the amount of the escalation or overrun does not exceed:

1. Twenty (20) percent of the capital expenditure authorized or $100,000, whichever is greater, in the case of projects with a capital expenditure of less than $500,000;

2. Twenty (20) percent of the capital expenditure authorized, in the case of projects with a capital expenditure of $500,000 or greater, but less than $5,000,000;

3. Ten (10) percent of the amount in excess of $5,000,000, plus $1,000,000, in the case of projects with a capital expenditure of $5,000,000 or greater, but less than $25,000,000;

4. Five (5) percent of the amount in excess of $25,000,000, plus $3,000,000, in the case of projects with a capital expenditure of $25,000,000 or greater, but less than $50,000,000; or

5. Two (2) percent of the amount in excess of $50,000,000, plus $4,250,000 in the case of projects with a capital expenditure of $50,000,000 or greater.

(b) The certificate of need holder shall submit, to the chairman, a standardized [escalation] form approved by the commission which includes the amount of the escalation or overrun, the factors pertaining to the escalation or overrun, and information to assure that the scope of the project as approved originally by the commission has not changed. The chairman shall review the form submitted and within thirty (30) days of receipt shall notify the certificate of need holder whether the proposed escalation or overrun meets the requirements of subsection (a) of this section. [Capital expenditures for escalations within the limits prescribed in this section shall not be obligated until the certificate of need holder has received this notice.] [A certificate of need shall be required for escalations in the capital expenditure authorized which exceeds the limits prescribed in this section or entails a change in the scope of the proposal which was originally approved.]

(c) The certificate of need holder shall[, prior to obligating any escalation of the capital expenditure authorized,] submit to the

chairman any additional certificate of need application fee required by the increased capital expenditure pursuant to the requirements of 902 KAR 20:135 **with the prescribed form**.

(d) A certificate of need holder who obligates an amount exceeding the capital expenditure authorized without receiving an approved escalation per paragraph (b) of this subsection is subject to the appropriate penalty per KRS 216B.990.

Section 8. Progress Reports. (1) As one of the conditions of a certificate of need, the certificate of need holder shall submit a report of progress every six (6) months or more frequently if required by the commission [until the project is complete].

(2) All certificate of need holders shall be notified in writing that certificates of need, or portions thereof, will be revoked by the commission if satisfactory evidence towards the implementation of a proposal is not made within the time tables and standards set [limits] set by this regulation. The applicant shall provide the necessary evidence on forms provided by the chairman. The commission may revoke the certificate of need, or portions thereof, for failure to submit progress reports as required.

(3) Procedures for submission of progress reports.

(a) The chairman shall send notice to the certificate of need holder specifying the date each progress report is due. The first six (6) month report shall be due six (6) months from the date the certificate was issued.

(b) The holder shall send one (1) copy of the six (6) month progress report form to the commission [and two (2) copies to the local health planning agency, if any].

(4) Criteria for review of progress.

(a) The first six (6) month progress report shall include the following:

1. On all projects for purchase of equipment only, a copy of the purchase order.

2. For all construction projects, a copy of the deed or the option to acquire the site.

(b) Within one (1) year after a certificate of need is issued, the second six (6) month report shall include documentation that:

1. All projects for conversion of beds are complete;

2. All projects for addition of new services, not involving construction, are complete;

3. Schematic plans have been submitted to the Department of Housing, Buildings and Construction and the Cabinet for Human Resources for construction projects. The second six (6) month report for all construction projects shall also include:

a. Schedule for project completion with projected dates;

b. Evidence of preliminary negotiation with financial agent;

c. Evidence of preliminary negotiation with contractors.

(c) Within eighteen (18) months after a certificate of need has been issued, the third six (6) month report shall include the following information regarding all construction projects:

1. Copy of deed or lease of land;

2. Evidence that holder has sufficient capital obligated to complete the project. If the source of capital is to be a financing agreement, the holder must have evidence that a final enforceable agreement or note has been executed;

3. Documentation that final plans have been submitted to the Department of Housing, Buildings and Construction and the Cabinet for Human Resources;

4. Enforceable contract with construction contractor;

(d) On all projects for purchase of equipment only, evidence that equipment has been installed.

(e) Within two (2) years after a certificate of need has been issued, the fourth six (6) month report shall verify that all construction projects have the walls and roof up and plumbing roughed in.

(f) Within six (6) months following completion of a project for which a certificate of need has been issued, **for a specific service area, all certificate holders** [the project] must **submit documentation that** [be operational including providing] services **are being provided** to all of the licensed service area[, if applicable].

Section 9. Commission Notification for Exemption. (1) Before any existing health facility proceeds to provide health services on site pursuant to KRS 216B.020, the facility shall notify the commission, in writing, of the intent to offer the services prior to implementation.

Section 10. Advisory Opinions. The process for seeking an advisory opinion from the commission shall be as follows:

(1) Requests shall be filed, in writing, on a form prescribed by the commission.

(2) The commission may require verification of information and may request additional documentation, if necessary.

(3) Within thirty (30) days of receipt of the completed request for determination, the commission shall notify all affected persons, in writing, of the commission's final determination.

Section 11. 902 KAR 20:127, Certificate of need hearings, is hereby repealed.

W. R. HOURIGAN, Ph.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 29, 1990
FILED WITH LRC: September 4, 1990 at 4 p.m.

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

905 KAR 8:140. Hearing procedures for area agency on aging contractor selection actions.

RELATES TO: KRS 205.201, 205.204, 205.460 to 205.465, 42 U.S.C. 3027(a)(5), 45 CFR 1321

STATUTORY AUTHORITY: KRS 194.050, 205.204, **42 U.S.C. 3027(a)(5)**

NECESSITY AND FUNCTION: 42 U.S.C. 3027(a)(5) requires that the Department for Social Services afford an opportunity for a hearing upon request to providers and applicants to provide services under Title III of the Older Americans Act of 1965, as amended. Accordingly, it is the Department for Social Services policy to provide an opportunity for a hearing to any applicant to provide services under Title III whose application to provide services under an area plan is denied or any service **provider** [provided] funded under Title III whose

contract is terminated or not renewed, except as set forth in 45 CFR Part 74, Subpart M. This regulation establishes procedures to provide a full and fair opportunity to resolve any complaints or protests that may arise in contractor selection actions by area agencies on aging under Title III and to create a complete, clear and accurate record for the formation of decisions regarding those selection actions.

Section 1. Definitions. (1) "AAA" means the area agency on aging under each area development district.

(2) "Applicant" means a person or entity making application to an area agency to provide services under an approved area plan.

(3) "Area plan" means a plan submitted by an area agency on aging and approved by the Commissioner, Department for Social Services, which enables the area agency to administer activities under Title III.

(4) "Burden of proof" means the duty of going forward, i.e., of producing evidence of a particular matter or fact in issue and the burden of persuasion that a particular matter or fact is true.

(5) "Commissioner" means the Commissioner of the Department for Social Services.

(6) "Days" means calendar days, unless specified.

(7) "Department" (as defined in KRS 209.020(3)).

(8) "Director" means that Director of the Division of Aging Services, Department for Social Services, Cabinet for Human Resources.

(9) "Division" means the Division of Aging Services, Department for Social Services, Cabinet for Human resources.

(10) "Hearing officer" means the person selected by the Commissioner of the Department for Social Services, to conduct a hearing and to submit a written report based on that hearing to the commissioner.

(11) "Local administrative review" means the procedure of an area agency for consultation and review with an applicant or provider.

(12) "Party" means an area agency, an applicant or provider who has requested a hearing, the person or entity who submitted the proposals in response to the request for proposal (RFP), and a person or entity that is admitted into the proceedings and designated as participant by the hearing officer.

(13) "Protest" or "complaint" means a written objection by an applicant or provider to a proposed award or the award of a contract, or a written objection by a provider to a decision to terminate or not renew its contract to provide services.

(14) "Provider" means a person or entity that is awarded a contract from an area agency on aging to provide services under an approved area plan.

(15) "RFP file" means those documents that are maintained regarding a particular procurement. These documents shall include:

(a) The request for proposal;

(b) Advertisements as published in the newspaper;

(c) Each proposal received in response to the RFP;

(d) All correspondence pertaining to the RFP;

(e) The review by the AAA;

(f) Rating or scoring and selection documents;

(g) Notice of award; and

(h) The contract.

(16) [(15)] "Title III" means Title III of the Older Americans Act of 1965, as amended, and implementing federal regulations and directives.

Section 2. Procedures for Local Review. (1) Written notice shall be sent by registered or certified mail within seven (7) days of a decision made by an AAA which denies an applicant its request to provide a service or which terminates a provider's contract to provide a service. The notice shall specify:

(a) The reason for the adverse action;

(b) That the provider or applicant has ten (10) days from receipt of notice to file a written complaint with the AAA; and

(c) That failure to file a complaint in a timely manner shall constitute a waiver of his opportunity for a hearing at the state agency level.

(2) Each AAA shall develop and set forth in writing division approved fair and adequate local administrative review procedures. These procedures shall:

(a) Provide that the AAA shall not proceed further with the solicitation, award or termination involved during the **pendency** [pending] of the local administrative review, except under a contingency plan approved by the division;

(b) Provide that a request for a state agency review shall not be accepted until all administrative remedies have been exhausted at the local level;

(c) Provide the protecting applicant or provider an opportunity to review pertinent evidence upon which the adverse action was based including:

1. Competing proposals and scoring sheets;

2. Requesting reconsideration of an award; and

3. Stating in writing why the protest is filed and the factual circumstances and issues to be considered during the review.

(d) Provide that the local administrative review shall include the following:

1. An opportunity to appear in person before an individual or a group of [at least] three (3) persons who can render an impartial decision;

2. An opportunity to present witnesses and documentary evidence;

3. An opportunity to be represented by counsel;

4. An opportunity to cross-examine witnesses; and

5. A written impartial decision which sets forth:

a. The reasons for the decision;

b. The evidence on which decision is based; and

c. Statement explaining the right to request a state-level hearing.

(e) Provide that the AAA conduct and complete the local administrative review not later than twenty (20) days after receipt of the written protest and:

1. Respond in writing by certified mail return receipt requested to the applicant or provider its findings and determinations on the issues raised in the complaint;

2. Provide notice to the applicant or provider of the right to request a hearing with the department; and

3. Forward a copy of the local administrative review to the division.

(f) Provide that subcontractors of an AAA and applicants to be subcontractors shall be:

1. Provided notice of an afforded an

opportunity for a hearing by the AAA; and
2. Provided an opportunity for appeal to the state-level for review of the transcript.

Section 3. Procedures for State-level Hearing. (1) Requests and grounds for a hearing.
(a) If the protest is not resolved by the local administrative review the applicant or provider may request in writing a hearing at the state-level on one (1) or more of the following grounds:
1. There is reason to claim that the award does not comply with the applicable request for proposal;
2. There is reason to claim that the local administrative review does not comply with the approved procedures of the AAA;
3. There is a reason to claim that denial by the AAA in whole or in a substantial part of an application to provide services on an action or the part of the AAA concerning termination or nonrenewal of a contract to provide services is:
a. Arbitrary;
b. Capricious;
c. An abuse of discretion;
d. Biased;
e. The result of a conflict of interest;
f. Not based upon substantial evidence; or
g. Does not comply with the terms of the contract or federal or state law, statute or regulation.
(b) The written request for a hearing by an applicant or provider shall sets forth the grounds and their alleged factual basis, and shall be mailed to the Director, Division of Aging Services, Department for Social Services, 275 East Main Street, Frankfort, Kentucky 40621, postmarked not later than ten (10) days from receipt of the local administrative review findings and determinations. A copy of the written request shall be mailed to the appropriate AAA.
(c) Upon receipt of the copy of the request the AAA shall send the following to the division for the hearing officer:
1. A complete copy of the local administrative review.
2. A complete copy of the request for proposal file relating to a particular procurement.
(2) Failure of the applicant or provider to comply with procedures shall constitute a forfeiture of the opportunity for a state level hearing. The request shall be returned by the director with a written explanation. The director may waive the timeliness requirements and shall notify the parties of the reason for the waiver upon:
(a) Receipt of a written request of a party and a determination that good cause or exigent circumstances exist; or
(b) Determination that waiver is in the best interest of the aging program.
(3) Each hearing shall be conducted within twenty (20) days of the date the director receives a request. The hearing officer shall:
(a) Notify the parties by mail of the date, time and location of the hearing;
(b) Provide each party with a copy of the request; and
(c) May grant an extension or continuance if:
1. He receives a written request by a party with good cause shown to reschedule; and
2. That extension or continuance shall not delay service delivery.
(4) The director may expedite the scheduling of events and notify the parties of the reason upon written determination that:
(a) A reduction in the time frames is in the best interest of the aging program; and
(b) The rights of the parties at the state level hearing are not prejudiced.
(5) The decision of the commissioner regarding the qualifications of the hearing officer shall be final.
(a) The hearing officer shall be disqualified if he has a:
1. Personal bias;
2. Prejudice with respect to a party; **or**
3. Conflict of interest in the matter pending; [or]
(b) A party may suggest in writing to the commissioner grounds for disqualification, prior to the date set for the hearing.
(6) The parties shall have an opportunity to present their sides of the matter at their expense and subject to the rulings of the hearing officer in a full and fair hearing. Each party has the right to:
(a) Appear with legal counsel or other representatives;
(b) Review pertinent evidence on which the decision of the area agency was based;
(c) Present evidence, both testimonial and documentary;
(d) Rebut adverse evidence, through cross-examination and other appropriate means, including the presentation of evidence;
(e) Submit a brief or memorandum setting forth the position of the party and substantiation for it to the hearing officer;
(f) Present oral argument;
(g) Have the decision based only upon the evidence introduced into the record of the hearing; and
(h) Have access to the complete record which consists of the following:
1. The request for hearing;
2. A copy of the local administrative review;
3. A copy of the RFP file;
4. A transcript of oral testimony and arguments, if a transcript is made;
5. Documentary evidence and papers filed with the request, and in the proceedings; and
6. Pre- and posthearing motions including written exceptions.
(7) The hearing officer shall rule on the admissibility of both testimonial and documentary evidence.
(a) The hearing officer shall not be bound by courtroom rules of evidence and irrelevant, immaterial, and unduly repetitious or cumulative evidence shall be excluded.
(b) Notice shall be taken of judicially cognizable facts, decisions of courts or other tribunals, and generally recognized technical and scientific facts. Each party shall be afforded an opportunity to contest these matters.
(c) Part of the evidence may be received in the form of a deposition, affidavit or stipulation if the interest of the parties will not be substantially prejudiced.
(d) The hearing officer shall arrange for the separation of witnesses and may exclude a prospective witness or spectator to ensure an orderly and fair proceeding.
(e) Upon notice to the parties, the hearing officer may seek a more definite and detailed statement of the issue.
(8) The proceedings in a hearing shall be taped or recorded at a location provided by the

director. The director shall provide a copy of the transcript to a party upon:

(a) Written request; and

(b) Payment of a reasonable fee which shall comply with the Kentucky Open Records law.

(9) When a party fails to appear at a hearing, the hearing officer shall notify the party in writing that a default shall be entered. The defaulting party shall have no more than five (5) days in which to seek a new hearing date which shall be granted only for good cause shown. Upon default, the hearing officer shall:

(a) Render a decision based on available evidence; or

(b) Dismiss the case with prejudice to the defaulting party.

(10) The provider or applicant may submit a written withdrawal of a request for a hearing which shall constitute a waiver of an opportunity for a hearing at the state level on the matters and issues involved in the original request.

(11) The hearing shall be conducted in an orderly but informal manner.

(a) The hearing officer shall:

1. Preside over all proceedings;

2. Rule on preliminary motions; and

3. Determine the order of presentation of evidence and other procedural matters.

(b) The parties shall in advance of the hearing indicate the names of the witnesses and the expected duration of their testimony.

(c) At the conclusion of the hearing the parties may submit to the hearing officer:

1. Proposed findings of fact; and

2. Written exceptions to proposed findings of fact.

(d) The hearing officer shall rule on each proposed finding and on all motions and objections.

(e) The burden of proof shall be with the applicant or provider who requested the hearing.

(f) The standard of proof shall be by a preponderance of evidence.

(12) Within ten (10) days of the conclusion of the hearing, the hearing officer shall forward to the commissioner a complete record of the hearing and a written report based on the record. The commissioner may extend the time for filing this report upon request of the hearing officer and with good cause shown. The report shall contain:

(a) Separate findings of fact based on the record;

(b) Conclusions based on the findings of fact; and

(c) Recommendations supported by the conclusions.

(13) Within five (5) days of receipt of the hearing officers report, a party may submit written exceptions to the commissioner, but a party shall not be entitled to a further hearing on a matter or issue which was the subject of the hearing.

(14) Upon review of the report of the hearing officer, and timely filed exceptions, the commissioner may remand the case back to the hearing officer for proceedings to assist him in making a decision, which shall:

(a) Be rendered in writing within twelve (12) days of receipt of the final report of the hearing officer;

(b) Approve, disapprove or approve with deletions, additions or modifications each finding of fact, conclusion and recommendation in the report.

(15) The decision of the commissioner **shall be based on the record of the hearing and** may direct appropriate action be taken including:

(a) Affirming the action of the AAA;

(b) Directing the award be made to the next most advantageous proposal, taken into consideration price, and the evaluation factors set forth in the RFP; or

(c) Requiring the AAA to readvertise its RFP.

(16) The commissioner may authorize the director to approve a contingency plan for delivery of services while the AAA takes action to conform to the decision.

(17) The decision of the commissioner shall constitute the final administrative review of the matter and issues which were the subject of the hearing. A copy of the decision shall be:

(a) Mailed or hand-delivered to the parties; and

(b) Maintained by the director with the complete record of the hearing.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 5, 1990
FILED WITH LRC: September 5, 1990 at noon

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

907 KAR 1:010. Payment for physicians' services.

RELATES TO: KRS 205.550, 205.560
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a program of Medical Assistance under Title XIX of the Social Security Act. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical care services. This regulation sets forth the method for establishing payment for physician services.

Section 1. Definition. For purposes of determination of payment, [:

(1)] "usual and customary charge refers to the uniform amount the individual physician charges in the majority of cases for a specific medical procedure or service.

[(2) Prevailing charge refers to those charges which fall within the range of charges as computed by the use of a predetermined and established statistical percentile. Prevailing charges for each medical procedure are derived from the overall pattern existing within the state.]

Section 2. Reimbursement [Amount of Payment]. Payment for covered services rendered to eligible medical assistance recipients on or after July 1, 1990 shall be [is] based on the physicians' usual and [,] customary actual billed [, reasonable and prevailing] charges up to the fixed upper limit per procedure established by the cabinet at sixty-five (65) percent of the median billed charge for outpatient services and fifty (50) percent of the median billed charge for inpatient services using 1989 calendar year billed charges. If there is no median available for a procedure, or

the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of fixed upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this subsectin of the regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the regulation.

[Section 3. Method and Source of Information on Charges. (1) Effective October 1, 1981, the individual fee profiles for participating physicians were generated from historical data accumulated from charges submitted and processed by the medical assistance program during all of calendar year 1980.]

[(2) Effective October 1, 1981, the Title XIX prevailing fee maximums were generated from the same historical data as referenced in subsection (1) of this section.]

[(3) Effective October 1, 1981, the Title XVIII, Part B, current reasonable charge profiles were utilized by the medical assistance program.]

[(4) Effective October 1, 1981, the Title XVIII, Part B, current prevailing charge data was utilized by the medical assistance program.]

[(5) Percentile.]

[(a) The Title XIX prevailing charges were established by utilizing the statistical computation of the 75th percentile.]

[(b) The Title XVIII, Part B, prevailing charges were established by utilizing the statistical computation of the 75th percentile.]

[Section 4. Maximum Reimbursement for Covered Procedures. (1) Reimbursement for covered procedures is limited to the lowest of the following:]

[(a) Actual charge for service rendered as submitted on billing statement;]

[(b) The physician's median charge for a given service derived from claims processed or from claims for services rendered during all of the calendar year preceding the start of the fiscal year in which the determination is made.]

[(2) In no case may payment exceed the prevailing charge established under Part B, Title XVIII for similar service on a statewide basis.]

[(3) In instances where a prevailing charge has not been established for a specific medical procedure by Part B, Title XVIII, the prevailing charge established under Title XIX is utilized as the maximum allowable fee.]

[(4) The upper limit for new physicians shall not exceed the 50th percentile.]

[(5) The amount otherwise payable for outpatient services, as determined in accordance with Sections 1 through 3 of this regulation and subsections (1) through (4) of this section, shall be reduced by five (5) percent to arrive at the final payment amount.]

Section 3. Reimbursement Exceptions. (1) [(6)] Effective with regard to services provided on or after October 1, 1988, physicians will be allowed to secure drugs for specified immunizations identified in 907 KAR 1:009 free from the Department for Health Services to provide immunizations for Medicaid recipients, with reimbursement for the cost of the drugs made from the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the physicians that the drugs were used to provide immunizations to Medicaid recipients.

(2) [(7)] Effective with regard to services provided on or after October 1, 1988, physicians will be allowed to purchase drugs for specified immunizations identified in 907 KAR 1:009 in the open market to provide immunizations for Medicaid recipients and the Department for Medicaid Services will reimburse the physician the same amounts that would have been paid to the Department for Health Services if the drugs had been obtained through that agency upon receipt of appropriate notice that the drugs were used to provide immunizations to Medicaid recipients.

[Section 5. Exceptions. Exceptions to reimbursement as outlined in the above sections are as follows:]

[(1) Reimbursement for physician's services provided to inpatients of hospitals is made on the basis of 100 percent reimbursement per procedure for the first twenty (20) dollars of allowable reimbursement and on the basis of a percentage of the physician's usual, customary and reasonable charge in excess of twenty (20) dollars per procedure, after the appropriate prevailing fee screens are applied. The percentage rate applied to otherwise allowable reimbursement in excess of twenty (20) dollars per procedure is established at thirty-five (35) percent. The percentage rate will be reviewed periodically and adjusted according to the availability of funds.]

(3) [(2)] Payments for specified obstetrical services provided on or after **July 1, 1990** [November 1, 1987], shall be at the lower of the actual billed charge or at $650 [the following flat rates: for board certified obstetricians, normal delivery and cesarean section, $650; for all other physicians, normal delivery, and cesarean section, $550].

(4) [(3)] For inpatient delivery-related anesthesia services provided on or after December 1, 1988, a physician will be reimbursed the lesser of the actual billed charge or a standard fixed fee paid by type of procedure. Those procedures and standard fixed fees are:

Normal delivery	$200
Low cervical c-section	270
Classic c-section	320
Epidural single	315
Epidural continuous	335
Extraperitoneal c-section	320
C-section with hysterectomy, subtotal	320
C-section with hysterectomy, total	320

(5) [(4)] Payment for individuals eligible for coverage under Title XVIII, Part B, Supplementary Medical Insurance, is made in accordance with Sections 1 and 2 [through 4] of this regulation and subsections (1) through (4) and subsection (6) [and (2)] of this section within the individual's deductible and coinsurance liability.

(6) For services provided on or after July 1, 1990, family practice physicians practicing in geographic areas with no more than one (1) primary care physician per 5,000 population, as reported by the United States Department of Health and Human Services, shall be reimbursed

at the physicians' usual and customary actual billed charges up to 125 percent of the fixed upper limit per procedure established by the cabinet.

(7) For services provided on or after July 1, 1990, physician laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

ROY BUTLER,, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 4, 1990
FILED WITH LRC: September 5, 1990 at noon

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

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

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

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The state agency will pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised July [January] 1, 1990, and amended August 1, 1990, 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 with regard to services provided on or after July 1, 1990.

(a) 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. A mental hospital designated by the cabinet as a primary referral and services resource for children in the custody of the cabinet shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; the projected cost may be adjusted for usual cost of living increases using the Data Resources, Incorporated Index. 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. Hospitals participating in the Hospital Indigent Care Assurance Program (HICAP) shall also receive, in addition to regular program payments, amounts which are payable under HICAP. The HICAP payments shall be the product of the ratio of each hospital's Medicaid patient days compared to total Medicaid patient days as applied to total available HICAP funds (which are the hospital assessments paid minus administrative expense, hold-harmless amounts, and the contingency reserve amount and taking into consideration available federal Medicaid matching funds). For hospitals which are disproportionate share hospitals the limitations shown in paragraph (b) of this subsection and subsection (9) of this section shall be applicable for HICAP payments. If a hospital which is a nondisproportionate share hospital is determined by the cabinet to be a nonparticipant in HICAP, the amounts otherwise payable under HICAP to the hospital shall not be made. [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.]

(b) The following upper limits and payment principles shall apply to disproportionate share hospitals as defined in subsection (9) of this section.

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or more nursing days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to infants under age one (1) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

2. Designated state teaching hospitals and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville) shall have an upper limit set at 126 percent of the weighted median per diem cost for all other hospitals of comparable size (401 beds and up). The 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 this amount shall not exceed the propsective reasonably determined uncompensated Medicaid cost to the facility. In addition to the per diem amount computed using the limits specified in this subparagraph, the hospitals shall be paid (as appropriate) additional amounts for services to infants under age one (1) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment

amount shown in subsection (9)(b)1 of this section if greater.

3. Mental hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array. The per diem amount shall be computed using this upper limit or by using the disproportionate share minimum payment amount shown in subsection (9)(b)1 of this section if doing so will result in a higher per diem amount.

4. All other disproportionate share acute care hospitals shall have their upper limit set at the weighed median per diem of the cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to infants under age one (1) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

(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; and

5. Effective with regard to services provided on or after July 1, 1990, hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of five (5) percent or higher.

(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.]

2. [3.] Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1990 [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 which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission), the payment rate shall be set at 110 [125] percent of the [uncapped allowable] per diem payment rate [cost], without regard to length of stay or number of admissions of the infants.

3. Effective with regard to services provided on or after July 1, 1990 any hospital which is participating in the Hospital Indigent Care Assurance Program (HICAP) shall receive disproportionate share payments under HICAP. HICAP assessments and payments are described in 907 KAR 1:017, Hospital indigent care assurance program. If a hospital is determined by the cabinet to be a nonparticipant in the HICAP program, the hospital shall be entitled to the minimum adjustment shown in subparagraph 1 of this paragraph.

(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) Effective with regard to services provided on or after July 1, 1990 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, up to the in-state per diem upper limit for a comparable size hospital, 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, 1990 [1989] to infants under the age of one (1), for days of stay which for

newborns are after thirty (30) days beyond the date of discharge for the mother of the chid and for all other infants are after thirty (30) days from the date of admission, 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 up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals 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, M.D., Secretary
APPROVED BY AGENCY: September 5, 1990
FILED WITH LRC: September 5, 1990 at noon

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

907 KAR 1:015. Payments for hospital outpatient 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 outpatient services.

Section 1. Outpatient Hospital Services. For services provided on or after July 1, 1990, [In accordance with the provisions of 42 CFR 447.321,] the cabinet shall reimburse participating hospitals for outpatient services at the rate of sixty-five (65) percent of usual and customary charges billed to the Medical Assistance Program with a [. There is no] settlement (except for out-of-state hospitals) to the lower of [the lower of] cost[, if lower,] at the year end. [or charges, nor may] Charges or costs shall not be transferred between the inpatient and outpatient service units. **Laboratory services shall be paid based on the Medicare allowable payment rates as specified in 907 KAR 1:029, Payments for laboratory services. For laboratory services with no established allowable payment rate, the payment shall be based on sixty-five (65) percent of usual and customary actual billed charges with no settlement to cost.**

[Section 2. The payment provisions shown in Section 1 of this regulation shall be effective for services provided on or after July 1, 1988.]

ROY BUTLER,, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 4, 1990
FILED WITH LRC: September 5, 1990 at noon

PROPOSED AMENDMENTS RECEIVED THROUGH SEPTEMBER 15, 1990

REVENUE CABINET
Department of Administrative Services
(Proposed Amendment)

103 KAR 18:110. Withholding methods.

RELATES TO: KRS 141.310, 141.370
STATUTORY AUTHORITY: KRS Chapter 13A, 141.370
NECESSITY AND FUNCTION: KRS 141.370 requires the cabinet to establish individual income tax withholding tables by regulation. This regulation establishes withholding tables and describes procedure for supplemental and mechanical withholding. KRS 141.310 requires the cabinet to revise the tables to compensate for substantial changes in the deductible federal income tax. These tables [are revised to] reflect repeal of the federal income tax deduction [beginning with federal income tax paid on 1990 income].

Section 1. General. The Revenue Cabinet is required by KRS 141.370 to prescribe tables for withholding Kentucky individual income tax from salaries and wages of employees. These tables withhold the tax levied by KRS 141.020 and reflect the standard deduction ($650) prescribed by KRS 141.081. The tables referred to in Section 4 of this regulation are hereby prescribed by the Revenue Cabinet.

Section 2. Supplemental Withholding. In addition to tax required to be withheld by the tables in Section 4 of this regulation, an employee may authorize his employer to withhold additional Kentucky income tax. An employee may authorize additional withholding by filing an amended Withholding Exemption Certificate (Revenue Form K-4) with his employer. The amended certificate may claim fewer personal exemptions than he is allowed, authorize the employer to withhold a specific amount of additional tax, or both.

Section 3. Mechanical Withholding. The cabinet provides a computer formula for withholding Kentucky income tax, and any employer with suitable equipment may use the formula in lieu of the tables referred to in Section 4 of this regulation. No other formula or withholding method may be used unless specific written approval is granted by the cabinet.

Section 4. Withholding Tables. Employers shall withhold Kentucky individual income tax from wages and salaries, paid <u>after December 31, 1990</u> [between May 1, 1990 and December 31, 1990], in accordance with the tables filed herein by reference which are obtainable without charge from the Revenue Cabinet, Frankfort, Kentucky, 40601. This material incorporated by refernce may be inspected and copied at the Frankfort office of the Revenue Cabinet located on the fourth floor of the Capitol Annex Building. Inspections may be made at this office and the Taxpayer Service Centers listed below between the hours of 8 a.m. and 4:30 p.m. (local time).

Revenue Cabinet Taxpayer Service Centers

Ashland
1422 Winchester Avenue
P. O. Box 687
Ashland, KY 41105-0687
(606) 329-9982

Bowling Green
1502 Westen Avenue
Bowling Green, KY 42102-2040
(502) 843-5470

Corbin
1707 18th Street, Suite 5
Falls Road Plaza
P.O. Box 1298
Corbin, KY 40702-3298
(606) 528-3322

Frankfort
Capitol Annex Building
Fourth Floor, Room 405
Frankfort, KY 40620
(502) 564-4580

Hazard
233 Birch Street
P. O. Box 419
Hazard, KY 41701-4194
(606) 439-2388

Hopkinsville
Hammond Plaza
P. O. Box 695
Hopkinsville, KY 42241-0695
(502) 887-2521

Lexington
301 E. Main Street, Suite 500
Lexington, KY 40507-1556
(606) 233-3837

Louisville
620 S. Third Street, Suite 102
Louisville, KY 40202-2402
(502) 588-4512

Northern Kentucky
Kentucky Executive Building
2055 Dixie Highway, Room 210
Ft. Mitchell, KY 41011-2648
(606) 292-6603

Owensboro
311 W. Second Street
P. O. Box 628
Owensboro, KY 42302-0628
(502) 686-3301

Paducah
555 Jefferson Street
P. O. Box 2336
Paducah, KY 42002-2336
(502) 444-8148

Pikeville
1279 N. Mayo Trail
Pikeville, KY 41501-8230
(606) 437-4075

C. EMMETT CALVERT, Secretary
APPROVED BY AGENCY: September 13, 1990
FILED WITH LRC: September 14, 1990 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on October 22, 1990 at 10 a.m. at Room 403 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 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. 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: Scott Akers, Revenue Cabinet, Division of Tax Policy and Research, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: This income tax withholding regulation impacts on employers whose income tax withholding is calculated either from the withholding tax tables or the prescribed computer formula. There are 87,296 Kentucky income tax withholding agents and it is estimated that 30,000 calculate income tax withholding from the prescribed tables with the remainder employing computers.

(a) Direct and indirect costs or savings to those affected:

1. First year: Nominal increase.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Initial printing and distribution of revised tax table and instruction booklet will cost an estimated $30,000.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on local revenue and no increase in employee or employer Kentucky tax liability. There is no additional tax withheld under these revised tables and computer formula.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no alternative method. KRS 141.370 requires revised tables to be established by 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:

(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

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:068. Quality enhancement program.

RELATES TO: KRS 325.240

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: [To promulgate administrative regulations of the State Board of Accountancy.] This regulation pertains to the quality enhancement program.

Section 1. Definitions. (1) [(5)] "Issuer" means sole practitioners [individuals], partnerships, professional service corporations, associations or other entities. ["Board" means the State Board of Accountancy of the Commonwealth of Kentucky.]

(2) "Office" means each place of business of a Kentucky practice unit which constitutes a separate geographical location where the practice unit engages in the practice of public accountancy.

(3) "Practice unit" means:

(a) Each certified public accountant or public accountant [as defined in KRS 325.220] engaged in the practice of public accountancy as sole proprietors;

(b) All partnerships, professional service corporations, associations or other entities engaged in the practice of public accountancy; or

(c) All out-of-state certified public accountants or firms of certified public accountants, issued or applying for a temporary permit [pursuant to KRS 325.390(2) for the purpose of enabling such individuals or firms to perform public accounting services in Kentucky].

(4) "Reports" mean [as used in this regulation, refers to] legible copies of an audit, a review and a compilation with disclosures issued by the practice unit in the twelve (12) months prior to submission to the board for [a desk] review. Reports to be submitted shall be year-end financial reports and not interim [quarterly] statements. The reports may have the identity of the client and the issuer obscured or deleted to preserve confidentiality prior to submission to the board for evaluation. The QEP transmittal form, prepared by the board, shall be used to identify the issuer and to forward said reports for review.

(5) [(6)] "Steering committee" means a committee of licensees appointed by the board and a board representative [pursuant to KRS 325.240] which is responsible for the administration [conduct] of the program subject to approval of the board.

(6) [(7)] "Transmittal form," [when used in this regulation, shall] means the document distributed by the board to be used in submitting copies of reports for evaluation or to advise the board that no reports were issued by the practice unit in the prior fiscal year.

Section 2. Report Submission Cycle. (1) [Beginning with renewals of firm registrations and/or individual permits for fiscal year 1987-88,] The quality enhancement program shall

operate on [will adopt] a three (3) year cycle in reviewing reports [for adherence to standards]. One-third (1/3) of all practice units registered with the board shall [will] be selected to submit their reports for evaluation at the time renewal forms are filed with the board.

(2) One-half (1/2) of the remaining practice units shall [will] be assigned to the second year of the three (3) year cycle and the balance scheduled to file reports in the third year of the three (3) year cycle.

(3) Practice units registered or licensed with the board for the first time shall [will not] be expected to file sample reports in the first full fiscal year following initial registration or licensure [until renewal forms are filed for the next fiscal year].

(4) Branch offices of a practice unit which issue reports separately from the main office shall be expected to forward reports during the year in which the main office of the firm is required to submit reports. If the branch office is not responsible for the issuance of reports, such office shall be exempt from the report submission requirements of this program.

(5) Out-of-state practice units shall be required to provide the board with legible copies of an audit, a review and a compilation with disclosures at the time of their application for renewal of the temporary permit and annually thereafter.

(6) Practice units not issuing a type [particular level] of report shall [may] be exempt[ed] from the report submission requirements for that type of report [level] by filing statements to that effect on the QEP transmittal form [prepared by the board].

(7) The three (3) year cycle described in subsections (1) and (2) of this section shall have no effect on the [annual] firm registration and individual permit renewal requirements [specified in KRS 325.330].

(8) A practice unit may qualify for exemption from QEP if there is no pending or unfinished action from the board's program and the practice unit provides a document indicating the practice unit has undergone a quality review, peer review, or other equivalent review during the last three (3) years and has received an "unqualified" opinion. [To assist practice units in complying with the report submission requirements, a reminder notice shall be forwarded prior to the license renewal process.]

(9) An office of a Kentucky practice unit which is affiliated with a national or regional firm that has undergone a peer review, or other equivalent review acceptable to the board during the last three (3) years and has received an "unqualified" opinion shall be exempt from the board's program.

Section 3. [4.] Desk Reviews. (1) Upon receipt of the reports [by the board], file numbers shall [will] be assigned and the QEP transmittal form, containing the identify of the issuer, shall [will] be separated from the report.

(2) A desk review shall [will] be conducted on all reports received and shall [will] consist of an in-depth analysis of the report by a volunteer reviewer, who shall be a permit holder skilled in accounting and auditing and [who] has participated in a training program sponsored by the board.

(3) The initial review and all subsequent reviews shall seek to determine adherence or departure from [lack thereof with]applicable standards of reporting.

(4) Upon completion of the desk reviews, the volunteer reviewer shall submit his comments to the program coordinator and the steering committee for consideration.

(5) Reports determined to contain no deficiencies or only minor deficiencies shall be classified as acceptable. If the steering committee deems it appropriate, suggestions for corrective action may be transmitted to the issuer.

(6) Reports which contain more serious deficiencies such as departures from technical reporting or accounting standards, but are of the type that will not render the statements materially inaccurate or misleading shall be classified as marginal.

(7) Reports which are materially inaccurate or misleading shall [will] be classified as substandard. Such statements violate one (1) or more significant reporting standards, seriously depart from generally accepted accounting principles or do not include material disclosures necessary for fair presentation.

Section 4. [3.] Subsequent Years. (1) Practice units notified that the reports submitted for review were classified as acceptable or marginal shall not be required to submit reports for review for three (3) years.

(2) Practice units receiving a substandard classification on the reports submitted shall be required to submit reports the following year. If the subsequent reports result in an acceptable or marginal classification, the practice unit would then be placed in the three (3) year cycle described in Section 2 of this regulation.

(3) Practice units no longer issuing a type of report[s, as defined in Section 1 of this regulation], shall advise [report that fact to] the state board on the QEP transmittal form and shall [will] be exempt[ed] from the report submission requirements for that particular type [level] of reporting.

Section 5. Steering Committee Critique. (1) The steering committee shall review the comments recorded by the reviewers for materiality and substance and determine what comments shall [will] be forwarded to the issuer.

(2) Following approval by the steering committee, letters of constructive comment and the classification assigned to the report shall be mailed to issuers regarding the [perceived] departures from standards detected in their reports. Such correspondence shall include authoritative citations to support the conclusions drawn. Issuers shall be encouraged to communicate their disagreement with the findings.

Section 6. Disposition of Files. [(1) Issuers of reports deemed by the steering committee to adhere to applicable standards of reporting will be so notified.]

[(2) A response to the letter of constructive comment where the report was classified as marginal will be optional.]

(1) [(3)] Issuers receiving notification that their report was classified as substandard shall be required to respond to the findings, providing documentation to support areas of

disagreement, and proposing means to improve their financial reporting if they agree with the findings of the steering committee.

(2) [(4)] The steering committee shall review responses from the issuers and determine whether or not the areas of disagreement warrant an adjustment in classification or a field review of the supporting workpapers and documentation.

(3) [(5)] The steering committee, or a representative thereof, shall regularly report to the board on the status of the Quality enhancement program, and, where appropriate, recommend that field reviews of workpapers be conducted.

(4) [(6)] If [Should] a field review is [be] deemed necessary, procedures contained in KRS 325.360 shall [will] be followed. The results of the field review of the workpapers and documentation shall be reported to the issuer and to the steering committee. The results shall be the basis for discussion concerning remedies to upgrade the reporting of the practice unit.

(5) [(7)] Failure of a practice unit to submit the reports required by this regulation shall not prevent the annual renewal of an individual permit or a firm registration; but shall [will] result in the initiation of an investigation by the board under KRS 325.360.

RONALD W. TIMMONS, President

APPROVED BY AGENCY: August 24, 1990

FILED WITH LRC: September 13, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 1990 at 2 p.m. at the adminstrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by October 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: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: 600 licensed public accounting firms.

1. First year: Since 1/3 of the practice units are reviewed each year, there are 200 firms affected annually. Since firms who have undergone professinal reviews and received unqualified opinions will now be exempt from the program, the exempt firms will not have the cost of masking and submitting reports.

2. Continuing costs or savings: In subsequent years, the other firms being reviewed will not be required to sumbit reports if exempt under this regulation.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Since this is a reduction of work for accounting firm compliance for those receiving unqualified reviews, it will not impact either positively or negatively on competition.

(b) Reporting and paperwork requirements: Reduced file review, postage and staff time every 3 years.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Of the 200 firms subject to review the first year, it is anticipated that 1/3 will be exempt. This will reduce the time devoted to processing the reports for review and follow-up correspondence to the practitioner. Savings will be realized on postage, stationary, file space, and staff and coordinator time.

2. Continuing costs or savings: The savings outlined in (2)(a)(1) will be realized as the other 1/3 of the practice units become subject to the program each year.

3. Additional factors increasing or decreasing costs: With firms undergoing extensive on-site review through review programs acceptable to the board, it is anticipated that in future years the number of exempt firms will continue to increase.

(b) Reporting and paperwork requirements: The reduction of paperwork is the significant factor is outlined.

(3) Assessment of anticipated effect on state and local revenues: There will not be a change in state revenues and local revenues are not affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Thought was given to exempting any firm which had simply undergone a review regardless of the rating received. This idea was rejected since the board believed it was an improper delegation of authority and those firms not adhering to reporting standards would be exempt from the state program which was undertaken to improve financial reporting.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no overlapping or conflicting statute/regulation.

(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: No

TIERING: Was tiering applied? No. The intent of this requirement is to improve financial reporting for the benefit of all users of financial reports. The issuance of these reports is the basis for the regulation of public accounting in Kentucky and the board believed all CPAs performing this type of work should be subject to some review.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:100. Continuing professional education requirements [for renewal of the permit to practice].

RELATES TO KRS 325.330
STATUTORY AUTHORITY: KRS 325.240
NECESSITY AND FUNCTION: [To promulgate administrative regulations of the State Board of Accountancy of Kentucky.] This regulation pertains to continuing professional education requirements for renewal of the permit to practice public accounting in the state.

Section 1. Definitions. (1) A continuing professional education hour means a fifty (50) minute period excluding meals, breaks and business sessions. For university or college courses, each unit of credit shall equal the following continuing education contact hours: semester hour equals fifteen (15) CPE hours; quarter hour equals ten (10) CPE hours.

(2) The practice of public accounting means anyone performing or offering to perform one (1) or more types of services specified in KRS 325.220(5), even when otherwise employed on a full-time basis in another capacity. [Basic Requirements. Effective for the license period beginning July 1, 1985, and each renewal period thereafter, certified public accountants shall provide evidence to the board of satisfactory completion of twenty (20) hours of acceptable education at the time of application for renewal of the annual permit to practice. All persons holding a Kentucky CPA certificate and renewing their permit to practice annually must comply with the continuing education requirements.]

[(1) An applicant for an initial permit to practice, or a reinstatement as the holder of a permit to practice as a certified public accountant in this state, may be granted a permit on the condition that the applicant agrees to complete, by the next succeeding June 30, a proportionate number of hours of continuing education required for that year. The applicant would be required to complete the two (2) hours per month for the number of full months from the date of application for the permit to the next succeeding June 30.]

[(2) A licensee short of the required continuing education hours at the renewal date may be given an extension of time by the board upon application to the board and presentation of sufficient cause to justify the extension. The board reserves the right to interpret the foregoing with flexibility depending upon the individual circumstances. During the extension period, the licensee must not only make up the deficiency for the preceding reporting period but must also earn towards the requirement for the next reporting period. All licensees still deficient in continuing education requirements at the end of the one (1) year renewal period and the extension will have their permits to practice withheld. If the situation continues the board will consider formal disciplinary action to revoke or suspend the CPA certificate.]

[(3) A licensee who exceeds the reporting requirement may not carry over the excess hours for the next reporting period.]

[(4) Exceptions. Licensees who are retired, disabled or have an individual hardship which precludes them from completing the education requirements will be required to file an affidavit with the board attesting to the difficulty and requesting waiver of the education requirements prior to the expiration of their present license. Formal approval by the board must be secured before the waiver can be assumed to be granted.]

Section 2. Requirements for Continuing Education Credit. (1) At permit renewal on or before July 1, 1991:

(a) Each permit holder shall report to the board successful completion of twenty (20) hours of continuing professional education earned during the 1990 calendar year.

(b) Upon successful completion of the continuing professional education and all other renewal requirements, one-half (1/2) of the licensees shall receive a one (1) year permit to practice; the remaining half shall receive a two (2) year permit to practice.

(2) At permit renewal on or before July 1, 1992:

(a) Each permit holder renewing the one (1) year permit to practice and who engaged in the practice of public accounting at any time during the 1991 calendar year shall report to the board successful completion of forty (40) hours of continuing professional education earned during the 1991 calendar year.

(b) Each permit holder renewing the one (1) year permit to practice who did not engaged in the practice of public accounting at any time during the 1991 calendar year shall report to the board successful completion of thirty (30) hours of continuing professional education earned during the 1991 calendar year.

(3) Effective with permit renewal on or before July 1, 1993 and subsequent years:

(a) Each permit holder who engaged in the practice of public accounting at any time during the preceding two (2) calendar years shall report to the board successful completion of eighty (80) hours of continuing professional education earned during the preceding two (2) calendar years.

(b) Each permit holder who did not engage in the practice of public accounting at any time during the preceding two (2) calendar years shall report to the board successful completion of sixty (60) hours of continuing professional education earned during the preceding two (2) calendar years.

Section 3. Each permit holder who held a certificate and a permit to practice for less than a full two (2) year permit period shall be required to obtain three (3) hours of continuing professional education for each full month a permit was held.

Section 4. Requests for Extensions of Time to Complete Continuing Professional Education Requirements. (1) A request for an extension shall be in writing, state sufficient cause supported by attached statements from physicians or other appropriate sources, and be submitted with the rewal fee.

(2) Sufficient cause means medical, psychological, financial or personal problems which have prohibited the permit holder from obtaining the necessary continuing education hours. Extensions may not be granted because of heavy workloads or desire to attend a later

course.

(3) Following a review of the request, a ninety (90) day extension until September 30 may be given and a new permit shall be issued. The permit holder shall submit documentation or certify course completion on or before September 30.

(4) No further extensions may be granted.

Section 5. Waivers From Continuing Professional Education. (1) The request for a waiver from the continuing professional education requirements shall be submitted on a form provided by the board.

(2) Waivers may be granted by the board if the permit holder meets one (1) of the following:

(a) Is physically or psychologically unable to complete the continuing professional education requirements and submits statements from licensed physicians or other appropriate authorities; or

(b) Has encountered a severe personal hardship which has made it extremely difficult or impossibile to meet the continuing professional education requirements and such hardship has been described in writing on the waiver form; or

(c) Is retired or not performing accounting services for a fee or salary and is fifty-five (55) years of age or older. Retired means cessation of employment from the practice of public accounting or employment in government, education or industry with the exception of managing personal assets or investments.

(3) The board shall respond in writing, accepting or rejecting all waiver requests. Rejections shall specify the reasons for the rejection.

(4) All permit holders granted waivers shall reaffirm the basis of the waiver when the permit to practice is next renewed.

(5) If the circumstances which form the basis of the waiver change, the permit holder shall notify the board within thrity (30) days from the date of the change and resume compliance with the continuing professional education requirements from the date of the change.

Section 6. [2.] Programs Which Qualify. (1) The overriding consideration in determining whether a specific program qualifies as acceptable continuing education shall [is that it] be whether it is a formal program of learning which contributes directly to the professional competence of an individual licensed to practice as a certified public accountant in this state. [The board may look to recognized state or national organizations for assistance in interpreting the acceptability of and credit to be allowed for individual courses.]

(2) Continuing professional education programs may [will] qualify only if:

(a) An outline of the program is prepared in advance and preserved; and

(b) The program is at least one (1) continuing professional education hour in length; and [hour (fifty (50) minute period) in length excluding meals and business sessions;]

(c) The program is conducted by a qualified instructor. A qualified instructor or discussion leader means [is] anyone whose background training, education or experience makes it appropriate for him to lead a discussion on the subject matter of the particular program; and

(d) A record of registration or attendance is maintained and a course completion document is given to the attendee.

(3) Acceptable subject matter.

(a) The following general subject matters are acceptable if [so long as] the programs meet the criteria established by this regulation: accounting and auditing; taxation; management services; computer science; communication arts; mathematics; statistics; probability and quantitative applications in business; economics; business law, functional fields of business - finance, production, marketing, personnel relations, business management and organizations; specialized areas of industry (i.e., real estate, farming, etc.); administration practice (i.e. [e.g.], engagement letters, personnel, etc.).

(b) Areas other than those listed in paragraph (a) of this subsection [above] may be acceptable if the permit holder [registrant] can demonstrate that they contribute to his professional competence. The responsibility for substantiating that a particular program is acceptable and meets the requirements rests solely upon the registrant.

(4) Acceptable programs. The following group programs qualify for credit if they meet the standards specified in this regulation: professional education and development programs of national, state and local accounting organizations; technical sessions at meetings of national, state and local accounting organizations and their chapters; university or college courses (both credit and noncredit courses); formal in-firm education programs; programs of other organizations (accounting, industrial, professional, etc.); and firm meetings for staff or management groups which are structured as formal education programs. Portions of such meetings devoted to the communication and application of general professional policy or procedure may qualify. However, portions devoted to firm administrative, financial and operating matters shall [would] not qualify.

(5) Formal individual study programs. The amount of credit to be allowed for correspondence and formal individual study programs, [(]including taped study programs, shall [) is to] be recommended by the program sponsor based upon one-half (1/2) the average completion time under appropriate field tests. Permit holders [Applicants] claiming credits for such correspondence or formal individual study courses shall [are required to] obtain evidence of satisfactory completion of the course from the program sponsor. Evidence of satisfactory completion in this section means a [is defined as] sponsor verification of completion of a workbook or examination on the subject matter. Credit shall [will] be allowed in the renewal period in which the course was completed.

(6) Service as lecturer, discussion leader, or speaker. Instructors, discussion leaders and speakers may claim continuing professional education credit for both preparation and presentation time. Credit may be claimed for actual preparation time up to two (2) times the class contact hours. Credit as an instructor, discussion leader or speaker may be claimed if [provided that] the session is one which would meet the continuing professional education requirements of those attending. No credit shall [will] be granted for repetitious presentations of group programs. Maximum credit for such preparation and teachings shall not exceed sixty

(60) percent of the renewal period requirement.

(7) Published articles, books. Credit may be awarded for published articles [and/]or books provided they contribute to the professional competence of the individual. Credit for preparation of such publications may be given on a self-declaration basis up to twenty-five (25) percent of the total education hours required. In exceptional circumstances, a permit holder [an applicant] may request additional credit by submitting the article or book to the board with an explanation of the circumstances which he feels justifies a greater credit. The board shall [will] determine the amount of credit to be granted [or such exercise].

Section 7. [3.] Reporting and Controls. (1) Primary responsibility for documenting the requirements rests solely with the permit holder [licensee], and evidence to support fulfilling those requirements shall [must] be retained for a period of five (5) years after completion of educational courses.

(2) The board shall [will] verify on a test basis, information submitted by permit holders [licensees] for renewal of their permit to practice.

(3) If an application for permit [license] renewal is not approved, the permit holder shall [applicant will] be [so] notified and he may be granted a period of time by the board in which to correct the deficiencies noted. Permit holders shall [Licensees will] provide a statement of completion of the required education requirements under penalty of perjury on forms designated by the board.

(4) Course completion evidence shall be a document indicating participation in a formal program of learing which includes:

(a) Name of sponsor; and

(b) Title and description of course content; and

(c) Dates attended; and

(d) Location; and

(e) Number of continuing professional education contact hours.

Section 8. Preapproved Continuing Professional Education Sponsors. (1) [(2) Sponsors.] All program sponsors [of programs] may preregister with the board on an advance approval form which constitutes an agreement between the sponsor and the board that [.] the programs sponsored shall [will] conform to the continuing professional education regulations [rules and policies of the board]. All programs and subject areas not covered by this regulation shall [must] have separate approval by the board. Detailed records of each program shall [must] be kept by the sponsor which shall [. The records will] include:

(a) The date and location of the program presentation; and

(b) The names of each instructor or discussion leader; and

(c) A listing of licensees attending each program presentation; and

(d) A written outline of the program presentation.

(2) [These] Records shall [must] be kept by the sponsor for a period of five (5) years following the date each program is presented.

The sponsors of approved programs may advise attendees of such approval and the number of hours of continuing education credit allowable.

(3) The failure by sponsors to comply with the regulations [rules and policies] of the board may result in revocation of approval of programs and such action may be made public to all permit holders [licensees]. The board may select an advisory committee on continuing education and request permit holders to [licensees] participate as members in the capacity of offering advice on the acceptability of such programs.

(4) Sponsors who have been approved for the Continuing Professional Education Registry of the National Association of State Boards of Accountancy may be considered as approved sponsors for the purposes of this regulation.

RONALD W. TIMMONS, President

APPROVED BY AGENCY: August 24, 1990

FILED WITH LRC: September 13, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 1990 at 2 p.m. at the adminstrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by October 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: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher

(1) Type and number of entities affected: 4,016 certified public accountants (CPAs).

(a) Direct and indirect costs or savings to those affected:

1. First year: No additional costs.

2. Continuing costs or savings: CPAs in public accounting will be required to obtain 40 additional hours of continuing professional education during a 2 year period; CPAs not engaged in public accounting will be required to obtain 20 additional hours of continuing professional education during a 2 year period. (The current requirement is 20 hours per year.) The cost per individual will vary from $0 - $35 per continuing professional education hour. Actual cost will depend on which course the participant selects to attend.

3. Additional factors increasing or decreasing costs (note any effects upon competition): 50% of the licensees will not be increading education costs since federal auditing requirements and professional group requirements mandate more than 20 hours of continuing professional education on an annual basis.

(b) Reporting and paperwork requirements: The change of reporting periods from fiscal to calendar years will decrease recordkeeping costs since the practitioner must keep other education

records on an annual basis.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No savings.
2. Continuing costs or savings: After implementatin period, the change from annual to biennial will reduce by half the costs for processing and producing permit renewal cards.
3. Additional factors increasing or decreasing costs: There are no other factors.
(b) Reporting and paperwork requirements: The reporting and paperwork requirements will be reduced by half on an annual basis.
(3) Assessment of anticipated effect on state and local revenues: There will not be a change in state revenues and local revenues are not affected.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No other methods were considred because of the statutory mandate and educational attainments of 91% of the CPAs annually.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no overlapping or conflicting statute/regulation.
(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: No
TIERING: Was tiering applied? Yes. Continuing professional education is to require all certified public accountants to maintain current knowledge of all accounting, auditing, and taxation issues. While this is necessary for all CPAs, it is of the most importance when a CPA is holding himself out to the public to perform or offering to perform public accounting services as descreibed in KRS 325.220. Therefore, those CPAs engaged in public accounting are required to obtain 20 more hours per biennium than their peers not engaged in public accounting. The board believes that this tiering provides assurance to the public that CPAs are maintaining an adequate knowledge base, while not penalizing those not engaged in the practice of public accounting.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:044. Taking of migratory wildlife.

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

Section 1. Seasons. (1) Doves: September 1 through September 30; October 6 [7] through October 29 [30]; December 1 through December 6.
(2) Woodcock: October 1 through December 4.
(3) Common snipe: October 1 through December 4.
(4) Wood duck: September 12 [6] through September 16 [10].

Section 2. Limits.

Species	Bag Limits	Possession Limits
Doves	15	30
Woodcock	5	10
Common snipe	8	16
Wood ducks	2	4

The possession limit is double the daily bag limit.

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

Section 4. Shooting Hours. (1) Doves: from 11 a.m. until sunset during the period September 1 through September 30 and October 6 [7] through October 29 [30]; from sunrise to sunset during the period December 1 through December 6.
(2) Common snipe and woodcock: from one-half (1/2) hour before sunrise to sunset.
(3) Wood duck: from one-half (1/2) hour before sunrise to sunset.

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

Section 6. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this regulation apply to the following areas:
(1) Ballard Wildlife Management Area, located in Ballard County.
(a) Doves: September 1 through September 30; and October 6 [7] through October 13 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.
(b) Woodcock and snipe: seasons closed.
(2) West Kentucky Wildlife Management Area, located in McCracken County.
(a) Doves: September 1 through September 30; and October 6 [7] through October 13 only.
(b) Woodcock and snipe: hunting permitted on tracts 2, 3, 6, and 7 only.
(c) All tracts designated by numbers followed by the letter "A" are closed to hunting.
(3) Central Kentucky Wildlife Management Area, located in Madison County.
(a) Doves: September 1 through September 30; and October 6 [7] through October 13 only.
(b) Woodcock and snipe: seasons closed.
(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.
(a) Doves: September 1 through September 30

and December 1 through December 6 only.
(b) Woodcock and snipe: December 1 through December 4 only.
(5) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties.
(a) Doves: postwide from September 1 through September 21 [22] and December 1 through December 6 [4]. On designated areas only from September 22 through October 6 [October 7 through October 30].
(b) Woodcock: postwide from November 22 [23] through December 3 [8] and January 3 [4] through January 27 [29]. On designated areas only from December 4 [9] through December 31.
(c) Snipe: postwide from [September 1 through September 22,] November 22 [23] through December 3 [8] and January 3 [4] through January 31 [29]. On designated areas only from December 4 [9] through December 31.
(d) September wood duck: September 13 [6] through 16 [10] only. Hunting permitted during these permits in designated areas only.
(6) Paintsville Lake Wildlife Management Area located in Johnson and Morgan counties and Dewey Lake Wildlife Management Area located in Floyd County.
(a) Doves: September 1 through September 30; and October 6 through October 13 only.
(b) Wood duck: September 12 through September 16.
(7) [(6)] Closed areas:
(a) The hunting of doves, woodcock, and common snipe[, and ducks] is prohibited on Camp Webb Refuge Area, Grayson Lake. [the following wildlife management areas: that portion of Grayson Lake Wildlife Management Area west of KY 1496 and east of the area formed by the line created by Bruin Creek and that section of the Little Sandy River (Grayson Lake) extending north from the confluence of Bruin Creek; Beaver Creek Wildlife Management Area, including all private in-holdings, located in Pulaski and McCreary Counties; Robinson Forest Wildlife Management Area, located in Breathitt, Perry, and Knott Counties; Redbird Wildlife Management Area, including all private in-holdings, located in Leslie and Clay Counties; Cane Creek Wildlife Management Area, including all private in-holdings, located in Laurel County; and Mill Creek Wildlife Management Area, located in Jackson County.]
(b) Waterfowl hunting is prohibited on the following areas on Grayson Lake: the Camp Webb Refuge Area; the area north of Rosedale Point, Deer Creek Fork, west of Route 1496; within fifty (50) yards of the State Park shoreline.

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

Section 8. Use of Steel Shot. Except for the areas requiring use of steel shot identified in subsections (1) and (2) of this section, all provisions of 301 KAR 3:080, Prohibition of lead shot for waterfowl and dove hunting, apply.
(1) Western steel shot zone. That area of Western Kentucky west of an eastern boundary described by the lines and/or roads as follows: The Purchase Parkway from Fulton, Kentucky, on the Kentucky-Tennessee border northeast to the Interstate 24 - Purchase Parkway junction; northeast on I-24 to the Lyon County line; then on a line including all of Lyon, Caldwell and Hopkins Counties to Fredonia; north from Fredonia on US 641 to US 60 at Marion; north on US 60 to the Union County line; northeast and north along the Union County Henderson County lines to the Indiana-Kentucky border north of Newman, Kentucky.
(2) Bracken and Oldham Counties.

DON R. McCORMICK, Commissioner
RON GENTRY, Secretary
DAVID GODBY, Chairman
APPROVED BY AGENCY: August 22, 1990
FILED WITH LRC: August 22, 1990 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1990 at 9 a.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 October 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: 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 90,000 persons will participate in the migratory bird hunting proposed by this regulation.
(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp and a state waterfowl stamp if hunting waterfowl. Indirect costs would be determined by the hunter, depending on his level of participation. Steel shot will be required in two additional counties and half of another this year. Steel shot costs approximately $2 more per box of 25 shells than does lead shot.
1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license ($8.50 for residents) unless exempt by regulations. Waterfowl hunters would be required to possess a $12.50 federal migratory bird hunting and conservation stamp and a $5.25 state waterfowl stamp.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Raondomly selected waterfowl hunters will be asked to report their hunting success by completing and mailing a Kentucky Waterfowl

Survey in a postage paid envelope.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $140,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The results of the waterfowl harvest survey will be tabulated and reported to the U.S. Fish and Wildlife Service in accordance with experimental hunting season agreement.

(3) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about $70 a season on food, lodging, transportation and equipment. This will add about $6,300,000 to the income of local businesses.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Only one class of citizen, the hunter, is impacted by this regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.

3. State the aspect or service of local government to which this administrative regulation relates. This activity relates to KRS Chapter 150.

4. How does this administrative regulation affect the local government or any service it provides? Hunting encourages spending by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 55, No. 132, Thursday, July 10, 1990.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Woodcock - season frameworks between September 1, 1990, and January 31, 1991, with a 65 day maximum season. Bag limits may be a maximum of 5 per day with 10 in possession. Wood duck - season frameworks allow 5 days in September. Bag limits may be two daily with 4 in possession. Dove - season frameworks allow either 70 or 60 days between September 1, 1990, and January 15, 1991. Bag limits may be either 12 per day with 24 in possession for the 70 day season or 15 per day with 30 in possession for the 60 day season.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:140. Seasons for wild turkey.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.175, 150.305, 150.320, 150.330, 150.360, 150.365, 150.390

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation pertains to seasons and limits for wild turkey. The commissioner with the concurrence of the commission finds this regulation necessary for the continued protection and conservation of wild turkey populations and to insure a permanent and continued supply for present and future residents of the state. The function of this regulation is to provide for the prudent taking of wild turkeys within reasonable limits based upon an adequate supply. This amendment is necessary to designate currently appropriate turkey hunting seasons for specific counties and wildlife management areas.

Section 1. Seasons and Counties Open to Wild Turkey Hunting. (1) Zone A, third Wednesday in April for fourteen (14) consecutive days in Adair north of the Cumberland Parkway, Allen east of Highway 31E, Anderson west of Highway 127, Ballard, Bell, Boyle south of Highway 37 and west of Carpenter Fork Road, Bullitt south

of Salt River, Butler, Caldwell east of Highway 139, Calloway south of Highway 94, Casey west of Highway 127, Christian, Edmonson, Grayson except east of Highway 259 and north of West Kentucky Parkway, Green north of Highway 569, Harlan, Hart west of Highway 31E, Hopkins south of Highway 70, Larue northeast of Highway 210, Letcher, Livingston, Logan north of Highway 106, Marion west of Highway 527, McCreary north of Highway 92, Monroe south of Highway 100, Muhlenberg except north of Highway 70 and east of Highway 431, Nelson west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown, Pike south of Elkhorn Creek, Pulaski south of the Cumberland River, Pulaski south of Highway 80 and east of Buck Creek, Taylor northwest of gas lines at Saloma, Todd east of Highway 181, Trigg south of Highway 68, Warren southwest of the Green River Parkway and northwest of Highway 80, and Wayne southeast of Highway 90 and northwest of Highway 92. [Zone A, second Wednesday in April for nineteen (19) consecutive days in Ballard, Bell, Boyle south of Highway 37 and west of Carpenter Fork Road, Bullitt east of I-65 and south of Highway 480, Butler east of Green River Parkway, Caldwell east of Highway 139, Calloway south of Highway 94 and east of Highway 641, Casey west of Highway 127, Christian, Harlan, Hopkins south of Highway 70, Larue north of Highway 84, Letcher, Livingston south of the Cumberland River, Logan west of Highway 431, Marion east of Highway 337, McCreary north of Highway 92, Nelson west of Highway 31E, Pike south of Elkhorn Creek, Pulaski south of the Cumberland River, Todd east of Highway 181, Trigg south of Highway 68.]

(2) Zone B, third Wednesday in April for seven (7) consecutive days in Bath south of I-64, Boyd south of I-64, Breathitt east of Highway 15 and south of Highway 30, Breckinridge northwest of Highway 79, Carlisle except south of Highway 62 and east of Highway 51, Carroll west of the Kentucky River, Carter north of I-64, Fulton, Graves, Greenup west of Highway 7, Hancock east of Highway 69, Henderson west of Highway 41, Hickman west of Highway 51, Jackson north of Highway 30, Knott north of Highway 80, Laurel west of I-75, Lewis east of Highway 59, Lyon south of I-24, Marshall, McCracken, McCreary south of Highway 92 and west of Highway 27, Meade northwest of Highway 79, Menifee north of Highway 460 and east of Highway 36, Owen west of Highway 127, Owlsey north of Highway 30 and west of Highway 399, Perry north of Highway 80 and east of Highway 15, Rowan north of I-64, Russell west of Highway 127 and south of Highway 92, Trimble east of Highway 421, Union. [Zone B, second Wednesday in April for seven (7) consecutive days in Adair north of the Cumberland Parkway, Allen east of Highway 31E, Anderson west of Highway 127, Boyd south of I-64, Breathitt east of Highway 15 and south of Highway 30, Breckinridge south of Highway 60 and west of Highway 259, Carroll west of the Kentucky River, Carter north of I-64, Grayson west of Highway 259, Greenup west of Highway 7, Hancock east of Highway 69, Hart south of Highway 88 and west of I-65, Henderson west of Highway 41, Jackson north of Highway 30, Knott north of Highway 80, Laurel west of I-75, Lewis east of Highway 59, Lyon south of I-24, Marshall southwest of Highway 68, McCreary south of Highway 92 and west of Highway 27, Meade northwest of Highway 79, Muhlenberg south of the West Kentucky Parkway, Owen west of Highway 127, Perry north of Highway 80 and east of Highway 15, Pulaski south of Highway 80 and east of Buck Creek, Rowan north of I-64, Russell west of Highway 127 and south of Highway 92, Trimble east of Highway 421, Union, Warren southwest of the Green River Parkway and northwest of Highway 80, Wayne southeast of Highway 90 and northwest of Highway 92, Webster east of Highway 41A.]

(3) Fall either sex archery only season from October 1 through October 31 in Ballard except Ballard Wildlife Management Area north of Terrell Landing Road, Bullitt south of the Salt River, Butler, Caldwell east of Highway 139, Calloway south of Highway 94, Christian, Hopkins south of Highway 70, Larue northeast of Highway 210, Logan north of Highway 106, Muhlenberg except north of Highway 70 and east of Highway 431, Nelson west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown, Todd east of Highway 181, Trigg south of Highway 68. [Fall either sex archery only season from October 1 through October 31 in Ballard, Bullitt east of I-65 and south of Highway 480, Butler east of Green River Parkway, Caldwell east of Highway 139, Christian, Hopkins south of Highway 70, Larue north of Highway 84, Logan west of Highway 431, Nelson west of Highway 31E.]

(4) All other counties and portions of counties are closed to wild turkey hunting except as specified in Section 4 of this regulation.

Section 2. Bag and Possession Limits. (1) No more than two (2) turkeys with visible beards per hunter per spring season shall be taken with the following restrictions: no more than one (1) turkey per day shall be taken, no more than two (2) turkeys shall be taken in Zone A, and no more than one (1) turkey shall be taken in Zone B.

(2) No more than one (1) turkey shall be taken in the fall.

(3) No more than three (3) turkeys shall be taken in any calendar year.

Section 3. Requirements and Restrictions. (1) The use of dogs is prohibited.

(2) All turkey hunters shall have in their possession a valid wild turkey permit and a valid annual Kentucky hunting license, unless exempted by KRS 150.170(3), (5), (6), [or] (7), or (8).

(3) Turkey shall be taken only from one-half (1/2) hour before sunrise until 1 p.m. During fall seasons, turkey may be taken only during daylight hours.

(4) Turkey may be taken with the aid of hand or mouth operated calls. Electronic calls are prohibited.

(5) Shotguns no larger than ten (10) gauge or no smaller than twenty (20) gauge are the only firearms which shall be used or possessed while turkey hunting. Only Number 4 shot or smaller shall be used. Shot larger than Number 4 or slugs shall not be possessed while turkey hunting.

(6) Longbows, recurve and compound bows which do not have devices to hold an arrow at full draw without human aid are the only archery equipment which shall be used. Only barbless arrows without chemical treatment or chemical attachments, with broadhead points at least seven-eighths (7/8) inch wide are permitted.

(7) The hunter shall attach the transportation

tag to the turkey immediately after taking. Any hunter harvesting a wild turkey shall have it checked at the nearest check station or by the nearest available conservation officer [no later than 5 p.m.] on the day the turkey is taken except as required on specified wildlife management areas. The hunter shall 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 turkey is processed. A completed state, Fort Campbell, or Land Between the Lakes game check card shall be attached to and remain with any turkey taken to a taxidermist. Turkeys shall be checked before being transported out of the state.

(8) Turkeys may be taken with the aid of decoys. Live turkeys shall not be used as decoys.

(9) Turkeys shall not be hunted on any baited area. A baited area means any area where feed, grains or any other substances capable of luring wild turkeys have been placed. Such areas shall be considered baited for ten (10) days following the complete removal of all bait. This does not prohibit hunting wild turkeys on any areas where grains, feed or other substances exist as the result of bona fide agricultural practices, or as the result of manipulating a crop for wildlife management purposes, provided that manipulation for wildlife management purposes does not include the placing or scattering of grain, feed or other substances once removed from or stored on the field where grown.

(10) Turkeys shall not be hunted from boats.

(11) All hunters less than eighteen (18) years of age shall be accompanied by an adult who [and] shall maintain reasonable control of the underage hunter at all times. [remain under control of that adult at all times. All turkey hunters born after 1972 shall have completed a hunter safety course and shall have a valid hunter safety certificate in their possession while hunting.]

(12) Indiana residents are prohibited from turkey hunting in Kentucky.

(13) Turkeys shall not be taken by any means other than those specified in this regulation.

Section 4. Seasons and Exceptions on Wildlife Management Areas. All provisions of this regulation apply unless otherwise specified in this section.

(1) Fort Knox Wildlife Management Area located in Hardin, Bullitt and Meade Counties.

(a) Season: all Saturdays and Sundays in [March and] April and the first two (2) Saturdays and Sundays in May.

[(b) Weapons. Muzzle-loading rifles .32 caliber or larger are permitted and 10 gauge shotguns are prohibited. Archery equipment may be used in designated areas only.]

(b) [(c)] Hunters shall check turkeys at French Range Building 9333 by 2 p.m. on the day harvested.

(c) [(d)] Bag limit: one (1) turkey per season.

(d) [(e)] Turkey hunters shall hunt in assigned area(s) only.

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

(a) Season: April 17, 18, 20, 21, 22, 24 through May 7. [11, 12, 14, 15, 16, 18 through May 1.]

(b) Wild turkey shall be taken only in designated areas.

(c) All hunters shall check in and out, shall check any turkey before leaving Land Between the Lakes and shall affix an LBL game check card [tag] to the carcass. State game check cards are not required.

(d) Shooting hours: daylight hours only.

(e) Bag limit: one (1) turkey per season.

(3) Reelfoot National Wildlife Refuge located in Fulton County.

(a) Season: quota hunt April 5, 6, and 7 [and 8].

(b) Bag limit: one (1) turkey per season.

(c) Permit: Reelfoot permit required.

(4) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties.

(a) Season: April 6 [7] through May 12 [7] with no hunting permitted on Tuesdays or Wednesdays.

(b) Permit. A post combination hunting-fishing permit is required.

(c) Shooting hours: daylight hours only.

(d) Bag limit: two (2) [one (1)] turkeys per spring season. Turkeys taken on Fort Campbell do not count against statewide limits and do not have to be tagged.

(e) A Fort Campbell game check card shall be attached to turkeys before leaving post and shall remain on the bird until processed. State game check cards are not required.

(5) Blue Grass Ordnance Depot Activity located in Madison County. Season: third [second] Wednesday in April for fourteen (14) consecutive days.

(6) Ballard Wildlife Management Area in Ballard County is closed to turkey hunting, except that portion south of Terrell Landing Road.

(7) Swan Lake Wildlife Management Area in Ballard County is closed to turkey hunting.

(8) Higginson-Henry Wildlife Management Area located in Union County. Season: archery only. April 17 [11] through May 5 [30] and either sex, October 1-31. Hunters must check in and check out daily. Bag limit: one (1) turkey per season.

(9) Robinson Forest Wildlife Management Area in Breathitt and Knott counties is closed to turkey hunting.

(10) West Kentucky Wildlife Management Area in McCracken County is closed to turkey hunting.

(11) Pioneer Weapons Wildlife Management Area in Bath and Menifee Counties.

(a) Season: third Wednesday in April for seven (7) consecutive days.

(b) Bag limit: one (1) turkey per season.

(c) Weapons: Muzzle-loading shotguns only. Breech-loading shotguns are prohibited. Longbows, recurve and compound bows, and crossbows of at least 100 pounds pull with a working safety are permitted.

DON R. McCORMICK, Commissioner
RON GENTRY, Secretary
DAVID GODBY, Chairman
APPROVED BY AGENCY: August 21, 1990
FILED WITH LRC: September 12, 1990 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 31, 1990 at 9 a.m. at the Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 26, 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, Wildlife Division, Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick
(1) Type and number of entities affected: Approximately 6,000 persons will participate in the wild turkey hunting proposed by this regulation.
(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and a wild turkey permit. Indirect costs are determined by the individual hunter, depending 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 wild turkey permit ($15) unless exempt by regulations.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Hunters will be asked to check their turkey at a check station and fill out a tag denoting specific information about the turkey taken.
(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 $80,000.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Approximately 6,000 turkey hunters may be expected to expend money for equipment, transportation, food and lodging. The annual expenditure for these items averages $46 per day of big game hunting according to the 1985 National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to the necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based on the wise use of renewable resources and the fact that wild turkey populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

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. 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.
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 turkey 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.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. <u>These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association.</u> 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 <u>September 14, 1990</u> [June 15], 1990 and hereinafter should be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09 Public Information and News Media Relations
KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-14 Extraordinary Occurrence Report
KSR 01-00-15 Cooperation and Coordination with Oldham County Court
KSR 01-00-19 Personal Service Contract Personnel
KSR 01-00-20 Consent Decree Notification to Inmates
KSR 02-00-01 Inmate Canteen
KSR 02-00-03 Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11 Inmate Personal Accounts
KSR 02-00-12 Institutional Funds and Issuance of Checks
KSR 04-00-02 Staff Training and Development
KSR 05-00-01 Officers' Daily Housing Security and Safety Log
KSR 05-00-02 Research Activities
KSR 05-00-03 Management Information Systems
KSR 06-00-01 Inmate Master File
KSR 06-00-02 Records Audit
KSR 06-00-03 Kentucky Open Records Law and Release of Psychological/ Psychiatric Information
KSR 07-00-02 Institutional Tower Room Regulations
KSR 07-00-04 Handling of PCB Articles and Containers
KSR 07-00-05 Proper Removal of Transformers
KSR 07-00-06 Asbestos Abatement
KSR 07-00-07 Discharge Monitoring Report (DMR)
KSR 08-00-07 Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08 Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery
KSR 08-00-10 Hazardous Chemicals and Material Safety Data Sheet
KSR 09-00-04 Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05 Gate I Entrance and Exit Procedure
KSR 09-00-09 Contraband, Dangerous Contraband and Search Policy
KSR 09-00-14 Use of Force
KSR 09-00-21 Crime Scene Camera
KSR 09-00-22 Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23 Drug Abuse Testing
KSR 09-00-25 Inmate Motor Vehicle Operator's License
KSR 09-00-26 Contraband Outside Institutional Perimeter
KSR 09-00-27 Construction Crew Entry/Exit
KSR 09-00-28 Restricted Areas
KSR 09-00-29 Transportation of Inmates
KSR 09-00-30 Parole Board
KSR 10-00-01 Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records
KSR 10-00-02 Unit D - General Operational Procedures
KSR 10-00-03 Unit D - Inmate Tracking System and Records System
KSR 10-00-04 Unit D - Administrative Segregation
KSR 10-00-05 Unit D - Disciplinary Segregation
KSR 10-00-06 Unit D - Protective Custody
KSR 10-00-07 Unit D - Geriatrics
KSR 10-00-08 Unit D - Safekeepers
KSR 10-00-09 Unit D - Hold Ticket Residents
KSR 10-00-10 Unit D - Inmate Legal Access (Amended 9/14/90)
KSR 10-00-11 Unit D - Behavior Problem Control
KSR 10-00-12 Unit D - Designated Staff Visits
KSR 10-00-13 Unit D - Property Room Access
KSR 11-00-01 Meal Planning for the General Population
KSR 11-00-02 Special Diets
KSR 11-00-03 Food Service Inspections [(Amended 6/15/90)]
KSR 11-00-04 Dining Room Dress Code for Inmates
KSR 11-00-06 Health Standards/Regulations for Food Service Employees [(Amended 6/15/90)]
KSR 11-00-07 Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01 Inmate Summer Dress Regulations
KSR 12-00-02 Sanitation and General Living Conditions
KSR 12-00-03 State Items Issued to Inmates
KSR 12-00-07 Regulations for Inmate Barbershop
[KSR 13-00-01 Identification of Mentally Retarded Inmates (Deleted 9/14/90)]
KSR 13-00-02 Hospital Operations, Rules and Regulations [(Amended 6/15/90)]
KSR 13-00-03 Medication for Inmates Leaving Institution Grounds
KSR 13-00-04 Medical and Dental Care
KSR 13-00-05 Medical Records [(Added 6/15/90)]
[KSR 13-00-06 Infection Control (Amended 6/15/90) (Deleted 9/14/90)]
[KSR 13-00-07 Referral of Inmates Considered to Have Severe Emotional Disturbances (Deleted 9/14/90)]
KSR 13-00-08 Institutional Laboratory Procedures [(Amended 6/15/90)]
KSR 13-00-09 Institutional Pharmacy Procedures
KSR 13-00-10 Requirements for Medical Personnel
KSR 13-00-11 Health Evaluation [(Amended 6/15/90)]
KSR 13-00-12 Vision Care/Optometry Services
KSR 13-00-14 Periodic Health Examinations for Inmates [(Amended 6/15/90)]
KSR 13-00-15 Medical Alert System
KSR 13-00-16 Suicide Prevention and Intervention Program
KSR 13-00-17 Special Care [(Added 6/15/90)]
KSR 13-02-01 Mental Health Services (Added 9/14/90)
KSR 13-02-02 Mentally Retarded Inmates (Added 9/14/90)
KSR 13-02-03 Suicide Prevention and Intervention Program (Added 9/14/90)
KSR 13-02-04 Division of Mental Health's Residential Services (Added 9/14/90)
KSR 14-00-01 Inmate Rights
[KSR 14-00-02 A/C Center and Unit D Inmate Access to Legal Aide Services (Deleted 9/14/90)]
KSR 14-00-04 Inmate Grievance Procedure
[KSR 14-00-05 Inmate Marriages (Deleted 9/14/90)]
[KSR 14-00-06 Inmate Legal Aides (Deleted 9/14/90)]
KSR 15-00-02 Regulations Prohibiting Immate Control or Authority Over Other Inmate(s)
KSR 15-00-04 Restoration of Forfeited Good Time
KSR 15-00-05 Differential Status for SU (QUIT) Inmates
KSR 15-00-06 Inmate I.D. Cards
KSR 15-00-07 Inmate Rules and Discipline - Adjustment Committee Procedures

KSR 15-00-08	Firehouse Living Area
KSR 15-00-10	Program Services for Special Housing Placement
KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
KSR 15-01-02	Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures
KSR 15-01-03	Inmate Rules and Regulations [(Amended 6/15/90)]
KSR 15-01-04	Institutional Medical and Fire Safety Service: Unit Application
KSR 15-01-05	Institutional Inmate Services
KSR 15-01-06	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Housing Criteria and Regulations, Honor Status and General Population [(Amended 6/15/90)]
KSR 16-00-01	Visiting Regulations (Amended 9/14/90)
KSR 16-00-02	Inmate Correspondence and Mailroom Operations
KSR 16-00-03	Inmate Access to Telephones
KSR 17-00-03	Notifying Inmates' Families of Admission and Procedures for Mail and Visiting
KSR 17-00-05	Dormitory 10 Operations (Amended 9/14/90)
KSR 17-00-06	Identification Department Admission and Discharge Procedures [(Amended 6/15/90)]
KSR 17-00-07	Inmate Personal Property
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification and Special Notice Form
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations
KSR 20-00-01	Vocational School Referral and Release Process
KSR 20-00-03	Academic School Programs
KSR 20-00-04	Criteria for Participation in Jefferson Community College Program
KSR 20-00-08	Integration of Vocational and Academic Education Programs
KSR 21-00-01	Legal Aide Office and Law Library Services and Supervision (Amended 9/14/90)
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Unit D
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate News Magazine
KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03	Religious Programming
KSR 25-00-01	Discharge of Residents to Hospital or Nursing Home
KSR 25-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03	Preparole Progress Report

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: September 14, 1990

FILED WITH LRC: September 14, 1990 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 23, 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: 569 employees of the Kentucky State Reformatory, 1367 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on

September 14 [July 13], 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
SP 050000-14	Searches and Preservation of Evidence
KSP 060000-01	Special Security Unit
KSP 060000-02	Special Management Units: Assignment, Classification Review and Release
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
KSP 090000-03	Correctional Industries
KSP 100000-02	Visiting Program
KSP 100000-03	Disposition of Unauthorized Property
KSP 100000-04	Inmate Grooming and Dress Code
KSP 100000-05	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 100000-06	Inmate Mail and Packages
KSP 100000-07	Inmate Telephone Access
KSP 100000-08	Behavioral Counseling Record (Amended 9/14/90)
KSP 100000-09	Due Process/Disciplinary Procedures
KSP 100000-11	Authorized and Unauthorized Inmate Property
KSP 100000-14	Property Room: Clothing Storage and Inventory
KSP 100000-15	Uniform Cell Standards for Fire Safety, Sanitation and Security
KSP 100000-18	Inmate Grievance Committee Hearings
KSP 100000-20	Legal Services Program
KSP 100000-21	Photocopies for Nonindigent Inmates with Special Court Deadlines
KSP 110000-04	Preparole Progress Report
KSP 110000-06	General Guidelines of the Classification Committee
KSP 110000-07	Statutory Good Time Restoration
KSP 110000-08	Award of Meritorious Good Time
KSP 110000-10	Special Needs Inmates
KSP 110000-12	Unit Classification Committee - Inmate Work Assignments
KSP 110000-13	Classification Document
KSP 110000-14	Vocational School Placement
KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-16	Consideration of Further Treatment Requirements for Inmates Prior to Release
KSP 110000-18	Functions of the Classification Committee
KSP 120000-04	Academic Education
KSP 120000-07	Community Center Program
KSP 120000-08	Inmate Furloughs
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 120000-31	Extended Furloughs
KSP 120000-32	Discharge of Inmates by Shock Probation
KSP 130000-10	Execution Plan

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: September 14, 1990
FILED WITH LRC: September 14, 1990 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 23, 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: 356 employees of the Kentucky State Penitentiary, 629 inmates, and all visitors to state correctional institutions.
(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: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

TRANSPORTATION CABINET
Office of Minority Affairs
(Proposed Amendment)

600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises.

RELATES TO: KRS Chapters 96A, 174, 176, 177, 183, 13 CFR 121.1-121.3, 49 CFR 23

STATUTORY AUTHORITY: KRS 13A.120, 174.080, 49 CFR 23

NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program to support the fullest possible participation of firms or business enterprises owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program of certification of disadvantaged, minority and women business enterprises. This administrative regulation establishes the procedures and criteria for the Transportation Cabinet's certification program.

Section 1. Definitions. (1) "Applicant" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification as a disadvantaged, minority or women business enterprise.

(2) "Approval" means that the applicant meets disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(3) "Certification" means the process whereby the Transportation Cabinet determines if an applicant meets disadvantaged, minority or women business enterprise or joint venture criteria.

(4) "Challenge" means an action of a third party which takes issue with the socially and economically disadvantaged status of certified disadvantaged business enterprise program participants or applicants for DBE certification.

(5) "Decertified" means that a firm or business enterprise which has been certified by the Transportation Cabinet which certification has not expired, as a disadvantaged, minority or women business enterprise or joint venture has been determined to be ineligible and is, therefore, no longer entitled to the rights and privileges accorded to those who are certified by the Transportation Cabinet as a disadvantaged, minority or women business enterprise or joint venture.

(6) "Denial" means that the applicant does not meet disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(7) "Disadvantaged business enterprise" or "DBE" means a small business concern as defined pursuant to Section 3 of the Small Business Act and implementing regulations:

(a) Which is at least fifty-one (51) percent owned by one (1) or more socially and economically disadvantaged persons; or, in the case of any publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more socially and economically disadvantaged individuals; and

(b) Whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.

(8) "Joint venture" means an association of two (2) or more businesses to perform a specified business contract for profit for which purpose the businesses combined their property, capital, efforts, skills and knowledge.

(9) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa);

(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);

(d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);

(e) American Indian and Alaskan native (a person having origins in any of the original peoples of North America); or

(f) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(10) "Minority business enterprise" or "MBE" means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one (1) or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

(a) Which is at least fifty-one (51) percent owned by one (1) or more minorities or women or, in the case of a publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more minorities or women; and

(b) Whose management and daily business operations are controlled by one (1) or more such individuals.

(11) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the application form.

(12) "On-site inspection" means conducting an interview with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities.

(13) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women and any other minorities or individuals

found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. The Transportation Cabinet rebuttable presumption that individuals listed in the groups below are socially and economically disadvantaged. The Transportation Cabinet also may determine, on a case-by-case basis, that individuals who are not a member of one (1) of the following groups are socially and economically disadvantaged:

(a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

(b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians;

(d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

(e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

(f) "Women."

(14) "Women business enterprise" or "WBE" means a disadvantaged or minority business enterprise which is owned and controlled by one (1) or more women.

Section 2. 49 CFR 23 effective May 23, 1988 is adopted without change. This regulation governs the federal Department of Transportation's and the Kentucky Transportation Cabinet's relationship with and responsibility to each other in the DBE/MBE/WBE Program. It further sets forth the basic requirements which the Transportation Cabinet shall impose on firms desiring certification.

Section 3. Application Process. (1) Application for certification as a DBE, MBE, or WBE shall be made on forms prescribed and furnished by the Transportation Cabinet. Each application form shall be completed in full. All documentation required by the application shall be attached to the completed application. The person signing the application shall identify his position with the business enterprise applying for certification. The completed application shall be submitted to the Transportation Cabinet, Office of Minority Affairs.

(2) If the application is not complete, the Office of Minority Affairs shall return the application to the applicant firm requesting that the omitted information be included. An incomplete application shall not be considered by the Office of Minority Affairs.

(3) The Office of Minority Affairs shall perform an on-site inspection of the offices and any job sites in Kentucky on which the firm is working at the time of the application evaluation of any new applicant. Failure of the applicant firm to participate in the on-site inspection shall be sufficient cause for the Office of Minority Affairs to deny the application.

(4) An out-of-state applicant as a prerequisite to consideration of certification by the Office of Minority Affairs shall be certified as a DBE, MBE or WBE by the state transportation agency responsible for certifying firms under 49 CFR Part 23 in the state in which the firm has residence.

(5) The Office of Minority Affairs may request additional information in order to determine if an applicant firm should be certified. Failure of the applicant firm to provide the requested information shall be cause for the Office of Minority Affairs to deny the application.

Section 4. Evaluation of Application. (1) The Transportation Cabinet, Office of Minority Affairs shall use the eligibility standards set forth in 49 CFR Part 23.53 to determine the eligibility of a firm to be certified or recertified as a MBE. The Office of Minority Affairs shall use the eligibility standards set forth in 49 CFR Part 23.53; 49 CFR Part 23.62; 49 CFR Part 23, Subpart D, Appendix A, Appendix B and Appendix C to determine the eligibility of a firm to be certified or recertified as a DBE or WBE. To be certified a firm shall perform a commercially useful function as set forth in 49 CFR Part 23.47.

(2) The Office of Minority Affairs shall issue a determination of eligibility for certification within ninety (90) days of receipt of a completed application provided that a challenge as set forth in Section 9 of this administrative regulation has not been received.

Section 5. Certification of Applicant Firm. (1) If an application for certification as a DBE, MBE or WBE is approved by the Transportation Cabinet, Office of Minority Affairs and a challenge to the status of a firm from a third party as set forth in Section 9 of this administrative regulation is not received during the time the Office of Minority Affairs is evaluating the application, the notification required by Section 4(2) of this administrative regulation shall be the notice to the applicant firm of certification as a DBE, MBE or WBE.

(2) Certification as a DBE, MBE or WBE is valid for one (1) year from the date of notice of certification.

(3) Records of a certified firm shall be retained for a period of not less than five (5) years from the date of notice of certification.

(4) Certification of a business enterprise shall expire immediately upon any change in ownership or control of the business enterprise. The business enterprise may submit a new application to the Office of Minority Affairs to be considered for certification under the new ownership or control. If, within seven (7) days of the change in ownership or control, the firm notifies the Office of Minority Affairs of the change, the office may extend the expired certification for a brief period of time and with reasonable conditions placed on the firm.

Section 6. Recertification. (1) At least thirty (30) days prior to its certification expiration a certified DBE, MBE or WBE that intends to continue its certification shall submit an application to the Transportation Cabinet, Office of Minority Affairs. The application shall be in the same form and require the same information as in Section 3 of this administrative regulation.

(2) Certification of a DBE, MBE or WBE which has requested recertification at least thirty

(30) days prior to the date of certification expiration shall not expire unless the Office of Minority Affairs denies the request for recertification as set forth in Section 6 of this administrative regulation.

(3) If a firm is notified that its request for recertification is denied and the reasons therefore, the firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days, its request for recertification shall be denied.

(4) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(5) If the Office of Minority Affairs' decision after the predetermination meeting is that the request for recertification shall be denied, the denial shall be effective immediately. However, the firm may appeal that decision in accordance with Section 11 of this administrative regulation.

Section 7. Denial of Certification. (1) If an application for certification as a DBE, MBE, or WBE is denied by the Transportation Cabinet, Office of Minority Affairs, the notification required by Section 4(2) of this administrative regulation shall set forth the reasons for denial.

(2) A denial may be appealed to the Transportation Cabinet within thirty (30) days of the notice. The appeal shall be filed in accordance with Section 11 of this administrative regulation.

(3) An applicant firm may not reapply for certification for one (1) year from the effective date of denial. The effective date of denial shall be the date of the notice if the denial is not appealed. If the denial is appealed and the denial is upheld the effective date of the denial shall be the date of the notice of final action on behalf of the Transportation Cabinet.

Section 8. Decertification. (1) The Transportation Cabinet, Office of Minority Affairs may perform periodic reviews of each certified DBE, MBE or WBE during its certification period to verify continued eligibility of the firm. If the Office of Minority Affairs finds noncompliance with the eligibility criteria or the certified firm fails to provide reasonable information requested by the Office of Minority Affairs as a part of the periodic review, the office may initiate a decertification proceeding.

(2) The Office of Minority Affairs shall notify the certified firm of the pending decertification. The notice shall specify the reasons for the pending decertification. The firm may request a predetermination meeting within ten (10) days of the notice. If the firm fails to request a predetermination meeting within the ten (10) days, it shall be decertified.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(4) If the Office of Minority Affairs' decision after the predetermination meeting is that the firm shall be decertified, the firm may appeal that decision in accordance with Section 11 of this administrative regulation.

(5) The effective date of the decertification is thirty (30) days after the date the notice of decertification is mailed to the firm providing the firm does not appeal the decertification to the Transportation Cabinet. If a firm appeals the decertification, the effective date of the decertification shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation. Decertification shall be for a specific period of time but not less than one (1) year.

Section 9. Challenge of DBE Certification. (1) Any third party may challenge the socially and economically disadvantaged status of any individual, except an individual who has a current 8(a) certification from the Small Business Administration, rebuttably presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the Transportation Cabinet, Office of Minority Affairs as a DBE. The challenge shall be made in writing to the Office of Minority Affairs.

(2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

(3) The Office of Minority Affairs shall determine, on the basis of the information provided by the challenging party, if there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

(4) If the Office of Minority Affairs determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the office shall so inform the challenging party in writing. This terminates the proceeding.

(5) If the Office of Minority Affairs determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the office shall notify the challenged party that his status as a socially and economically and disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the Office of Minority Affairs, within a specified reasonable time, information sufficient to evaluate his status as a socially and economically disadvantaged individual. Failure to provide the requested information within the time limit shall be cause for the DBE to be decertified or to be denied certification.

(6) If the social and economic disadvantaged status of a new applicant is challenged, the challenge proceedings shall be completed prior to completion of the certification.

(7) The Office of Minority Affairs shall evaluate the information available and make a proposed determination of the social and economic disadvantage of the challenged party. The office shall notify both parties of this proposed determination, setting forth the reasons for its proposal.

(8) Either party may request a predetermination meeting within ten (10) days of the date of the notice. If neither party

requests a predetermination meeting within the ten (10) days, the proposed determination of the Office of Minority Affairs shall become the final determination, i.e., the challenged party shall either be decertified or continue to be certified.

(9) The predetermination meeting, if requested, shall be held in accordance with Section 10 of this administrative regulation. However, both parties shall be allowed to attend the meeting or respond in writing to the proposed determination.

(10) In making the determinations called for in subsections (3) and (7) of this section and Section 10 of this administrative regulation as it relates to challenge, the Office of Minority Affairs shall use the standards set forth in 49 CFR Part 23, Subpart D, Appendix C.

(11) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

(12) The decision of the Office of Minority Affairs in subsection (4) of this section or after an appeal and hearing before the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation may be appealed to the United States Department of Transportation, by the adversely affected party to the proceeding under the procedures of 49 CFR Part 23.55.

Section 10. Predetermination Meeting. (1) A predetermination meeting with the Office of Minority Affairs may be requested by any party as set forth in Sections 8 and 9 of this administrative regulation. The request shall be made in writing, signed and dated.

(2) The Transportation Cabinet, Office of Minority Affairs shall schedule the predetermination meeting between five (5) and ten (10) days after receipt of the request for the predetermination meeting. Upon agreement between the Office of Minority Affairs and all affected parties the meeting may be scheduled later than the ten (10) days.

(3) The Office of Minority Affairs shall notify all affected parties in writing of the date, time and location of the predetermination meeting.

(4) The predetermination meeting shall be an informal proceeding. The predetermination meeting shall provide the opportunity for the affected parties to present evidence or arguments, either written or oral, on the matter being considered by the Office of Minority Affairs. The affected parties may be represented by legal counsel.

(5) The Office of Minority Affairs shall render a decision within seven (7) days of completion of the predetermination meeting. In making this decision, the Office of Minority Affairs shall use the standards set forth in Section 4 of this administrative regulation. The affected parties shall be notified of the decision of the Office of Minority Affairs.

Section 11. Appeal and Hearing. (1) Any party in Sections 6(2), 8(4) and 9(10) of this regulation adversely affected by a decision of the Transportation Cabinet, Office of Minority Affairs may appeal that decision within thirty (30) days of the notice of determination. The appeal shall be filed in writing with the Transportation Cabinet.

(2) The Transportation Cabinet shall schedule the hearing on the appeal between fifteen (15) and thirty (30) days after the appeal is received unless otherwise agreed to by all parties.

(3) The Transportation Cabinet shall provide written notice to the appellant of the date, time and location of the hearing.

(4) At the hearing, the hearing officer appointed by the Transportation Cabinet, shall provide an opportunity for the appellant to call witnesses and present evidence and arguments both written and oral as to why the decision of the Office of Minority Affairs should be overturned.

(5) The Office of Minority Affairs shall present evidence at the hearing on the reasons their decision was made. However, the burden of proof is on the appellant.

(6) The hearing officer appointed by the Transportation Cabinet has the authority to issue subpoenas to compel the appearance of witness or the production of other evidence.

(7) The Transportation Cabinet shall provide a stenographer to record all oral testimony at the hearing.

(8) The hearing officer shall prepare a written report setting forth findings of fact, conclusions of law and a recommendation of final action within sixty (60) days of the hearing. The report shall be submitted to the Secretary of the Transportation Cabinet or his appointed designee.

(9) The Secretary shall render the final decision of the Transportation Cabinet within ten (10) days of receipt of the hearing officer's report. A copy of the decision shall be sent by certified mail to the appellant and the Office of Minority Affairs.

(10) An appeal from the Transportation Cabinet's final decision may be made to the United States Department of Transportation in accordance with the provisions of 49 CFR 23.55 and 49 CFR 23 Subpart D, Appendix A, Decertification Procedures.

Section 12. Joint Ventures. (1) Any joint venture which includes a certified DBE, MBE or WBE may apply to be certified as a joint venture eligible to participate in the DBE, MBE or WBE program. Application for certification shall be on forms prescribed and furnished by the Transportation Cabinet. The application procedure, eligibility standards, and certification procedure followed shall be as set forth in this administrative regulation.

(2) Application from a joint venture which includes a disadvantaged, minority or women business enterprise which has not been certified shall not be considered by the Transportation Cabinet.

(3) If all firms involved in the joint venture are certified DBEs, MBEs or WBEs, there is no need for the joint venture to request certification.

Section 13. Additional Program Guidelines. 13 CFR 121.1-121.3, effective July 2, 1990 [March 2, 1987], is adopted without change. The federal regulation sets forth the small business size standards established by the Small Business Administration. These size standards, when less than $15.37 [14] million, are required by 49 CFR Part 23 Subpart D, Appendix A to be used to determine when a firm has graduated from the

certification program, i.e., it is no longer considered to be a small business.

WILLIAM E. COFIELD, SR., Executive Director
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: August 14, 1990
FILED WITH LRC: September 12, 1990 at 1 p.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on October 23, 1990 at 10 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by October 18, 1990 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be accepted until October 18, 1990. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: The size limit was increased by USDOT from $14 million to $15.37 million to take into account both the 1987 and 1988 inflation factors. Therefore, the bigger disadvantagd business can continue to be certified. However, in Kentucky there are no firms certified as disadvantaged which approach the old size limit of $14 million and so there is no impact in Kentucky. The changes to the adopted federal regulations are corrections of typographical errors.
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: Even though there is no substantive change, it is preferable to keep the federal regulations adopted current.
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because large disadvantaged firm from another state may wish to apply for certification in Kentucky.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Tiering was applied by establishing a Disadvantaged Business Enterprise Program.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(Proposed Amendment)

702 KAR 3:010. Guidelines for use of [foundation program] capital outlay funds.

RELATES TO: KRS 156.031, 157.420[(3)(e)]
STATUTORY AUTHORITY: KRS 157.420 [156.070, 156.160]
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS 157.420 allows the chief state school officer to permit a local district with a special levy to use all or a portion of its capital outlay allotment for current expenses. This regulation is necessary to provide guidelines for the use of SEEK [foundation] program capital outlay funds in districts which have a special levy for capital outlay or debt service.

Section 1. A district levying a special voted tax under the provisions of KRS 160.477 or a sinking fund tax under the provisions of KRS 162.080 may, with the approval of the chief state school officer, [Superintendent of Public Instruction] retain all or a proportionate fraction of its SEEK [foundation] program capital outlay fund in the general fund for current expenses.

Section 2. In considering the approval of application to use SEEK [foundation] program capital outlay funds in the general fund, the chief state school officer [Superintendent of Public Instruction] shall ascertain that the local school district presenting the application is making satisfactory progress toward meeting its capital outlay needs as reflected by the latest adopted school facility plan acceptable to the Department of Education.

Section 3. The amount of SEEK [foundation] program capital outlay funds retained in the general fund shall not exceed the amount of revenues produced by the tax levied under KRS 160.477 or 162.080.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Bob Coakley
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected: No change
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 change in paperwork.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No change
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No change in paperwork.
(3) Assessment of anticipated effect on state and local revenues: No change
(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. Applies equally to all districts.

EDUCATION AND HUMANITITES CABINET
Department of Education
Office of School Administration and Finance
(Proposed Amendment)

702 KAR 3:020. Bond issue approval.

RELATES TO: KRS 58.150, 156.031, 156.070, 156.200, 156.210, 162.080 to 162.100, 162.120 to 162.290, 162.300
STATUTORY AUTHORITY: KRS 58.150, 156.070, 162.160, 162.170, 162.180

NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; KRS 58.150 authorizes the State Board for Elementary and Secondary Education to allow local school districts to issue revenue bond anticipation notes as an initial financing mechanism; KRS 156.070 gives the State Board the management and control of the common schools; KRS 156.200 and 156.210 require the chief state school officer [Superintendent of Public Instruction] to receive all reports and supervise all accounts of local boards of education, and to rectify any improper use of school funds; and KRS 162.080 to 162.100, 162.120 to [,] 162.290, and 162.300 set forth methods and authorizations for school districts to finance capital construction projects through bonds. This regulation sets forth procedures for the approval of bond and bond anticipation note issues by school districts.

Section 1. The chief state school officer [Superintendent of Public Instruction] shall determine the financial soundness of all school revenue bond issues. He shall supervise all phases of school revenue and voted bonds.

Section 2. The chief state school officer [Superintendent of Public Instruction] shall disapprove the sale of any school revenue or school voted bond issue which he deems to be not in accord with State Board for Elementary and Secondary Education regulations or financially unsound for the district in question. The chief state school officer [Superintendent of Public Instruction] at the next special or regular meeting of the State Board for Elementary and Secondary Education shall report the terms and conditions of all school revenue or school voted bond sales and certify that such sales were made in accordance with KRS Chapter 162 and the State Board for Elementary and Secondary Education regulations.

Section 3. Fiscal agents shall be registered with the Banking and Securities Commission in the Commonwealth of Kentucky. The local board of education shall select the fiscal agent for the proposed revenue bond issue. The fiscal agent shall employ appropriate bond counsel subject to approval of the local board of education. The allowable discount on bonds shall not exceed two (2) percent of the par value of the issue under contract.

Section 4. Twenty (20) percent of the revenues appropriate for bonding purposes shall be set aside as a safety factor in determining the initial bonding potential of a local district. The chief state school officer [Superintendent of Public Instruction] may allow safety factors below twenty (20) percent to a minimum of ten (10) percent on a case by case basis dependent upon the financial stability of the individual school district. The following sources of revenue are eligible as annual revenues in support of school building revenue bonds or notes:
(1) Utility gross receipts license tax (KRS 160.593);
(2) Occupational income tax (KRS 160.593);

(3) Excise income tax (KRS 160.593);
(4) Special voted building fund ax (KRS 160.477);
(5) General fund ad valorem tax (KRS 160.476);
(6) Facilities support program tax (KRS 157.620) [Power equalization levy (KRS 157.565)];
(7) Capital outlay funds (KRS 157.5650; and
(8) Special trust funds (when legal opinion provided by bond counsel).

Section 5. (1) Revenue bond anticipation notes or the reissuance (roll over) of bond anticipation notes shall be issued only upon approval of the State Board for Elementary and Secondary Education on a case by case basis and in accord with KRS 58.150.
(2) Prior to submittal to the State Board for Elementary and Secondary Education for approval, the local school district shall provide the Department of Education the following financial information:
(a) Sources and annual amounts of revenue available for debt service;
(b) Projected debt service of a comparably-sized bond issue using maximum interest rates that the district could support with current available revenues as reflected in subsection (2)(a) of this section; and
(c) Projected debt service on a comparably-sized bond issue based on the then-current market.
(3) The following criteria are established for determining the approval of bond anticipation notes or the reissuance (roll over) of bond anticipation notes:
(a) The district shall show evidence that the available fiscal resources could support a twenty (20) year revenue bond issue at the then-current market rates plus one and five-tenths (1.5) percent;
(b) The district shall agree to escrow the difference between a regular revenue bond issue at the then-current market twenty (20) year amortization schedule, level principal redemption) and the annual net interest cost of the bond anticipation notes. The escrow account shall be used to reduce the principal of the note at the call date, the termination date, or as is stipulated in the terms and conditions of the issue note;
(c) Notes shall be issued for a period not less than two (2) nor more than four (4) years with a one (1) year call provision; and
(d) Bonds may be required to be issued to replace callable notes should market conditions change such that permanent financing is advisable and warranted.

Section 6. The maximum net interest cost for the sale of school revenue bonds established by the State Board for Elementary and Secondary Education shall be a rate no greater than the most current Bond Buyer's 20 - Bond Index plus one and five-tenths (1.5) percent. In the event a bid on an issue of bonds exceeds the maximum interest rate the chief state school officer [Superintendent of Public Instruction] may declare an emergency to exist and request the chairman to convene the State Board for Elementary and Secondary [of] Education for the purpose of approving or disapproving his recommendation that the bonds be sold.

Section 7. Required transfers of principal and interest payments shall be made by local school districts, to bond and interest redemption accounts, at least ten (10) calendar days prior to the date upon which such payments are due. The paying and transfer agent bank shall notify the chief state school officer [Superintendent of Public Instruction], at least eight (8) calendar days prior to the due date should the local district fail to deposit required funds on the required date. The chief state school officer [Superintendent of Public Instruction], in accordance with the terms and conditions of the contract of lease and rental agreement of the revenue bond issue of the local school district, shall then resolve the matter with the local school district or intercept appropriate funds due to the local school district and transmit them to the bond and interest redemption account of the local school district.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Bob Coakley
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected: No change.
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 change in paperwork.
(2) Effects on the promulgating administrative body: No change.
(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: No change in paperwork.
(3) Assessment of anticipated effect on state and local revenues: No change.
(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. Applies equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance
(Proposed Amendment)

702 KAR 3:040. Check issuing policy.

RELATES TO: KRS 156.031, 160.560
STATUTORY AUTHORITY: KRS 156.070, 160.560 [156.160]
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS 160.560 requires the State Baord for Elementary and Secondary Education to approve local practices for issuance of checks to pay legal claims. This regulation is necessary to provide local boards of education some uniformity in a policy of issuing checks.

Section 1. The local board of education shall submit to the chief state school officer [Superintendent of Public Instruction] prior to July 1 each year, or before issuing any check, a copy of the minutes stating its local policy for issuing checks. [:]

Section 2. [(1)] The treasurer shall receive Department of Education Form F-40 (Appendix A), properly executed including signatures of the chairman and the secretary of the board before issuing checks.

Section 3. [(2)] Authorized payments made between local board meetings shall be limited[:] to contract salaries, to take advantage of discounts, to prevent penalties and disruption of services, and shall be specified in the board's policy statement approved by the chief state school officer [Superintendent of Public Instruction].

Section 4. [(3)] The board of education shall give subsequent approval to all disbursements made in accordance with their approved policy between meetings of the board.

See Appendix A in Regulations Compiler's office

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).
JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cooper Whitt
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected: No change.
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 change in paperwork.
(2) Effects on the promulgating administrative body: No change.
(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: No change in paperwork.
(3) Assessment of anticipated effect on state and local revenues: No change.
(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. Applies equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance
(Proposed Amendment)

702 KAR 3:045. Withholding funds.

RELATES TO: KRS 156.031, 156.035, 156.070 [156.160]
STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070, 157.320 [156.160]
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resumitted to the Legislative Research Commission prior to December 30, 1990; and KRS 156.035 and 156.070 set forth the State Board for Elementary and Secondary Education's plenary powers over the management and control of local school districts and disbursement of state appropriations. This regulation is necessary to insure that all reports and documents are filed as required.

Section 1. The chief state school officer [Superintendent of Public Instruction] shall be authorized to withhold state funds from any school district in the state which fails, after written notification, to file or to have on file within fifteen (15) days in the Department of Education any and all reports as required by the statutes or the rules and regulations of the State Board for Elementary and Secondary [of] Education.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cooper Whitt
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected: No change.
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 change in paperwork.
(2) Effects on the promulgating administrative body: No change.
(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: No change in paperwork.
(3) Assessment of anticipated effect on state and local revenues: No change.
(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. Applies equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance
(Proposed Amendment)

702 KAR 3:050. Application to exceed budget.

RELATES TO: KRS 156.031, 160.550
STATUTORY AUTHORITY: KRS 156.070, 160.550 [156.160]
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resumitted to the Legislative Research Commission prior to December 30, 1990; and KRS 160.550 requires that no local school district may have a deficit budget situation except for a purpose for which bonds have been voted or upon a declaration of emergency by the State Board for Elementary and Secondary Education. This regulation is necessary to provide a safeguard against deficit spending by local boards of education and to establish the process for declaration of an appropriate emergency.

Section 1. The chief state school officer [Superintendent of Public Instruction] shall determine on the basis of evidence submitted in an application provided by the Division of [Local] School District Finance to exceed the

current budget of a local board of education whether or not an emergency exists within the meaning of KRS 160.550. The chief state school officer [Superintendent of Public Instruction] shall examine carefully all facts pertaining to the claimed emergency and take such action as he deems appropriate, including the authority to declare an emergency in those cases where the health and safety of the pupils of the school district are placed in jeopardy or the school program disrupted.

Section 2. Any application to exceed the current budget filed under this regulation, as well as any emergency declared by the chief state school officer [Superintendent of Public Instruction], shall be submitted to the State Board for Elementary and Secondary [of] Education for a final decision.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cooper Whitt
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected: No change.
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 change in paperwork.
(2) Effects on the promulgating administrative body: No change.
(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: No change in paperwork.
(3) Assessment of anticipated effect on state and local revenues: No change.
(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. Applies equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance
(Proposed Amendment)

702 KAR 3:060. Procedure for payment of employees.

RELATES TO: KRS 156.031, 156.070, 160.291, 160.450, 161.210
STATUTORY AUTHORITY: KRS 156.070, [156.160,] 161.210
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resumitted to the Legislative Research Commission prior to December 30, 1990; KRS 160.291 provides for all school employees working on a continuing, regular basis of less than twelve (12) months a year to be paid regularly, on dates determined by the employing board of education, with the gross salary received on each pay date to be equal to the employee's annual salary divided by the number of pay dates and with payments deemed to be for services rendered; KRS 160.450 provides for the fiscal year of all school districts to begin on July 1 and end on June 30; KRS 161.210 allows for requiring teachers to submit reports at the time and in the manner prescribed; and KRS 156.070 gives the State Board for Elementary and Secondary [of] Education the management and control of the public schools [and gives it authority to prescribe such rules and regulations as it deems necessary for the efficient management, control, and operation of the schools under its jurisdiction]. This regulation, in the interests of uniform and efficient fiscal management, establishes procedures relative to payment of certified and classified school employees.

Section 1. A board of education shall establish a calendar for payment of salaries to all school employees working on a continuing, regular basis of less than twelve (12) months a year and may require a teacher to present reports of attendance and other necessary reports before the salary check is delivered.

Section 2. A board of education may adopt a policy whereby employees' salaries may be made payable for a period in excess of the number of months for which the school is operated, not exceeding twelve (12) months, but a board doing such shall adopt one (1) of the following plans:

(1) The board of education shall write all deferred salary checks on or before June 30 of the current fiscal year and these deferred checks shall then be delivered at the regular pay periods in July and August of the following fiscal year; or

(2) The board of education shall set up a payroll account into which shall [will] be transferred on the order of the board of education on or before June 30, the gross amount for salaries earned by employees but not paid. The amounts transferred into this payroll account shall be held for the payment of deferred employees' salaries and shall not be used for any other purpose. Payment of salaries from this fund shall [are to] be at the regular pay periods in July and August of the following fiscal year.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: September 12, 1990

FILED WITH LRC: September 13, 1990 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cooper Whitt

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected: No change.

1. First year: None
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): Less than half-time teachers make up a small percentage of all teachers.

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

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

(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: No change in paperwork.

(3) Assessment of anticipated effect on state and local revenues: Minimal

(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? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance
(Proposed Amendment)

702 KAR 3:070. Teachers' salary scheduling.

RELATES TO: KRS 156.031, 157.320, 157.390

STATUTORY AUTHORITY: KRS 156.070, 157.320

NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resumitted to the Legislative Research Commission prior to December 30, 1990; KRS 157.320 defines experience for state funding of teacher salary purposes and the single salary schedule; and KRS 157.390[(2)(a)] prescribes [that] the base funding level amount to be included in each school year in the SEEK [Foundation] Program of a school district for teachers' salaries [shall be determined by multiplying the number of teachers in each rank, not to exceed the number of classroom units allotted, by the amount set forth in the biennial budget schedule for each rank and experience for a term of 185 days]. This regulation defines procedures for teachers' salary scheduling [teaching experience allowable in Foundation Program salary calculations] and to define extra service pay.

Section 1. Each board of education shall adopt and submit for the approval of the State Board for Elementary and Secondary [of] Education a single salary schedule as defined in KRS 157.320.

Section 2. [For the purpose of calculating the salary allotment of each school district, experience for all professional personnel shall be defined as follows:]

[(1) Professional personnel shall have taught or rendered professional service under contract for a complete school year or a minimum of 140 days during a school term in a public or nonpublic elementary or secondary school or

college or university that is approved by the public accrediting authority in the state in which the professional experience was rendered. In no case shall more than one (1) year of experience be credited for professional experience during a given school year.]

[(2) Experience credit shall not be taken into consideration in calculating the salary allotment for a Foundation Program unit under the following circumstances:]

[(a) Substitute teaching;]

[(b) Teaching for less than a half day;]

[(c) Nursery schools.]

[(3) School psychologist, school social worker, school business administrator and other professional personnel shall have rendered professional service in their present profession and in the employment of a federal, state or local agency. Professional personnel shall have been employed by these agencies for a complete year or a minimum of 190 days during a calendar year. In no case shall more than one (1) year of experience be credited for professional experience during a calendar year.]

(1) [(4)] It shall [will] be the responsibility of the local board of education to validate all experience of professional personnel employed in the school district.

(2) [(5)] Such validation of experience shall be on file in the office of the superintendent.

[(6) Units granted to a public school district by the Bureau of Vocational Education for contracted services in an area vocational school or an area vocational school extension center will be calculated on the basis of Rank II with four (4) to nine (9) years of experience.]

(3) [(7)] Professional personnel leaving employment of a local board of education after June 16, 1966, shall be granted experience credit when calculating the SEEK [Foundation] Program salary allotment when the employee's career was interrupted to perform military duty, voluntarily or involuntarily, and who has been relieved from such duty under conditions other than dishonorable.

Section 3. Each local board of education may allow increments in pay to members of its professional staff who render services beyond those normally expected of other professional members of the staff when these duties rendered extend beyond the regular school day.

Section 4. Expenditures for increments for extra duties classified as extra service shall be paid from local revenue or funds other than the allotment for instructional salaries in SEEK [Foundation] Program [calculations] and shall not be counted toward meeting the requirements of KRS 157.420.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: September 12, 1990

FILED WITH LRC: September 13, 1990 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cooper Whitt

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected: No change.

1. First year: None

2. Continuing costs or savings: Additional salary cost to school districts as less than half-time teachers move up on pay scale.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Less than half-time teachers make up a small percentage of all teachers.

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

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

(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: No change in paperwork.

(3) Assessment of anticipated effect on state and local revenues: Minimal

(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. Applies equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance
(Proposed Amendment)

702 KAR 3:075. Substitute teachers' salary scheduling.

RELATES TO: KRS 156.031, 156.160 [157.320(13)]
STATUTORY AUTHORITY: KRS [156.070,] 156.160
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resumitted to the Legislative Research Commission prior to December 30, 1990; and KRS 156.160 requires the State Board for Elementary and Secondary Education to adopt regulations relating to the preparation of salary schedules for local school districts. This regulation is necessary to insure the [to] establishment of a pay schedule for substitute teaching.

Section 1. Local boards of education shall submit annually to the Division of School District Finance a per diem pay schedule for substitute teaching. Such pay schedule shall take into consideration the following:
(1) Substitute teachers shall be paid on a single salary schedule based on training and experience.
(2) Substitute teachers shall be ranked in accordance with [Foundation Program] requirements [as] outlined in KRS 157.390.
(3) Local boards of education shall adopt a pay schedule for substitute teaching which may be the same, higher, or lower than the rate of pay for a regular full-time teacher.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cooper Whitt
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected: No change.
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 change in paperwork.
(2) Effects on the promulgating administrative body: No change.
(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: No change in paperwork.
(3) Assessment of anticipated effect on state and local revenues: No change.
(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. Applies equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance
(Proposed Amendment)

702 KAR 3:080. Treasurer's bond, penal sum.

RELATES TO: KRS 156.031, 160.560[(4)]
STATUTORY AUTHORITY: KRS 156.560 [156.070, 156.160]
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resumitted to the Legislative Research Commission prior to December 30, 1990; and KRS 160.560 requires each local board of education treasurer to be bonded in accordance with State Board for Elementary and Secondary Education regulations. This regulation [To] establishes a penal sum for the bond of treasurer and [to] requires the bonding of other school employees.

Section 1. It shall be the duty of each local board of education, on the advice of the chief state school officer [superintendent], to determine the amount of the penal sum of the bond of treasurer of the board and that of other school employees who are responsible for board of education funds.

Section 2. No bond shall be approved which in the opinion of the chief state school officer [Superintendent of Public Instruction] is inadequate to safeguard the funds of the district board of education.

Section 3. The district board of education shall require the bonding of all employees who are responsible for board funds. The cost of such bonds may be a liability of the general fund or of any account which the specific bond protects. The penal sum of any bond shall be determined by the amount in custody of the treasurer during the period covered by the bond.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cooper Whitt
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected: No change.
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 change in paperwork.
(2) Effects on the promulgating administrative body: No change.
(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: No change in paperwork.
(3) Assessment of anticipated effect on state and local revenues: No change.
(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. Applies equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance
(Proposed Amendment)

702 KAR 3:090. Depository bond, penal sum.

RELATES TO: KRS 156.031, 160.570
STATUTORY AUTHORITY: KRS [156.070,] 160.570
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resumitted to the Legislative Research Commission prior to December 30, 1990; and KRS 160.570 requires each local board of education - designated depository of funds to execute bond for the faithful performance of its duties, such bond to be approved by local board and the State Board for Elementary and Secondary [of] Education; defines the nature and qualifying sureties for such bond; and requires the state board to regulate the penal sum of the bond. This regulation provides for certain requirements relative to bonds of depository.

Section 1. It shall be the duty of each local board of education, on the advice of the superintendent, to determine the penal sum of the bond of depository.

Section 2. No depository bond shall be approved by the State Board for Elementary and Secondary [of] Education which in its opinion is inadequate to insure the deposits of the local board of education.

Section 3. As security for this bond, the depository bank shall deposit with its escrow agent, collateral in an amount equal to the penal sum of the bonds. This collateral shall consist of United States Government Bonds Kentucky School Revenue Bonds [and/]or federal government agency obligations such as obligations of the Federal Farm Credit Banks, the Federal National Mortgage Association, and the Federal Home Loan Bank. The escrow agent shall file safekeeping receipts with the local board of education as evidence that collateral has been pledged in accordance with the provisions of the bond executed by the depository institution. At no time may the local board of education permit a reduction of the collateral of a bond without execution of a new bond with prior approval of the chief state school officer [Superintendent of Public Instruction] and subsequent reporting of such to the state board.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cooper Whitt
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected: No change.
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 change in paperwork.
(2) Effects on the promulgating administrative body: No change.
(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: No change in paperwork.
(3) Assessment of anticipated effect on state and local revenues: No change.
(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. Applies equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance
(Proposed Amendment)

702 KAR 3:100. Data form, professional staff.

RELATES TO: KRS 156.031, 157.390, 157.420
STATUTORY AUTHORITY: KRS 156.070, 157.320 [157.390]
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resumitted to the Legislative Research Commission prior to December 30, 1990; KRS 157.390 sets forth that the SEEK base funding level of a local school district for teachers' salaries shall be based on categories of experience set forth therein; and [through] 157.420 sets forth various restrictions on a local district's teachers' salaries [how Foundation Program] allotment[s are determined]. This regulation allows the Department of Education to collect assignment and salary data on teachers employed by the school district [and included in the Foundation Program calculation as classroom units].

Section 1. The Department of Education professional staff data form (Appendix A) shall be completed during the week of September 15 for any teacher paid by and/or under the supervision of the district board of education. The completed forms shall be forwarded to the Division of School District Finance [Management and Audit] not later than October 1 of each school year.

[Section 2. Rank and experience of the teacher on September 15 shall determine the rank of the Foundation Program teacher for the school year except teachers having a higher rank certified by Office of Instruction, Division of Teacher Certification, dated between September 15 and January 31, shall be allotted five-tenths (0.5) unit on the September 15 rank, and five-tenths (0.5) unit on the rank earned on or before January 31 of the school year. Such a teacher employed subsequent to September 15 and prior to January 31 of the school year shall be allotted a fractional part of five-tenths (0.5) unit, based on the rank on the date employed and for the period employed prior to January 31, and five-tenths (0.5) unit on the higher certified rank on January 31.]

Section 2. [3. A vacancy or new position staffed between September 15 and January 31 shall be assigned a fraction of a classroom unit.] Changes of personnel, vacancy, new position staffed, or position abolished between September 15 and January 31 shall be reported on the February amendment to the professional staff data form. This amendment shall be completed February 1 and is due in the Division of School District Finance [Management and Audit] on or before February 5. [No part of a unit shall be granted for positions staffed after January 31.]

See Appendix A in Regulation Compiler's Office

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).
JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan Goins
(a) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected: No change.
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: Paperwork requirements will remain the same.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No change.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Paperwork remains the same.
(3) Assessment of anticipated effect on state and local revenues: The new formula will eliminate the additional funding previously allotted to districts with a greater percentage of high rank and experience personnel.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendments are needed for better implementation of the statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are none
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The regulation applies evenly to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance
(Proposed Amendment)

702 KAR 3:110. Document filing dates.

RELATES TO: KRS 156.031, 156.160, 157.060 [160.470]
STATUTORY AUTHORITY: KRS [156.070,] 156.160
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resumitted to the Legislative Research Commission prior to December 30, 1990; KRS 156.160 requires the State Board for Elementary and Secondary Education to establish a uniform series of financial forms for local school districts; and KRS 157.060 requires local districts to submit annual financial reports. This regulation is necessary to establish forms and dates of filing for State Board for Elementary and Secondary [of] Education financial archives.

Section 1. The documents which become a part of State Board for Elementary and Secondary [of] Education archives shall be submitted to the Division of School District Finance [Management and Audit] by the following dates annually: Annual Financial Report (F-55, Appendix A), July 25; Working Budget (F-10, Appendix B), September 15.

See Appendices A & B
in Regulation Compiler's Office

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cooper Whitt
(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected: No change.
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 change in paperwork.
(2) Effects on the promulgating administrative body: No change.
(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: No change in paperwork.
(3) Assessment of anticipated effect on state and local revenues: No change.
(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. Applies equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance
(Proposed Amendment)

702 KAR 3:170. Educational television equipment purchases.

RELATES TO: KRS 156.031, 156.074, 168.100
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resumitted to the Legislative Research Commission prior to December 30, 1990; KRS 156.074 gives the State Board for Elementary and Secondary [of] Education the general authority, through the Finance and Administration Cabinet, to secure state price contracts for supplies and equipment to be purchased by district boards of education; and KRS 168.100 gives the Kentucky Authority for Educational Television the specific authority to prescribe standards for television receiving units to be used in the public schools. This regulation establishes the terms and means by which the school districts may purchase, from state price contracts, educational television receivers, stands, and related equipment.

Section 1. The chief state school officer [Division of Purchasing, State Department of Education,] shall prepare Kentucky minimum specifications for educational television receivers and stands for approval by the State Board for Elementary and Secondary [of] Education, and review and approval by the Kentucky Authority for Educational Television, and shall keep said specifications up to date by revision whenever experience, manufacturing techniques, and product improvement indicate that revision and updating is necessary.

Section 2. The State Board for Elementary and Secondary [of] Education shall approve the Kentucky minimum specifications for educational television receivers and stands as a separate document for approval by the Kentucky Educational Television Authority. Copies of this document containing the detailed specifications for educational television receivers and stands shall be kept on file by the chief state school officer [in the Division of Purchasing, State Department of Education, Frankfort, Kentucky]. This document shall be made available in reasonable numbers to those persons and business firms that have need for same.

Section 3. All manufacturers, their agents or representatives that propose to sell educational television receivers and stands to the school districts of the Commonwealth of Kentucky shall provide the chief state school officer [Division of Purchasing] current detailed specifications, test results, certifications, and advertising brochures on the television receivers and stands that they propose to offer for sale as meeting the current Kentucky minimum specifications for educational television receivers and stands.

Section 4. The chief state school officer [Director of the Division of Purchasing] shall have the authority for approval of the types, makes, and models of educational television receivers and stands that meet the Kentucky minimum specifications for educational television sets and stands. The chief state school officer [Said director] shall have the authority for approvals of "as equals," and shall have the authority to waiver minor formalities.

Section 5. The chief state school officer [Division of Purchasing] shall prepare, at least annually, a list of those educational television receivers and stands that are approved as meeting the current Kentucky minimum specifications for educational television receivers and stands. Said lists shall be made available in reasonable numbers to those persons or business firms that have need of same.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).
JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Bob Coakley
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected: No change.
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 change in paperwork.
(2) Effects on the promulgating administrative body: No change.
(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: No change in paperwork.
(3) Assessment of anticipated effect on state and local revenues: No change.
(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. Applies equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(Proposed Amendment)

707 KAR 1:051. Exceptional children's programs.

RELATES TO: KRS 156.031, 157.200, 157.224, 157.230, 157.270, 157.280, 157.285 [to 157.290,] 157.360
STATUTORY AUTHORITY: KRS [156.070,] 157.220[, 157.221, 157.250, 157.360]
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resumitted to the Legislative Research Commission prior to December 30, 1990; KRS 157.200 defines terms relative to special education programs; KRS 157.224 commits the Commonwealth to comprehensive [to 157.290 set forth the state statutory framework for] special education programs for exceptional children; KRS 157.230 requires local school districts to operate special education programs for resident children; KRS 157.270 authorizes home and hospital instruction; KRS 157.280 relates to programs in other districts and private agencies and in state schools; KRS 157.285 authroizes provision of related services; and KRS 157.360 provides the mechanism for state financial support of local school district programs for exceptional children. This regulation establishes requirements for special education programs and is necessary to assure uniformity in providing special education and related services to exceptional children and to conform with the Education for All Handicapped Children Act (EAHCA) 20 U.S.C. 1400 et seq [P.L. 94-142].

Section 1. General Provisions. Local school boards of education shall operate programs for exceptional children of school attendance age pursuant to KRS 157.200 to 157.290 inclusive, and the criteria listed in this chapter. Funding for these programs shall be provided in accordance with KRS 157.360 and Support Educational Excellence in Kentucky Program.
[(1) Classroom units. Local school districts shall request classroom units for the education of exceptional children from the State Department of Education by filling out the appropriate application(s) as provided by the Office of Education for Exceptional Children, and in accordance with KRS 157.360(6). Application(s) shall be made pursuant to schedules established by the Office of Education for Exceptional Children. In order to receive allotment of foundation classroom units local school districts shall assure that the following criteria are met:]
[(a) Approved teacher;]
[(b) Approved housing;]
[(c) Approved program plan; and]
[(d) Minimum number of children for type of unit requested.]
[(2) Fractional classroom unit. A fractional classroom unit is a unit having fewer pupils than the prescribed pupil-teacher ratio as indicated in regulations pertaining to the specific categorical program or if the program is in operation for less than a full day or full school year. Such units shall be allotted and certified on a basis proportionate to the pupil-teacher ratio and/or the proportionate length of the school day or the school year.]
[(3) Qualifications for assignments of special education personnel. Teachers employed for a teaching assignment in a classroom unit for exceptional pupils shall hold appropriate state certification in the area(s) of assignment as required in Title 704 KAR Chapter 20, except as hereinafter provided specified in 707 KAR 1:140:]
[(a) Teachers employed as of September 1, 1985, and assigned to classes for multiple handicapped students who do not possess a certificate as specified in 707 KAR 1:140, Section 7 may continue to be assigned to such classes provided the teacher has had class assignments in a class for multiple handicapped pupils for each of the preceding three (3) years, and the Kentucky Department of Education approved the assignment for each of the years

involved.]

[(b) Teachers of cross-categorical classes. Assignment of teachers to special education classes serving more than one (1) category of exceptional pupils (cross-categorical programs) shall meet the following:]

[1. Local school districts may serve pupils classified as educable mentally handicapped (EMH), learning disabled (LD) and emotionally disturbed (ED) within the same classroom, provided teachers assigned to such classes are certified in at least two (2) of the categories of exceptionality or have certification in the area of learning and behavior disorders (LBD). Teachers employed as of September 1, 1985, and assigned to classes which include pupils of an exceptionality not covered by their certification may continue to be assigned to such classes, provided the teacher has had class assignments which included such exceptional pupils for each of the preceding three (3) years, and the Kentucky Department of Education approved the assignment for each of the years involved.]

[2. Local school districts may serve pupils classified as trainable mentally handicapped, severely/profoundly handicapped and multiple handicapped whose intellectual functioning is trainable mentally handicapped within the same classroom, provided teachers assigned to such classes are certified as specified in 707 KAR 1:140.]

[3. Local school districts may serve pupils classified as educable mentally handicapped (EMH) and learning disabled (LD) within the same classroom, provided teachers assigned to such classes are certified as specified in 707 KAR 1:140.]

[(c) Teachers providing instruction to exceptional children at home or in hospitals shall be provided with the skills needed to meet the individual needs as set forth in the individual education program.]

[(d) Local school districts which need to assign teachers to teach classes or pupils not consistent with the above criteria and which do not correspond with the certification specified in 707 KAR 1:140 for the assigned teachers shall request approval for the teacher assignment from the Kentucky Department of Education, Office of Education for Exceptional Children.]

[1. The Kentucky Department of Education shall give consideration for such approval based on information provided by the local school district as follows:]

[a. Request shall be made prior to September 15 or within ten (10) school days of the need for assignment if it occurs after September 15 and shall include the teacher's name, school assignment, social security number and class plan assignment;]

[b. Teacher's current certification(s) and a listing of pupils by category of exceptionality to be served demonstrating that the teacher meets qualifications for assignment to teach the majority of the exceptional pupils enrolled and that only one (1) additional category of exceptional pupils shall be included in the classroom;]

[2. The assignment shall not exceed the length of the school year during which it was initiated.]

(1) [(4)] Program plan. The appropriate program plan for exceptional pupils in the local school district shall be determined by the needs of the pupils. Consideration shall be given to the least restrictive environment concept in the placement of pupils. Programs shall be organized and operated under one or more, or a combination of the following:

(a) Classroom [units] plans.

1. A resource plan shall be a program which serves exceptional pupils who shall be entered on the class roll of a regular class teacher and shall do part of their classwork in the regular class. The pupils shall receive special instruction from the resource teacher as specified on their individual education programs. The number of pupils served by the resource teacher and the number of pupils in the resource room for instructional purposes at any one (1) time shall be determined by the appropriate categorical regulations. The resource plan shall utilize a classroom-based teacher or an itinerant teacher.

2. A special class plan shall be a classroom-based program which serves exceptional pupils who shall be entered on the class roll of the special class teacher. The pupils shall participate in the regular class program to the maximum extent appropriate as specified on the pupils' individual education programs. The number of pupils and the chronological age range for pupils enrolled in the special class shall be determined by the appropriate categorical regulations. A classroom-based teacher shall be utilized for this plan.

3. A hospital instructional plan shall be a program which provides educational services on a regularly scheduled basis to pupils in a hospital setting. The itinerant teacher providing educational services in the hospital shall keep a regular Kentucky attendance register. A pupil receiving services in a hospital setting shall have a minimum of two (2) one (1) hour visits per week in order to be counted as being in attendance five (5) days. Special education and related services for the identified exceptional pupil in a hospital setting shall be provided as specified on the pupil's individual education program (IEP). The hospital instructional plan shall utilize a classroom-based teacher, an itinerant teacher, or a visiting teacher.

4. A home instruction plan shall be a program which provides educational services to pupils at the home on a regularly scheduled basis. The teacher providing educational services at the home shall keep a regular Kentucky attendance register. A pupil receiving educational services under this plan shall have a minimum of two (2) one (1) hour visits per week in order to be counted in attendance five (5) days. Special education and related services for the identified exceptional pupil served under this plan shall be provided as specified on the pupil's individual education program (IEP). The home instruction plan shall utilize an itinerant teacher or a visiting teacher.

(b) Teacher and housing. Each classroom [unit] plan shall be housed as specified and shall operate utilizing one (1) of the following types of teachers:

1. A classroom-based teacher shall be an approved teacher who shall provide educational services to exceptional students in a classroom provided for such services. The classroom-based teacher providing services through the resource plan or special class plan shall be housed in an elementary or secondary school dependent upon

the age range of the pupils or in an approved special school or facility. Classroom location shall be made consistent with the least restrictive environment concept. Classrooms shall meet the standards for regular classrooms pursuant to 702 KAR 4:060. The classroom-based teacher providing services in a hospital setting shall be housed in facilities [and/]or rooms appropriate and adequate for instructing pupils in small groups or individually.

2. An itinerant teacher shall be an approved teacher who travels to exceptional pupils' school(s), class(es), homes, or hospital setting(s) on a regularly scheduled basis to work with pupils either individually or in small groups. Those pupils being served in a school facility shall be entered on the class roll of a regular class teacher and shall receive the majority of their instruction through the regular program. The itinerant teacher shall work with the pupils in an area in the regular classroom or in a room provided for such services. Housing for the itinerant teacher providing services in a school shall be in facilities [and/]or rooms appropriate for instructing pupils in small groups or individually and shall be housed in an elementary or secondary school dependent upon the age range of the pupils or in an approved special school or facility. The itinerant teacher shall be provided permanent work space. For the itinerant teacher who travels to the pupils' school(s), class(es), homes, or hospital setting(s) the board of education shall defray travel expenses incurred by personnel in the execution of duties related to the program [pursuant to 702 KAR 3:120].

3. A visiting teacher shall be an approved teacher in a home [and/]or hospital program who travels to the necessary setting to provide appropriate instruction to pupils on an hourly basis. Teacher salary, travel expenses, and teaching supplies for the visiting teacher shall [will] be provided through the funding mechanism set forth in the Kentucky Education Reform Act [707 KAR 1:051, Section 1(b)].

(c) A variation plan shall be an alternative to the above plans. The local school district shall submit a written request to and receive approval from the Office of Education for Exceptional Children prior to implementation of a variation plan. Written requests for such plan shall be made pursuant to provisions established by the Office of Education for Exceptional Children. In granting approval the Office of Education for Exceptional Children shall assure that approved requests for such plan shall contain but not be limited to the following components:

1. Rationale for need of the variation plan;
2. Detailed description of the plan;
3. Verification of teacher's certification in the categorical area of the majority of the students to be served; and
4. Method of evaluation to be used to determine effectiveness of the plan.

(2) [(5)] Length of school day. The length of school day shall be the same as for nonhandicapped children except as specified in KRS 157.270 and 158.060. Requests for and approval of changes in length of school day shall be made in writing pursuant to provisions established by the Office of Education for Exceptional Children.

(3) [(6)] Length of school year.

(a) The provision of an extended school year program shall be considered for students having handicaps which are severe in nature. Eligibility criteria for placement of students in extended school year programs shall be:

1. Significant regression caused by interruption in educational programming; and
2. Limited recoupment capacity which would render unlikely the attainment of a level of self-sufficiency and independence from caretakers which would be expected for the handicapping condition.

(b) Local boards of education shall provide written notification of the availability of extended school year programs to the parents of students with handicaps.

(4) [(7)] Instructional materials and equipment. Instructional materials and equipment appropriate to the educational needs of the identified exceptional child shall be provided as required under 702 KAR 1:005 [704 KAR 2:020].

Section 2. Identification of Exceptional Children. Each local school district shall have in operation policies and procedures to insure that all exceptional children are identified, located and evaluated. As used here, this requirement refers to all exceptional children who are in need of special education and related services and are residing within the jurisdiction of the local school district, including those exceptional children who are out of school; in local school district programs; and, being served by other public and private agencies and institutions within the local school district's jurisdiction. Local school district policies and procedures shall include the development, implementation, monitoring and evaluation of a practical method of determining:

(1) Which children are currently receiving needed special education and related services; and

(2) Which children need special education and related services but are not currently receiving these services.

Section 3. Admissions and Release Committees. Local school district personnel shall establish one (1) district-wide administrative admissions and release committee and a school-based admissions and release committee in each school with appropriate membership and functions as listed below. In addition, for those school districts with a school census figure of 15,000 or over, subdistrict admissions and release committees may be established pursuant to approval by the Office of Education for Exceptional Children.

(1) Administrative admissions and release committee. The membership of the Administrative Admissions and Release Committee (AARC) shall consist of:

(a) Director, local school district's program for exceptional children or person having such responsibility, chairperson (permanent member);
(b) Local school district superintendent or designee (permanent member);
(c) Referred pupil's principal and teacher (if the child is enrolled in public or private school);
(d) Involved instructional supervisor depending on the age and level of the child;
(e) The parent(s) of the referred child;
(f) The referred child, where appropriate;
(g) Personnel responsible for providing

evaluation information, where appropriate; and

(h) Other persons as requested by any member of the AARC.

(2) The functions of the AARC shall include the following:

(a) Receive referrals of the following nature:

1. Written information on identified children not currently enrolled in the local school district, including those children enrolled in nonpublic schools, who are thought to need special education and related services.

2. Cases where the school-based admissions and release committee is not able to determine an appropriate educational placement for a referred pupil and make recommendations as to appropriate educational placement.

3. Cases from school-based admissions and release committee where appropriate services are not available within the school.

(b) Follow due process procedures to insure that exceptional children and their parent(s) are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement.

(c) Assure that appropriate evaluations on referred children are obtained or conducted.

(d) Review written results of the formal and informal evaluation to determine if the referred child meets eligibility criteria for a category of exceptionality.

(e) Determine if the identified child needs special education and related services.

(f) Develop an individual education program (IEP) for the identified child needing special education and related services to make recommendations as to appropriate services and[/or] programs for the identified child. The AARC shall determine if the local school district can provide appropriate services, if local programs must be changed to accommodate the identified child, if additional services or programs will be developed, or if the child must receive services outside the local school district. For those pupils who shall receive services within the local school district, the appropriate school-based admissions and release committee shall assume responsibility for the implementation, monitoring, evaluation and annual review of the IEP as well as annual review of placement. In those cases where the local school district has determined that appropriate special education and related services cannot be provided through existing programs in the local school district, services shall be provided to the identified child pursuant to the following:

1. Local school district referral of an exceptional child to a public or private agency. The Administrative Admissions and Release Committee shall:

a. Contact a public agency or approved private agency or [/]organization, as provided in 707 KAR 1:070, which provides the type of services specified on the child's IEP regarding the possible referral of the child to the agency.

b. Insure that a representative(s) of the receiving agency shall participate in a meeting(s) with the AARC regarding the possible referral. Participation may be provided through attendance at meetings, written communications, [and/]or individual or conference calls. Receiving agency means an approved agency or [/]organization which has indicated a willingness to provide the services requested by the local school district.

c. In collaboration with representative(s) of the receiving agency, review and revise, where appropriate, the child's IEP.

d. In collaboration with representative(s) of the receiving agency, determine if such agency is the appropriate agency to provide the specified services. If the agency is an appropriate one, such agency assumes responsibility for implementing the provisions of the special education and related services specified on the IEP.

e. The local school district shall be responsible for providing continued educational services to the child until such time as the child enters the programs provided by the receiving agency.

2. Placement of an exceptional child in a public or private agency:

a. Public agency (another local school district, Kentucky School for the Blind, Kentucky School for the Deaf). Upon admission of the referred child to the agency's program, the agency shall assume responsibility for providing special education and related services to the exceptional child as specified on the IEP; and, insure that the child and parent(s) are afforded all rights and protections as required and provided in 707 KAR 1:051, Sections 9 and 10, and 707 KAR 1:060.

b. An admissions and release committee of the receiving public agency shall conduct meetings for the purposes of reviewing and where appropriate revising the IEP and [,] assure that the IEP shall be reviewed on at least an annual basis and revised where appropriate; insure that any review (including annual review) and revision of the IEP shall be done with the input and approval of the parent(s); and, insure that any review and revisions of the IEP shall include input and approval of the local school district placing the child in the program. The participation of the parent(s) and the local school district placing the child may take place through attendance at meetings, written communications [and/]or individual or conference calls.

c. Monitoring and evaluation of the IEP shall be done by specific members of the receiving public agency's admissions and release committee at intervals specified on the IEP. This shall be done to document progress and mastery of objectives specified in the IEP. Written results of such monitoring and evaluation shall be forwarded to the parent(s) and the Administrative Admissions and Release Committee of the local school district placing the child in the agency's program.

d. Responsibilities of the Administrative Admissions and Release Committee of the local school district placing the child in another public agency shall be participation in meetings called by the receiving agency for the purpose of review and revision of the IEP; and, at least annually, reviewing the exceptional child's IEP and [review] the placement of each exceptional child receiving services outside the local school district in relation to his educational progress in that setting.

e. Private agency or [/]organization (as defined in 707 KAR 1:070) the private agency shall provide those special education and related services specified on the child's IEP. At the discretion of the local school district, the private agency may initiate and conduct meetings for the purposes of reviewing and

revising the child's IEP. When circumstances warrant, the private agency shall be responsible for notifying the local school district of the need to initiate and conduct a meeting for such purposes. The local school district shall insure that the parent(s) and a local school district representative(s) are involved in any decision regarding review and revisions of the child's IEP and agree to any placement changes before such changes are implemented.

f. Responsibilities for the Administrative Admissions and Release Committee of the local school district placing the child in a private agency shall be participation in meetings called by the receiving agency regarding review and revision of the IEP; at least annually, reviewing the exceptional child's IEP and [review] the placement of each exceptional child receiving services outside the local school district in relation to the educational progress in that setting; and, insuring that the child and parent(s) are afforded all rights and protections as required and provided in Sections 9 and 10 of this regulation and 707 KAR 1:060.

(g) For those referred pupils who are determined by the AARC not to need special education and related services, the AARC shall provide the referring person and the parents with written explanation of why the child is not to receive special education and related services, shall provide in writing recommended remedial action, and shall provide written notice pursuant to 707 KAR 1:060.

(3) School-based admissions and release committee (SBARC). The membership of the school-based admissions and release committee shall consist of:

(a) Chairperson, building principal or designee. The designee shall be recommended by the building principal and approved by the local school superintendent. This person shall not be a regular or special education teacher, (permanent member).

(b) Referring person(s) or the referred child's regular teacher(s);

(c) Teacher(s) of exceptional children;

(d) Parent(s) of the referred pupil;

(e) The referred child, where appropriate;

(f) Other persons providing input into the referred pupil's educational program as requested by any member of the SBARC; and

(g) Personnel responsible for providing evaluation information, as appropriate. For a child who has been evaluated for the first time, the chairperson shall assure that a member of the evaluation team participates in the meeting; or that a representative of the school district is present who is knowledgeable about the evaluation procedures used with the child and is familiar with the results.

(4) The functions of the SBARC shall include the following:

(a) Receive written referrals on pupils currently enrolled in the school and thought to need special education and related services.

(b) Follow due process procedures to insure that exceptional children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation and educational placement.

(c) Assure that appropriate evaluations on referred children are obtained or conducted.

(d) Review written results of the formal and informal evaluations to determine if the referred child meets eligibility criteria for a category of exceptionality.

(e) Determine if the identified child needs special education and related services.

(f) Develop an individual education program (IEP) for the identified child needing special education and related services to make recommendations as to appropriate services and[/or] programs for the identified child.

(g) At least annually, review the pupil's IEP and review the placement of each exceptional child in the school in relation to his or her educational progress in that setting to determine:

1. Continuation of current educational placement;

2. Change in educational placement; or

3. That special education and related services are no longer needed.

(h) For those referred pupils who are determined by the SBARC not to need special education and related services the SBARC shall provide the referring person and the parents with written explanation why the child is not to receive special education and related services, shall provide in writing recommended remedial actions, and shall provide written notice pursuant to 707 KAR 1:060.

(i) Refer cases where appropriate services are not available within the school to the AARC.

(5) If at any time during the school year, the child's IEP or educational placement appears to be inappropriate to the parent(s), the principal, the teacher(s) or specialist(s) providing services to the child, any one of such persons may request a review of placement. The appropriate admissions and release committee shall conduct the review. The child, parent(s) and local school district shall be afforded all due process rights as described in 707 KAR 1:060. When a review is requested for the purpose of securing a more restrictive or less restrictive environment, the appropriate admissions and release committee shall determine that the child's needs can appropriately be met in the proposed setting and the child's placement and educational program shall be changed and support services provided as necessary.

(6) At any time, during the three (3) years following an individual evaluation utilized for initial placement purposes, or for reevaluation purposes, the parent(s), principal, teacher(s), or specialist(s) providing services to the child may request a reevaluation. The appropriate admissions and release committee shall be responsible for assuring that such evaluation(s) are obtained or conducted, and shall follow the procedures outlined in Section 3(2) and (4) of this regulation, functions of the AARC and SBARC.

(7) Subdistrict admissions and release committees. For those school districts with a school census figure of 15,000 or over, subdistrict admissions and release committees (ARCs) may be established within the local school district to facilitate school to school placements. The subdistrict ARCs shall not supplant administrative and school-based admissions and release committees and their respective functions. Subdistrict ARCs shall be established to conform with district-specified school groupings. Those local school districts wishing to establish subdistrict ARCs shall submit a written request to and receive approval from the Office of Education for Exceptional Children prior to implementation of the plan and

pursuant to provisions specified by the Office of Education for Exceptional Children. The membership and functions of subdistrict committees shall be similar to the membership and the functions of the administrative admissions and release committee.

Section 4. Child Evaluation. Child evaluation refers to the sum total of information needed to make educational decisions about the child, including information obtained from such sources as informal and formal testing, aptitude and achievement tests, behavior observation, teacher and [/]parent interviews, work samples, social and [/]developmental history, medical history, school records and anecdotal records. The appropriate admissions and release committee shall be responsible for assuring that child evaluation information is obtained from all available sources, documented and carefully considered in making placement decisions pursuant to the following:

(1) All due process procedures related to evaluation as required and provided in Section 9 of this regulation and 707 KAR 1:060 shall be followed.

(2) Appropriate evaluations shall be conducted by a multidisciplinary team. Evaluation personnel shall be determined by the appropriate admissions and release committee and shall include at least one (1) teacher or other specialist with knowledge in the suspected area of exceptionality.

(3) Areas for evaluation shall be determined by the appropriate admissions and release committee and as specified by regulations related to the suspected area of exceptionality, including where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(4) Evaluation procedures. To the maximum extent possible, child evaluation procedures shall be nondiscriminatory in that:

(a) Techniques and[/]or materials used are nonbiased relative to race, culture, socioeconomic status or impaired sensory, manual, or speaking skills, in order to insure that test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure.

(b) Qualified personnel provide the evaluation services. Qualified personnel refers to those certified special education personnel and others who have met approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area of child evaluation. Such personnel shall be trained in specific areas of child evaluation and shall assure that they:

1. Have the expertise to conduct the evaluation;

2. Understand the use of the different evaluation procedures; and

3. Properly administer and interpret the evaluation results.

4. Such personnel may include but are not limited to: educational diagnosticians, assessment specialists, classroom teachers, speech and language therapists, psychologists, psychometrists, counselors.

(c) Tests and materials are provided and administered in the child's native language or primary mode of communication, unless it is clearly not feasible to do so.

(d) Tests and materials have been validated for the specific purpose for which they are used.

(e) Tests and materials are administered by trained personnel in conformance with the instructions provided by the producer.

(f) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

(5) No single evaluation procedure shall be used to determine an appropriate program for a child.

(6) Each child placed in a program for exceptional children shall be reevaluated every three years or more frequently as warranted.

(7) Any evaluation conducted within one year prior to the current referral may be accepted by the appropriate admissions and release committee as a legitimate substitute for another evaluation of the same type provided the information obtained meets the criteria specified in subsection (1) to (5) of this section.

Section 5. Individual Education Programs (IEP). The appropriate admissions and release committee shall be responsible for the development, implementation, and monitoring and [/]evaluation of each exceptional child's individual education program.

(1) Development. The individual education program shall include but not be limited to the following components:

(a) Present level of educational and [/]behavioral performance including a written summary of strengths and weaknesses.

(b) Annual goals based on child's current level of functioning.

(c) Short term instructional objectives for each of the annual goals. Short term instructional objectives refer to measurable intermediate steps between the present level of educational and [/]behavioral performance and the specified annual goals. These objectives are identified for the purpose of periodically reviewing and evaluating pupil progress toward meeting the annual goal(s) specified on the IEP.

(d) Specific special education and related services needed to meet the specified goals and objectives.

(e) Extent to which the child shall [will] participate in the regular education program.

(f) Projected dates for initiation of specified educational and related services.

(g) Anticipated duration of the specified special education and related services.

(h) Appropriate objective criteria and evaluation procedures; and

(i) Schedule for determining, at least on an annual basis, whether the goals and objectives are being achieved.

(2) Implementation and evaluation. The appropriate admissions and release committee shall be responsible for assuring that strategies and activities designed to meet short-term objectives are implemented, and that the child's progress toward and mastery of the short-term objectives is evaluated at least annually.

(a) For each short-term objective specified on the IEP the appropriate admissions and release committee shall assign a specific person(s) who shall be responsible for determining and implementing appropriate strategies and

activities that will assist the child in achieving the specified objectives and goals.

(b) The implementer(s) shall maintain records of student progress in achieving short term objectives.

(c) The above records shall be utilized by the implementer and the appropriate admissions and release committee for ongoing evaluation of the IEP to determine the effectiveness and appropriateness of the IEP and to document implementation of the IEP.

Section 6. Placement. Placement shall mean the special education and related services provided an exceptional child [and shall not refer solely to enrollment in a minimum foundation program classroom unit for exceptional children].

(1) All exceptional children as defined in KRS 157.200 are eligible for placement. The appropriate admissions and release committee shall identify the specific handicapping condition of the child. The specific area of exceptionality (handicapping condition) of the child shall be that category for which the child meets eligibility criteria following evaluation procedures as specified in the appropriate categorical regulations.

(2) All due process procedures related to placement as required and provided in Section 9 of this regulation and 707 KAR 1:060 shall be followed.

(3) For each identified exceptional child needing special education and related services, the appropriate admissions and release committee shall:

(a) Determine placement;

(b) Base placement on the child's IEP;

(c) Determine placement at least annually; and

(d) Make placement consistent with the least restrictive environment concept as required in Section 7 of this regulation.

(4) Temporary placement. Temporary placement may occur for thirty (30) school days, upon written request from the parent(s), for those exceptional pupils who are new enrollees to the local school district and who have been provided special education and related services by another local school or agency in the school days preceding the request. Documentation shall be on record that special education and related services were provided to the pupil by the other school district or agency. The pupil shall be placed in the same type program as previously provided and in accordance with the IEP. Within the thirty (30) school days the admissions and release committee shall convene to carry out its functions as specified in Section 3(4) of this regulation.

(5) Trial placement. Trial placement shall be a temporary placement for students not new to the school or school system and may be considered pursuant to the following conditions:

(a) The placement shall be for no longer than four (4) school months and shall not be continued beyond this time as a trial placement.

(b) Written rationale justifying the trial placement shall be provided by the admissions and release committee recommending such placement and shall be maintained with the IEP.

(c) The pupil shall have an IEP specifying trial placement and the starting and ending dates of such placement.

(d) A trial placement shall not serve as a substitution for a more appropriate placement.

(e) The appropriate admissions and release committee shall review the trial placement no later than four (4) school months after initiation of services to determine the effectiveness of such services, and to make recommendations for continuation in that program or a change in program.

(f) All due process procedures as required and provided in Sections 9 and 10 of this regulation and 707 KAR 1:060 shall be afforded the parent, child, and school, including written parental permission for trial placement.

(6) Change in placement. Change in placement refers to those actions that cause a significant alteration in programming for a child who is currently receiving special education and related services.

(a) Change in placement shall mean, but not be limited to, a change from:

1. Special education and related services to regular education, including regular education with support services;

2. One (1) categorical program to another (e.g., TMH to EMH); or

3. [Or to] A more or less restrictive environment (e.g., special class to resource room).

(b) Any change in placement shall follow due process procedures to insure that exceptional children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and placement, including the written prior notice requirements as specified in 707 KAR 1:060.

(c) Any change in placement shall be subject to established admissions and release committee procedures and consideration of the least restrictive environment concept.

Section 7. Least Restrictive Environment. Least restrictive environment refers to that educational setting or program in which he identified child can function most effectively based upon his or [/]her unique needs and capabilities.

(1) To the maximum extent appropriate exceptional children as defined in KRS 157.200 including those children in public or private institutions or other care facilities shall be educated with children who are not identified as exceptional.

(2) Self-contained classes, separate schooling or other removal of exceptional children from the regular educational environment shall occur only when the nature or severity of the exceptionality is such that education in the regular class with the use of supplementary aids and services cannot be achieved satisfactorily.

(3) Unless an exceptional child's individual education program requires some other arrangement, the child shall be educated in the school in which he or she would attend if not identified as exceptional.

(4) [Each agency providing educational services shall insure that] A continuum of placement alternatives shall be [is] available to meet the needs of exceptional children for special education and related services. The alternatives shall include but not be limited to instruction in the regular classroom, special classes, special schools and home and hospital instruction. The alternatives shall also make provision for supplemental services such as resource room or itinerant instruction to be provided in conjunction with regular class placement.

(5) The identified child shall be returned to the most normal setting possible when specified goals and objectives have been achieved, consistent with the child's capabilities and educational needs and as determined by the appropriate admissions and release committee.

Section 8. Program Completion. An exceptional pupil shall be granted a high school diploma pursuant to meeting criteria and standards as provided in the "Program of Studies for Kentucky Schools," 704 KAR 3:304. These pupils should be considered a part of the graduating class and no distinction shall be made in the ceremonies.

Section 9. Procedural Safeguards. (1) Each local school district shall establish and implement reasonable timelines in order for the identification, evaluation, and placement of referred pupils to occur without delay and pursuant to the specifications of this section and 707 KAR 1:060.

(2) Each child and his or her parent(s) and the local school district shall be guaranteed procedural safeguards in decisions regarding identification, location, evaluation and educational placement of the child in programs for exceptional children as provided in 707 KAR 1:060, the "Due Process Policy and Procedure Manual." These safeguards shall include the following:

(a) The child shall be represented by his or her parent(s) at all decision making points in the identification, evaluation and placement process. "Parent" refers to a natural mother or father, adoptive mother or father, a legally appointed guardian, a person acting as a parent of a child[,] (e.g., grandparent or [,] stepparent[, etc.]) or a surrogate parent appointed to act in this capacity.

(b) The parent(s) shall receive written notification from the local school district that their child has been referred as a possible candidate for programs for exceptional children and that the child has the right to receive a free, appropriate public education.

(c) Parent(s) shall receive written notification in English and the primary language of the home regarding identification, evaluation and placement procedures.

(d) The local school district shall obtain written parental permission prior to initial individual evaluation and initial placement in a program for exceptional children.

(e) The local school district shall provide the parent(s) with written notification of continuation of placement.

(f) The parent(s) shall have the right to obtain an independent educational evaluation conducted by a qualified examiner. The results of this evaluation must be considered in decisions regarding the provision of a free appropriate public education to the child.

(g) In accordance with procedures outlined in 707 KAR 1:060, the "Due Process Policy and Procedure Manual," either the parent(s) or the local school district may request an impartial due process hearing to resolve disagreements regarding proposed or refused actions related to the identification, evaluation and educational placement of exceptional children. Appeals related to the due process hearing decision shall be conducted pursuant to 707 KAR 1:080.

(h) Where a child's parent(s) or guardian(s) are not known, whereabouts of the parent cannot be determined or the child is a ward of the state (parental rights have been terminated), such child shall be assigned a surrogate parent to represent him or [/]her in all matters relating to the provision of a free, appropriate public education.

1. The local school district in cooperation with other public and private agencies shall recruit persons who shall [can and will] serve as surrogate parents. Persons selected as surrogate parents shall:

a. Have no other vested interest that would conflict with their primary allegiance to the child they would represent;

b. Be committed to personally and thoroughly acquainting themselves with the child and the child's educational needs;

c. Be familiar with the educational system within the state;

d. Be readily accessible to the children they represent;

e. Be an adult - eighteen (18) or over; and

f. Be a U.S. citizen.

2. Assignment of a surrogate to a particular child shall be made by the local school district according to the following procedures:

a. Any person including local school district personnel, may file a request for a surrogate to represent a child with the child's local school district.

b. The local school district shall acquire the proper documentation to substantiate the need for a surrogate parent. Justification and documentation for surrogate parent assignment shall be:

JUSTIFICATION FOR SURROGATE	DOCUMENTATION NEEDED
No parent (as defined by federal regulation 34 CFR 300.10) can be identified. 34 CFR 300.10 the term "parent" means a parent, a guardian, a person acting as a surrogate parent of a child, or a surrogate parent. This term does not include the state if the child is a ward of the state. Comment: The term "parent's" defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.	A copy of the request for a surrogate parent and a copy of the returned envelope sent by certified mail to the parent(s) or guardian(s) at their last known address, documentation from the Cabinet for Human Resources that no parent exists or a copy of death certificate(s).
Whereabouts of the parent cannot be determined.	A copy of the request for a surrogate parent and a copy of the returned envelope sent by certified mail to parent(s) or guardian(s), at their last known address.

Child is a ward of the state and parental rights have been terminated.	A copy of the court order terminating the rights of the parent(s) or an affidavit from the local Cabinet for Human Resources, Social Services Field Office Supervisor, stating the child's name, birthdate, county of termination and signature and title of the person giving it.

c. The local school district shall assign a surrogate within fifteen (15) school days of the receipt of request for surrogate parent.

d. The assigned surrogate shall represent the child in all matters relating to identification, evaluation and placement, and the provision of a free appropriate public education.

e. Surrogates shall not be assigned to children who have reached the age of majority unless they have been declared by a court of competent jurisdiction as being unable to make informed decisions and otherwise meet the requirements for eligibility for the assignment of a surrogate to represent them in educational matters.

f. An individual assigned as a surrogate shall not be an employee of a public agency involved in the education or care of the child.

(i) Testing and evaluation materials utilized for the purpose of evaluation and placement of exceptional children must be selected and administered so as not to be racially or culturally discriminatory.

(j) Decisions regarding the placement of exceptional children shall be made with regard to educating these pupils to the maximum extent appropriate with their nonhandicapped peers in the least restrictive environment.

Section 10. Confidentiality of Personally Identifiable Information. The public agency shall develop and adopt policies and procedures consistent with the provisions of the Family Educational Rights and Privacy Act and confidentiality requirements of EAHCA [P.L. 94-142] for all exceptional children. These shall include the following:

(1) Parent(s) shall be notified annually of all requirements concerning personally identifiable information.

(2) Educational records collected, maintained, and used by the agency are open for inspection and review by the child's parent(s) and a representative of the parent(s).

(3) The agency shall comply with a parental request to inspect and review records without unnecessary delay, before any meeting of the admissions and release committee, before an impartial due process hearing, and in no case more than forty-five (45) days after the request has been made.

(4) Upon request of the parent(s) the public agency must provide an explanation and interpretation of such records.

(5) Copies of the records shall [must] be provided if failure to do so would prevent the parent(s) from exercising their right to review and inspect the records. A nominal fee may be charged unless it would prevent such access rights. A fee shall [may] not be charged for record search or retrieval.

(6) An agency may presume that the parent(s) has the authority to inspect and review records relating to his or [/]her child unless the agency has been advised that the parent(s) does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

(7) A record of access shall be maintained for those individuals obtaining access to such records, except the parent(s) and authorized parties of the agency, including the name of the party, the date of access, and the purpose for which the party was authorized to use the records.

(8) Information from records containing data on more than one (1) child shall be provided in such a way as to preserve the confidentiality of the other pupils.

(9) A list of the location and types of education records collected, maintained and used by the agency shall be provided by the agency to parent(s) on request.

(10) The parent(s) have the right to request an amendment of information in the education records pursuant to the following:

(a) The agency shall decide whether to amend the information within a reasonable period of time of receipt of the request and shall notify the parent(s) to this effect.

(b) If the agency refuses to amend the records, it shall inform the parent(s) of their right to a record amendment hearing.

(c) If the result of the hearing does not require such amendment, the parent(s) has the right to place a statement outlining the points of dissent in the education records. This statement shall [must] accompany the information each time it is released.

(d) If the agency amends the records as a result of the hearing, it shall so inform the parent(s) in writing.

(11) Parental consent shall [must] be obtained before disclosing personally identifiable information to individuals or agencies unless otherwise authorized to do so as delineated in the Family Educational Rights and Privacy Act and the EAHCA [P.L. 94-142].

(12) Each agency shall protect the confidentiality of records at collection, storage, disclosure and destruction stages and shall insure that all persons collecting or using records receive training in confidentiality requirements.

(13) One (1) agency official shall assume responsibility for insuring the confidentiality of personally identifiable information.

(14) A current listing of the names and titles of individuals in the public agency who have access to education records shall [must] be maintained for public inspection.

(15) Public agencies shall [must] inform the parent(s) when education records are no longer needed for educational services and destroy that information upon request of the parent(s). The agency shall [must] inform the parent(s) that such information could be needed later for social security benefits or other purposes. A permanent record of the pupil's name, address, phone, grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Linda F. Hargan
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: 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 alternative methods were available to meet Ketnucky Education Reform Act and federal Corrective Action Plan requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The provisions of the Kentucky Education Reform Act and the Federal Corrective Action Plan mandate the changes set forth in these amendments for all local school districts.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR Chapter 300.
2. State compliance standards. 707 KAR 1:051
3. Minimum or uniform standards contained in the federal mandate. Federal mandate provides parameters for programs for exceptional children in the areas of child identification, membership of individual education program (IEP) committees, child evaluation, IEP development, placement of children, least restrictive environment, procedural safeguards and confidentiality.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 707 KAR 1:051 incorporates federal mandates in the above listed areas and contains the requirements which are necessary for compliance in this state. The changes made in these regulations are required under the Kentucky Education Reform Act and should not impose stricter requirements than the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(Proposed Amendment)

707 KAR 1:140. Qualifications for approved classroom assignment of teachers of exceptional children.

RELATES TO: KRS 157.250 [157.200 to 157.290, 157.360, 161.030]
STATUTORY AUTHORITY: KRS 157.220 [156.070, 157.360, 161.030]
NECESSITY AND FUNCTION: KRS 157.250 prohibits any person from being employed in a special education program without meeting special training requirements of the State Board for Elementary and Secondary Education [157.200 to 157.290 set forth the state statutory framework for special education programs for exceptional children; KRS 157.360 provides the mechanism for state financial support of local school district programs for exceptional children; and KRS 161.030 rests teacher certification authority with the State Board for Elementary and Secondary Education]. This regulation establishes the qualifications for approval of classroom teaching personnel for classrooms [unit allocation] for exceptional pupils.

Section 1. Qualifications for Assignments of Special Education Personnel. Teachers employed for a teaching assignment in a classroom for exceptional pupils for the 1990-91 school year shall hold appropriate state certification in the areas of assignment as required in Title 704 KAR Chapter 20, except as specified in Sections 2 through 14 of this regulation.

Section 2. [1.] Educable Mentally Handicapped. Teachers holding the following certification may be assigned to classes established to serve educable mentally handicapped pupils, grades K-12 or any combination of grades thereof:
(1) Certification for learning and behavior

disorders, grades K-12 or 7-12.
(2) Certification for teaching the educable mentally retarded, emotionally disturbed, or neurologically impaired, for grades 1-12, 1-8, or 7-12.

Section 3. [2.] Emotionally Disturbed. Teachers holding the following certification may be assigned to classes established to serve emotionally disturbed pupils, grades K-12, or any combination of grades thereof:
(1) Certification for learning and behavior disorders, grades K-12 or 7-12.
(2) Certification for teaching the educable mentally retarded, emotionally disturbed, or neurologically impaired, or handicapped for grades 1-12, 1-8, or 7-12.

Section 4. [3.] Learning Disabilities. Teachers holding the following certification may be assigned to classes established to serve learning disabled pupils, grades K-12, or any combination of grades thereof:
(1) Certification for learning and behavior disorders, grades K-12 or 7-12.
(2) Certification for teaching the educable mentally retarded, emotionally disturbed, or neurologically impaired, for grades 1-12, 1-8, or 7-12.

Section 5. [4.] Physically Handicapped. Teachers holding the following certification may be assigned to classes established to serve physically handicapped pupils, grades K-12, or any combination of grades thereof:
(1) Certification for learning and behavior disorders, grades K-12 or 7-12.
(2) Certification for teaching the educable mentally retarded, emotionally disturbed, neurologically impaired, or orthopedically handicapped for grades 1-12, 1-8, or 7-12.

Section 6. [5.] Trainable Mentally Handicapped. Teachers holding the following certification may be assigned to classes established to serve trainable mentally handicapped pupils, grades K-12, or any combination of grades thereof:
(1) Certification for trainable mentally handicapped, grades K-12.
(2) Certification for teaching the trainable mentally retarded, grades 1-12, 1-8, or 7-12.
(3) Certification for teaching the severely and [/] profoundly handicapped.

Section 7. [6.] Severely Profoundly Handicapped. Teachers holding the following certification may be assigned to classes established to serve pupils classified as severely and [/] profoundly handicapped at any grade level:
(1) Certification for teaching the trainable mentally handicapped, or trainable mentally retarded, grades K-12, 1-8, or 7-12.
(2) Certification for teaching the severely and [/] profoundly handicapped.

Section 8. [7.] Multiple Handicapped. (1) Teachers of classes established where the majority of students are multiple handicapped whose intellectual functioning is trainable mentally handicapped or below shall hold the following certification:
(a) Certification for teaching the trainable mentally handicapped or trainable mentally retarded, grades K-12, 1-8, or 7-12.
(b) Certification for teaching the severely and [/] profoundly handicapped.
(2) Teachers of classes established where the majority of students are multiple handicapped whose intellectual functioning is educable mentally handicapped or above, and with no students whose intellectual functioning is within the range for severely and [/] profoundly handicapped, shall hold the following certification:
(a) Certification for teaching the educable mentally retarded, emotionally disturbed, neurologically impaired, or orthopedically handicapped for grades 1-12, 1-8, or 7-12.
(b) Certification for learning and behavior disorders, grades K-12, or 7-12.

Section 9. [8.] Visually Handicapped. Teachers holding the following certification may be assigned to classes established to serve pupils classified as visually impaired at any grade level: certification for teaching the partially seeing, blind, or visually impaired, grades 1-12, 1-8, or 7-12.

Section 10. [9.] Hearing Impaired. Teachers holding the following certification may be assigned to classes established to serve pupils classified as hearing impaired at any grade level: certification for teaching the hard of hearing, deaf, or hearing impaired, grades K-12, 1-12, 1-8, or 7-12.

Section 11. [10.] Speech-Language Disorders. Teachers holding the following certification may be assigned to serve pupils at any grade level who have been identified as needing instruction for speech or language disorders:
(1) Certification for speech and hearing, grades 1-12.
(2) Certification for speech and communication disorders, grades K-12.
(3) Certification for communication disorders.

Section 12. [11.] Exceptional Children Kindergarten Classes. Teachers holding the following certification may be assigned to serve kindergarten age pupils classified as handicapped:
(1) Certification for teaching the educable mentally retarded, emotionally disturbed, neurologically impaired, orthopedically handicapped, trainable mentally handicapped, visually impaired, partially seeing, deaf, hard of hearing, hearing impaired, grades 1-12, 1-8, or 7-12.
(2) Certification for learning and behavior disorders, trainable mentally handicapped, and severely or profoundly handicapped, grades K-12.

Section 13. [12.] Replacement Teacher for Special Education Classes. When a local school district loses the services of the approved, certified special education teacher after September 15, a replacement teacher may be assigned to a classroom unit for exceptional children under the following priority order.
(1) A teacher holding certification for the assignment as identified in Sections 2 [1] through 12 [11] of this regulation.
(2) If a teacher is not available who holds certification identified in subsection (1) of this section, the local school district may apply to the Office of Education for Exceptional

Children for approval of qualifications for a replacement teacher, with the exception of speech language disorders, who meets the following criteria:

(a) The application shall document the following:

1. Teachers with certification in special education are not available within the local school district for the position.

2. Efforts have been made to recruit a teacher certified in special education for the vacant position. The vacancy has been publicized by appropriate means, including advertisement of the vacant position under applicable law.

3. The position will be filled by the best certified person available giving preference to the factors of academic preparation, prior successful teaching experience or related educational work.

(b) The replacement teacher shall hold a classroom teaching certificate valid for the same grade level of the assignment.

(c) The replacement teacher shall not be employed for the same teaching assignment for the following academic year without obtaining appropriate certification.

(d) The approval shall be effective from the date the application for approval is received by the Office of Education for Exceptional Children.

Section 14. [13.] Combinations of grades to be served within all categorical areas remain subject to age range requirements as set forth in 707 KAR 1:052 through 707 KAR 1:059.

Section 15. Qualifications for Assignments of Special Education Personnel. Teachers employed for a teaching assignment in a classroom for exceptional pupils beginning with the 1991-1992 school year shall hold appropriate state certification in the areas of assignment as required in Title 704 KAR Chapter 20, except as specified in Section 13 through 22 of this regulation.

Section 16. Qualifications for assignments of special education teachers to programs serving a single category or combinations of categories of pupils identified as educable mentally handicapped (EMH), learning disabled (LD), emotionally disturbed (ED), and physically handicapped (PH) shall be as follows:

(1) Single category programs. Only teachers certified to teach the category of handicapping condition of the students in the class (EMH, LD, ED, or PH) or teachers certified for learning and behavior disorders (LBD) shall be assigned to teach these classes.

(2) Dual category programs. Local school districts may serve pupils classified in two (2) different categories of exceptionality listed above in the same program if the teacher is certified to teach one (1) of categories of handicapping conditions of the students in the program or is certified in the area of learning and behavior disorders (LBD).

(3) Triple category programs. Local school districts may serve pupils classified in three (3) different categories of exceptionality listed above in the same program if the teacher is certified to teach two (2) of the categories of handicapping conditions of the students in the program or is certified in the area of learning and behavior disorders.

Section 17. Qualifications for assignments of special education teachers to programs serving a single category or combinations of categories of pupils identified as trainable mentally handicapped (TMH), severely and profoundly handicapped (SPH), or multiple handicapped whose intellectual functioning is trainable mentally handicapped or below (MH). Local school districts may serve pupils classified in a single category of exceptionality listed above, or in combinations two (2) or three (3) categories of exceptionality listed above, in the same program if the teacher is certified to teach trainable mentally handicapped (TMH) or severely and profoundly handicapped (SPH).

Section 18. Qualifications for assignments of special education teachers to multiple handicapped programs where the majority of students are multiple handicapped whose intellectual functioning is educable mentally handicapped or above. Teachers of programs established where the majority of students are multiple handicapped whose intellectual functioning is educable mentally handicapped or above, and with no students whose intellectual functioning is within the range of severely and profoundly handicapped, shall hold the following certification:

(1) Certification for teaching the educable mentally retarded, neurologically impaired, for grades 1-12, 1-8, or 7-12.

(2) Certification for learning and behavior disorders, grades K-12, or 7-12.

Section 19. Exceptional Children Kindergarten Classes. Districts wishing to assign teachers to exceptional kindergarten classes which serve kindergarten age pupils identified as handicapped shall request approval for the teacher assignment from the Kentucky Department of Education, Office of Education for Exceptional Children, pursuant to the requirements set forth in Section 22 of this regulation.

Section 20. Teachers employed as of September 1, 1985, and assigned to programs which include pupils of an exceptionality not covered by their certification may continue to be assigned to such classes, provided the teacher has had class assignments which included such exceptional pupils for each of the preceding three (3) years, and the Kentucky Department of Education approved the assignment for each of the years involved.

Section 21. If a teacher of exceptional students is appropriately certified pursuant to the provisions of Title 704 Chapter 20 or assigned in accordance with the requirements of this regulation, such teacher may teach students at any grade level for which he or she holds categorical certification.

Section 22. Requests for Teacher Assignment. Local school districts which need to assign teachers to teach classes or pupils not consistent with the above criteria shall request approval for the teacher assignment from the Kentucky Department of Education, Office of Education for Exceptional Children.

(1) The Kentucky Department of Education shall give consideration for such approval based on information provided by the local school

district as follows:

(a) Request shall be made prior to September 15 or within ten (10) school days of the need for assignment if it occurs after September 15 and shall include the teacher's name, school assignment, Social Security Number and class plan assignment.

(b) The teacher's current certification(s), a listing of pupils currently served by age and category of exceptionality, a listing of pupils the district is requesting to be served by age and exceptionality, and any other relevant information which the district wishes to have considered in the decision-making process.

(2) The assignment shall not exceed the length of the school year during which it was initiated.

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: September 12, 1990

FILED WITH LRC: September 13, 1990 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on October 30, 1990 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Linda F. Hargan

(1) Type and number of entities affected: 176 local school districts.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A. No alternative method is available for establishing minimum state certification requirements.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Federal regulations do not allow for tiering of minimum state certification requirements. Minimum state certification requirements must be met by all local education agencies providing services to handicapped students.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 300.12.

2. State compliance standards. 707 KAR 1:051, 707 KAR 1:140.

3. Minimum or uniform standards contained in the federal mandate. Federal mandate requires personnel providing services to be qualified, meaning that they have met state education agency approved or recognized certification requirements. The above regulations contain the state education agency requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The regulations contain the state education agency requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

PUBLIC PROTECTION & REGULATION CABINET
Department of Alcoholic Beverage Control
(Proposed Amendment)

804 KAR 4:110. Dormant license renewal.

RELATES TO: KRS 243.020, 243.030, 243.040, 243.090, 243.430

STATUTORY AUTHORITY: KRS 241.060

NECESSITY AND FUNCTION: Since Kentucky operates under a quota system for the number of distilled spirits licenses available, and since many [most] quotas are filled and no new licenses are available [in most areas], it would be unfair to those desiring a license to be precluded from obtaining a license because some licenses were issued but not being used by the licensee. Therefore, it is necessary that a licensee actually conduct the business authorized by the [such a] license or else the license will become [be declared] dormant [and become null and void after ninety (90) days. Such is the intent in provisions of this regulation]. Realizing that a licensee, like any other business, may have his business interrupted by situations not under his control, various exceptions to the dormancy rule have been included in the regulation.

Section 1. (1) Any wholesale, distributor, or retail license under which no business is transacted during a period of ninety (90) days

shall be revoked by the Alcoholic Beverage Control Board or surrendered [become null and void. At the expiration of the ninety (90) day period the license shall be surrendered to the Alcoholic Beverage Control Department].

(2) [Except that] The provisions of subsection (1) of this section shall not apply to any licensee who is unable to continue in business at the licensed premises [for which a license was issued] due to an act of God, casualty, the acquisition of the premises by any federal, state, city or other governmental agency under power of eminent domain, acquisition by any private corporation through its power of eminent domain granted to it, whether such acquisition is voluntary or involuntary, [or] loss of lease through failure of landlord to renew existing lease, court action or other verifiable business reason. The [. Such] licensee shall apply to place the license in dormancy by furnishing [furnish] to the Alcoholic Beverage Control Board [Department] a verified statement setting forth the fact that the licensee is unable to continue in business [prior to the discontinuance of business] at his licensed premises, for any of the reasons set forth herein prior to the discontinuance of business. [, and] The license shall continue to remain in effect during the license period or until it [same] is transferred to another premises or person. [, notwithstanding the fact that no business is transacted during said period; provided, however,] No [such] license shall be considered valid unless business is conducted thereunder within twelve (12) months from date of first notice to the board. The board may extend this dormancy period for up to an additional twelve (12) months for good cause shown. [department.]

(3) Licenses placed in dormancy shall be renewed and renewal fees paid in the same manner as active licenses. [All renewal of licenses must be on file with the Alcoholic Beverage Control Board within thirty (30) days after the expiration of the licenses for the preceding license period or the same shall be cancelled, except where the licensee is unable to continue in business at the same premises licensed during the preceding license period due to an act of God, casualty, the acquisition or threatened acquisition of these premises by any federal, state, city or other governmental agency or private corporation, possessing power of eminent domain, whether such acquisition is voluntary or involuntary, or loss of lease through failure of landlord to renew existing lease; that said licensee shall file a written verified statement not less than twenty (20) days from the expiration date of the license, setting forth these facts, and the distilled spirits administrator and malt beverage administrator are hereby authorized to extend the time for filing of a renewal of such license for a reasonable length of time within the sound discretion of said administrator; provided, however, such licensee shall pay a license fee from the expiration date of the former license or licenses. Said license fee shall not be payable until application is made for the transfer of said license to a new location.]

(4)(a) If [In the event] negotiations for [of] a buy-out of a license privilege issued under KRS 243.030 or 243.040(3) [(2)] may extend thirty (30) days beyond the date of expiration of the seller's license or licenses, then the distilled spirits administrator[, under KRS 243.030,] or the malt beverage administrator[, under KRS 243.040(2),] shall be notified in writing of the [such] transaction or negotiations not less than ten (10) days prior to the expiration date of the license or licenses involved. The appropriate [said] administrator may then extend the time for filing a renewal or application for the [said] license or licenses for a reasonable length of time not to exceed sixty (6) days [within his sound discretion].

(b) If a buy-out of an existing license privilege under KRS 243.030 or 243.040(3) [(2)] extends over the renewal period and the license or licenses have not been renewed by the seller, the purchaser shall pay the annual license fee for the whole fiscal year or from the expiration date of the license privilege sought to be purchased, whichever is greater.

(c) If a license privilege under KRS 243.030 or 243.040(3) qualifies under Section 2 of this regulation, the purchaser of the privilege may place the license in dormancy in the manner provided by this regulation.

Section 2. All licenses carried in a dormant status in the records of the Alcoholic Beverage Control Board on the date this regulation becomes effective shall be subject to the provisions of this regulation. The time periods contained in this regulation shall be calculated from the effective date of this regulation for these licensees. The records of the board granting a license dormant status shall be prima facie evidence that the license is valid.

LANNY COMBS, Commissioner
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 12, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 24, 1990 at 9 a.m. EDT. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, October 17, 1990, 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 unelss 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: Cynthia Newton, Acting Secretary to the Board, Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky 40601 .

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Catherine C. Staib

(1) Type and number of entities affected: Approximately 150 dormant licensees and unknown others who may request dormant status.

(a) Direct and indirect costs or savings to those affected: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing

costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This legislation is language changes to comply with the requirements of KRS Chapter 13A. Additional language to clarify department procedures.
TIERING: Was tiering applied? Yes

PUBLIC PROTECTION & REGULATION CABINET
Department of Financial Institutions
(Proposed Amendment)

808 KAR 1:050. Retention of records.

RELATES TO: KRS 287.375
STATUTORY AUTHORITY: KRS 287.011
NECESSITY AND FUNCTION: To prescribe those records which banks must retain and to prescribe the period of time for which such records must be retained.

Section 1. For purposes of this regulation, record shall be construed to mean any paper, book, photograph, film, reproduction, sound recording, tabulating card, data processing tape or disc, map, drawing or other document that has been prepared or received in the transaction of business.

Section 2. Records shall be retained by banks in accordance with the record retention schedule, effective August 1, 1990, which is hereby incorporated by reference. A copy of the record retention schedule may be obtained by writing to the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601. The record retention schedule can be inspection and copied at the Office of the Dewpartment of Financial Institutions on 911 Leawood Drive during regular office hours, 8 a.m. to 4:30 p.m., Monday through Friday.

EDWARD B. HATCHETT, JR., Commissioner
APPROVED BY AGENCY: September 13, 1990
FILED WITH LRC: September 14, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 24, 1990 at 10 a.m. at the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 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 unelss 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: J. Rick Jones, Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas W. Stout
(1) Type and number of entities affected: State chartered banks (250) and national banks (85).
(a) Direct and indirect costs or savings to those affected: This amendment reduces the retention period for many bank records, but the dollar savings is impossible to quantify.
1. First year: Indeterminable
2. Continuing costs or savings: Indeterminable
3. Additional factors increasing or decreasing costs (note any effects upon competition): No effect on competition, since national banks also use this records retention schedule.
(b) Reporting and paperwork requirements: Most of the changes to the records retention schedule reduced the retention periods; therefore banks will be able to get rid of many records sooner and reduce necessary storage space.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is required by statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None determined.
(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. The regulation applies equally to all banks, regardless of size or location.

PUBLIC PROTECTION & REGULATION CABINET
Department of Financial Institutions
(Proposed Amendment)

808 KAR 3:020. Record retention schedule.

RELATES TO: KRS 290.070
STATUTORY AUTHORITY: KRS 290.070
NECESSITY AND FUNCTION: KRS 290.070 requires the Department of Financial Institutions to prescribe rules and regulations for proper conduct and regulation of credit unions. This regulation is to assure the proper time to maintain records for all state chartered credit unions.

Section 1. Record means any paper, book, photograph, film, reproduction, sound recording, tabulating card, ledger card, journals, data processing tape or disc, map, drawing or other document that has been prepared or received in the transaction of business.

Section 2. Records shall be retained by credit unions in accordance with the record retention schedule, effective August 1, 1990, which is hereby incorporated by reference. A copy of the record retention schedule may be obtained by writing to the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601. The record retention schedule can be inspected and copied at the office on 911 Leawood Drive during regular office hours, 8 a.m. to 4:30 p.m., Monday through Friday.

EDWARD B. HATCHETT, JR., Commissioner
APPROVED BY AGENCY: September 13, 1990
FILED WITH LRC: September 14, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 24, 1990 at 10 a.m. at the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 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 unelss 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: J. Rick Jones, Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas W. Stout
(1) Type and number of entities affected: 75 state chartered credit unions, and 118 federally chartered credit unions.
(a) Direct and indirect costs or savings to those affected: Costs or savings cannot be quantified; it is hoped that the records retention schedule would help credit unions save money by disposing of unnecessary records.
1. First year: Indeterminable
2. Continuing costs or savings: Indeterminable
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: It is hoped that this regulation will result in the maintenance of fewer records since the terms used are more specific.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: Indeterminable
2. Continuing costs or savings: Indeterminable
3. Additional factors increasing or decreasing costs: Indeterminable
(b) Reporting and paperwork requirements: No effect.
(3) Assessment of anticipated effect on state and local revenues: None identified.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was found which could provide specific guidance to credit unions or record retention.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 12 CFR 749, promulgated by the National Credit Union Administration, provides a minimal listing of documents which must be maintained by all federally-insured credit unions. It is not in conflict with this regulation.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: N/A
TIERING: Was tiering applied? No. All credit unions, whether large or small, need to retain the same types of vital documents.

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.105
NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. This regulation establishes licensure requirements for the operation of skilled nursing facilities.

Section 1. 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), or by personnel who have completed a state approved training program from a state approved training provider. 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. 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 by hand, 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.

d. 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.

e. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

f. A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

g. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

h. 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.

EDWARD A. WILSON, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 22, 1990
FILED WITH LRC: August 28, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 22, 1990 at 9 a.m., in the Department for Employment Services Conference Room, 2nd Floor East, 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 October 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: Eric Freidlander/Miller

(1) Type and number of entities affected: 101 facilities.

(a) Direct and indirect costs or savings to those affected: This should produce a cost savings to skilled nursing facilities. This would be accomplished through the pay differential between required personnel.

1. First year: Difficult to determine for individual facilities.

2. Continuing costs or savings: This would be a continuing savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.

(b) Reporting and paperwork requirements: No additional requirements.

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

(a) Direct and indirect costs or savings: The only costs will be associated with reprinting the regulation.

1. First year: $500 for printing the regulation.

2. Continuing costs or savings: No additional costs since reprinting regulations is incorporated in agency budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The CMA program has proven to be cost effective and efficient.

(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: 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 additional information.

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 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, this amendment to this regulation is permissive in that it allows for certified medication aides to dispense medication in skilled nursing facilities.

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.105(3)
NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105(3) mandate that the Cabinet for Human Resources regulate health facilities and health services. This regulation establishes licensure requirements for existing nursing homes. This regulation does not address the establishment of new nursing homes.

Section 1. 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, <u>from a state approved training provider</u>. 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. 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 by hand, 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.

d. 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.

e. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera,

diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

f. A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

g. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

h. 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.

EDWARD A. WILSON, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 21, 1990
FILED WITH LRC: August 28, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor East, 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 October 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: Eric Friedlander/Delano Miller

(1) Type and number of entities affected: 204

(a) Direct and indirect costs or savings to those affected: There should be no additional cost 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: The costs should be minimal.

(a) Direct and indirect costs or savings: $500 for printing new regulation.

1. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs should be associated with this amendment since reprinting costs are a normal agency expense.

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: This change is to clarify an existing program.

(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: No conflict exists.

(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. This is a licensure regulation and as such must apply to all regulated entities equally.

CABINET FOR HUMAN RESOURCES
Office of 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.105
NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. This regulation establishes licensure requirements for the operation of and services provided by intermediate care facilities.

Section 1. 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. 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 by hand, 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.

4. 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.

5. 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, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus. If an attending physician is in doubt regarding the communicability of a patient's condition, he may contact the Department for Health Services.

7. 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.

9. 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, from a state approved training provider. 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.

EDWARD A. WILSON, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 21, 1990
FILED WITH LRC: August 28, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor East, 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 October 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: Eric Friedlander/Delano Miller
(1) Type and number of entities affected: 17
(a) Direct and indirect costs or savings to those affected: There should be no additional cost 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: The costs should be minimal.
(a) Direct and indirect costs or savings: $500 for printing new regulation.
1. First year: $500 for printing costs.
2. Continuing costs or savings: No continuing costs should be associated with this amendment since reprinting costs are a normal agency expense.
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: This change is to clarify an existing program.
(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: No conflict exists.
(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. 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, this regulation only sets forth training requirements for personnel.
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.990(1), (2), 222.210 et. seq.
STATUTORY AUTHORITY: KRS 216B.042, 216B.105
NECESSITY AND FUNCTION: KRS 216B.042 mandates that the Kentucky Cabinet for Human Resources regulate health facilities and health services. This regulation provides licensure requirements for the operation and services of intermediate care facilities for the mentally retarded/developmentally disabled (MR/DD).

Section 1. 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) "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) "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) "Facility" means an intermediate care facility for the mentally retarded and the developmentally disabled (MR/DD).

(7) "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) "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) "License" means an authorization issued by the commission for the purpose of offering intermediate care MR/DD services.

(10) "MR/DD" means the mentally retarded and the developmentally disabled persons.

(11) "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) "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) "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) "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) "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) "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) "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) "Seclusion" means the retention of a resident alone in a locked room.

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

(21) "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) 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 by hand, 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.

(d) 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.

(e) Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

(f) A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

(g) Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

(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, from a state approved training provider. 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).

EDWARD A. WILSON, Inspector General
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: August 21, 1990

FILED WITH LRC: August 28, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 22, 1990 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor East, 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 October 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: Eric Friedlander/Delano Miller
(1) Type and number of entities affected: 101
(a) Direct and indirect costs or savings to those affected: There should be no additional cost 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: The costs should be minimal.
(a) Direct and indirect costs or savings: $500 for printing new regulation.
1. First year: $500 for printing costs.
2. Continuing costs or savings: No continuing costs should be associated with this amendment since reprinting costs are a normal agency expense.
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: This change is to clarify an existing program.
(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: No conflict exists.
(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. 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. Federal statute or regulation constituting 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, this amendment to this regulation only sets forth training requirements for personnel.
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 Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:006. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.52, 205.10, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 233.100, 250
STATUTORY AUTHORITY: KRS 194.050, 205.200(2), (3)
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC) in accordance with Title IV-A of the Social Security Act. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with the Social Security Act and federal regulations. This regulation sets forth the technical requirements of residence, deprivation, living with a relative, age, one (1) category of assistance, work registration, job opportunities and basic skills (JOBS) program participation [work program participation], cooperation in child support enforcement activities and potential entitlement for other programs for eligibility for AFDC.

Section 1. Definitions. (1) "Assessment" means the ongoing evaluation of an individual's educational and vocational potential.
(2) "Barriers" are any hardships the individual shall overcome to participate in education, training or employment.
(3) "Case manager" means the Department for Social Insurance (DSI) individual who:
(a) Determines ongoing AFDC or medical assistance (MA) or food stamp (FS) eligibility and benefit levels for all case action in the household of a JOBS participant;
(b) Aids the JOBS participant by brokering services for the participant;
(c) Identifies and resolves barriers to the extent possible; and
(d) Delivers JOBS related services to the participant.
(4) "Conciliation" is a process in which participation problems in the JOBS program can be resolved.
(5) "JOBS" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support.
(6) "Target population" means that group composed of each individual who:
(a) Is receiving AFDC, and who has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;
(b) Makes application for AFDC and has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;
(c) Is a custodial parent under the age of twenty-four (24) who:
1. Has not completed a high school education and, at the time of application for AFDC, is not

enrolled in high school or a high school equivalency course of instruction; or

2. Had little or no work experience in the preceding year; or

(d) Is a member of a family in which the youngest child is within two (2) years of being ineligible for AFDC because of age.

Section 2. [1.] Residence and Citizenship. [Residence is determined in accordance with 45 CFR 233.40 which, in summary, provides that a]

1. Residence. A resident is anyone who is:

(a) Living in the state;

(b) Entered the state with a job commitment or seeking employment; and

(c) [is] Not receiving AFDC benefits from another state. [Citizenship is determined in accordance with 45 CFR 233.50 which states that]

(2) Citizenship. AFDC shall [can] be provided only to:

(a) Citizens; [or]

(b) Aliens lawfully admitted for permanent residence; or

(c) Aliens otherwise permanently residing in the United States under color of law.

Section 3. [2.] Deprivation. (1) To be eligible for AFDC, a child shall [must] be in need and shall [must] be deprived of parental support of a natural or adoptive parent or care due to: [the]

(a) Death;

(b) Continued absence from the home; [or]

(c) Physical or mental incapacity; or

(d) Effective October 1, 1990, unemployment. [of a natural or adoptive parent.]

(2) A married child living with his spouse in the home of his parents is not deprived of parental support or care.

(3) A married child living in the home of his parents but divorced or legally separated from his spouse is deprived of parental support if he is dependent on the parent and a parent is:

(a) Dead;

(b) Incapacitated; [or]

(c) Unemployed; or

(d) Continually absent from the home.

(4) [(2)] Continued absence from the home.

(a) To be eligible for AFDC, a needy child shall [must] be physically separated from the parent and:

1. The nature of the absence of the parent [is such as either to] interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

2. The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.

(b) Absence may be voluntary or involuntary.

1. Voluntary absence includes:

a. Divorce;

b. Legal separation;

c. Marriage annulment;

d. Desertion of thirty (30) days or more;

e. Forced separation of seven (7) days or more; or

f. Birth out-of-wedlock.

2. Involuntary absence includes:

a. Commitment to a penal institution for thirty (30) days or more;

b. Long-term hospitalization;

c. Deportation; or

d. Single parent adoption.

(c) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(5) [(3)] Incapacity.

(a) All determinations regarding whether a child has been deprived of parental support or care by reason of the physical or mental incapacity of a natural or adoptive parent shall be in conformance with federal regulations found at 45 CFR §233.90(c)(1)(iv) and the criteria set forth in this subsection.

(b) Each determination shall be based on a full consideration and assessment of all medical, social, and economic factors involving a particular claimant.

(c) If [Should] a verified medical condition exists, then all relevant social and economic factors shall [will] be considered to determine whether the parent's condition is the cause of and results in a parent's inability to support or care for the child[(ren)].

1. [(a)] Incapacity exists in each case when the following criteria are met:

a. [1.] It is medically determined that one (1) parent has a physical or mental defect, illness or impairment which was:

(i) Present at the time of application; and

(ii) Which has continued or is expected to last for a period of at least thirty (30) calendar days. This may include [, including] a period[, if any,] in which the claimant is undergoing planned diagnostic studies or evaluation of rehabilitation potential; and

b. [2.] It is determined by nonmedical evaluation that such defect, illness or impairment is [of such] debilitating to the extent of reducing [nature as to reduce] substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

2. [(b)] Factors to be considered in making the medical determination shall include:

a. [1.] The claimant's medical history and subjective complaints regarding an alleged physical or mental defect, illness or impairment; and

b. [2.] Competent medical testimony relevant to:

(i) [a.] Whether a physical or mental defect, illness or impairment exists;

(ii) [b.] Whether the defect, illness or impairment is enough to reduce the parent's ability to support or care for a child; and

(iii) [c.] Whether the defect, illness or impairment is likely to last thirty (30) days. The thirty (30) days is not intended to be a "waiting period." Rather, expected duration is substantial and pertinent to causal relationship.

3. [(c)] Factors to be considered in making the nonmedical evaluation shall include:

a. [1.] The claimant's:

(i) Age;

(ii) Employment history;

(iii) Vocational training;

(iv) Educational background; and

(v) Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

b. [2.] The extent and accessibility of employment opportunities available in the claimant's area of residence.

4. [(d)] In determining the extent and

accessibility of available employment opportunities, the limited employment opportunities of handicapped individuals shall be taken into account; and

a. [1.] Available printed materials that provide information regarding available employment opportunities shall be researched;

b. [2.] The local Department for Employment Service (DES) office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

c. [3.] The claimant shall be referred, if necessary, for further appraisal of his abilities.

5. [(e)] A written report shall be made of the determination under this subsection.

6. [(f)] Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing [in accordance with federal regulations found at 45 CFR §205.10].

(6) Unemployment. The determination that a child is deprived of parental support due to the unemployment of a parent shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a prior labor market attachment.

(a) Principal wage earner (PWE). The PWE is the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application.

1. If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

2. If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (4)(b) of this section.

3. Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

4. PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(b) Unemployment. A parent shall be considered to be unemployed if:

1. Employed less than 100 hours in a calendar month; or

2. Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent was under the 100 hour standard in the prior two (2) months and is expected to be under the 100 hour standard in the following month.

(c) Prior labor market attachment (PLMA).

1. PLMA is met if the parent:

a. Earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, within any thirteen (13) calendar quarter periods ending within one (1) year of the application;

b. Within twelve (12) months prior to application, received unemployment compensation; or

c. Is currently receiving unemployment compensation or if potentially eligible, has made application for unemployment insurance benefits.

2. In determining whether or not criteria in subsection (4)(c)1a of this section is met, the following shall be taken into consideration:

a. Participation in a work or training program shall be considered as earning an income in determining PLMA.

b. Full-time attendance, as defined by the school or institution, in educational activities may be substituted for two (2) of the six (6) calendar quarters.

c. Gross income from self-employment and farming qualify as earned income in determining prior labor market attachment. The self-employed individual does not have to realize a profit to meet this requirement.

(d) Restrictions. Unemployment shall not exist if the PWE:

1. Is on strike;

2. Is temporarily unemployed;

a. Due to weather conditions or lack of work;

b. If there is a job to return to; and

c. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

3. Is unavailable for full-time employment;

4. Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

5. Has not met the criteria of unemployment for at least thirty (30) days;

6. Has not applied for unemployment benefits, if potentially eligible;

7. Is not:

a. Registered for work under Section 8 of this regulation; or

b. Subject to JOBS, under Section 9 of this regulation; or

8. Has refused a bona fine offer of employment or training for employment without good cause in the thirty (30) days prior to AFDC-UP eligibility or during the course of receipt of AFDC-UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 is met.

Section 4. [3.] Living with a Specified Relative. To be eligible for AFDC a needy child shall [must] be living in the home of a relative [as specified in the Social Security Act and interpreted] as follows:

(1) A blood relative, including father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, first cousin.

(2) Also relatives of the half-blood and preceding generations as denoted by prefixes of grand, great or great-great; a stepfather, stepmother, stepbrother, stepsister.

(3) Any person listed above if parent has had paternity established through the administrative determination process. An administrative determination of paternity is limited to situations in which the following types of evidence are present:

(a) A birth certificate listing the alleged parent; or

(b) Legal documents such as;

1. Hospital records;

2. Juvenile court records;

3. Wills; and

4. Other court records which clearly indicate the relationship of the alleged parent or relative; or

(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or

(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:

1. School records;

2. Bible records;
3. Immigration records;
4. Naturalization records;
5. Church documents, such as baptismal certificates;
6. Passport;
7. Military records;
8. U.S. Census records; or
9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(e) Rebuttal of paternity.

1. Effective April 1, 1987, in cases in which the parent or, in the absence of the parent, the caretaker relative alleges the evidence present in paragraphs (a) or (b) of this subsection is erroneous and provides substantiation of the erroneous information, the parent or [/] caretaker relative shall provide a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.

2. Presence of the sworn statement or affidavit will serve as rebuttal to the evidence present in paragraphs (a) or (b) of this subsection and a determination of paternity will not be acknowledged.

(4) Adoptive parents as well as the natural and other legally adopted children and other relatives of such parents.

(5) Husband or wife of any persons listed above even if the marriage may have terminated, providing termination occurred after the birth of the child.

(6) If the parent continues to exercise control over the child, a child is considered as living in the home even when temporarily absent for:

(a) Medical care;
(b) Attendance at boarding school;
(c) College or vocational school;
(d) Emergency foster care; or
(e) Short visits with friends or relatives[, if the parent continues to exercise control over the child].

Section 5. [4.] Age and School Attendance. (1) A child may be eligible for AFDC from birth to age eighteen (18). [, or]

(2) A child may be eligible to age nineteen (19) if:

(a) A full-time student in a secondary school; or

(b) The equivalent level of vocational or technical training; and

(c) [if] Expected to complete the program prior to or during the month of their 19th birthday.

(3) Full- and part-time is defined in 904 KAR 2:016, standards for need and amount; AFDC.

(4) Unless he has indicated an intention not to reenter school, a child is considered in regular attendance in months in which he is not attending because of:

(a) Official school or training program vacation;
(b) Illness;
(c) Convalescence; or
(d) Family emergency [unless he has indicated an intention not to reenter school].

Section 6. [5.] One Category of Assistance. (1) A child or adult relative shall not be eligible for AFDC if receiving supplemental security income (SSI).

(2) If a child who receive SSI meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility factors are met.

Section 7. [6.] Strikers. (1) A family shall be ineligible for benefits for any month in which the natural or adoptive parent, with whom the child is living is, on the last day of such month, participating in a strike; and

(2) No individual shall be considered eligible for benefits for any month if, on the last day of such month, such individual is participating in a strike.

(3) Strike shall be defined to include 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.

[Section 7. Work Registration. Unless exempt under the criteria specified in Title IV of the Social Security Act and 45 CFR Section 224.20(b), an individual who has applied for or is receiving AFDC shall be ineligible for benefits if he refuses to register for work.]

Section 8. Work Registration. (1) In a case based on the deprivation of unemployment, the PWE shall register for work with the DES if:

(a) He resides in a non-JOBS county; or

(b) He resides in a JOBS county and is exempt from participation as specified in Section 9(1)(e) of this regulation.

(2) Failure of the PWE to register for work shall cause the case to be ineligible.

Section 9. Job Opportunities and Basic Skills (JOBS) Training Program. (1) Exemptions. Effective October 1, 1990, all AFDC recipients are required to participate in the JOBS program if the program is available in the county of residence unless the recipient:

(a) Is a child who:

1. Is under age sixteen (16); or

2. Attends, full time, an elementary secondary, vocational or technical school (unless he was enrolled in school through the JOBS program);

(b) Is ill and the illness or injury is serious enough to temporarily prevent entry into employment or training;

(c) Is incapacitated to the extent that the physical or mental impairment would prevent the recipient from participating in the JOBS program. This may include a period of recuperation after child birth if prescribed by a woman's physician;

(d) Is sixty (60) years old or older;

(e) Resides in a county which offers the JOBS program but in a location in which travel time to the JOBS activity would exceed two (2) hours round trip by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility;

(f) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity;

(g) Is working at least thirty (30) hours per week;

(h) Is pregnant and the child is expected to be born within the following six (6) month period;

(i) Is the parent or other relative who is personally providing care for a child under age three (3), except as specified in subsection (5)(c) of this section;

(j) Is a full-time VISTA volunteer.

(2) Volunteers. All persons in active JOBS counties who are exempt as specified in subsection (1) of this section may volunteer to participate in the JOBS program.

(a) The DSI shall give first priority for JOBS services to volunteers within the target population to be served.

(b) A volunteer who is exempt, as specified in subsection (1) of this section and who stops participating without good cause, shall lose priority status for JOBS services if he volunteers at a later time.

(c) A volunteer who is not exempt and who stops participating without good cause shall be subject to sanctions, as specified in subsection (10) of this section.

(3) Components. All JOBS counties shall offer the following services and activities:

(a) Education is provided:

1. Below the postsecondary level:

a. High school or equivalent;

b. Basic or remedial education; and

c. English as a second language; or

2. At the postsecondary level if:

a. The occupational assessment indicates that the participant has the aptitude to perform a specific job for which this education and training is required;

b. The participant has or is capable of achieving the basic literacy skills required by the occupation; and

c. Jobs are available in the specific occupation for which education and training is needed.

(b) Job skills training which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area.

(c) Job readiness activities that help prepare participants for work by familiarizing them with workplace expectations, attitudes and appropriate behavior.

(d) Job development and job placement activities for soliciting public and private employers' job openings, marketing participants, and securing job interviews for participants.

(4) Optional components. All JOBS counties shall offer job search, which provides group and individual assistance and training with job-seeking activities, and at least one (1) of the following components:

(a) On-the-job training in which a JOBS participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job;

(b) Community work experience program which provides unpaid work experience and training to assist participants to move promptly into regular public or private employment.

(c) Work supplementation in which AFDC funds are used to develop and subsidize jobs for AFDC recipients. A portion of the participant's AFDC grant shall be reduced and paid to the employer instead of to the participant to subsidize the individual's wages. This component shall be implemented effective January 1, 1991.

(5) JOBS participation requirements.

(a) Assessment. When an AFDC recipient has been identified as a JOBS participant, the individual shall be referred to a JOBS case manager. The case manager shall make an assessment of the individual's employability. The assessment shall include consideration of basic skills, work skills, occupational skills, and barriers. The assessment shall be based on:

1. Education, child care and other supportive service needs;

2. The individual's proficiencies, skills deficiencies, and prior work experience;

3. The needs of the family of the participant;

4. Any other relevant factors.

(b) Employability plan. Based on the findings of the assessment, the agency and participant shall jointly develop an employability plan. This plan shall contain:

1. An employment goal for the participant;

2. Services to be provided by the agency (including child care);

3. JOBS activities to be undertaken to achieve the employment goal;

4. Other needs of the family.

(c) Special participation requirements for education.

1. An AFDC parent under age twenty (20) who resides in a JOBS county shall be required to participate in educational activities if:

a. The parent is not otherwise exempt;

b. The parent lacks a high school diploma or has basic skills in reading or math below the 8.9 grade level.

2. For purposes of this requirement, the exemption contained at subsection (1)(i) of this section shall not qualify the participant for exemption from JOBS educational activities.

3. The agency may require a parent aged eighteen (18) or nineteen (19) to participate in work or training activities instead of education if:

a. The parent fails to make good progress in successfully completing educational activities; or

b. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for the parent.

(d) Participation for parents with children under age six (6). Participants with children under age six (6) who are not required to participate in education (as specified in subsection (5)(c) of this section) shall not be required to participate in the JOBS program for more than twenty (20) hours per week.

(6) Self-initiated JOBS activities. Self-initiated JOBS activities refer to approved activities of individuals who of their own accord began education or training activities. These individuals shall be in good standing at an institution of higher education or school or other entity offering a course of vocational or technical training. Activity below the postsecondary level shall be included if it is determined to be appropriate for the participant's employability plan. Both exempt and nonexempt individuals may be approved for self-initiated education or training for their JOBS activity. The participant shall be attending:

(a) At least half time, as defined by the

institution;

(b) A JTPA-funded program, if in training;

(c) A public source or private institution that is licensed by the Kentucky Board for Proprietary Education or recognized by the appropriate regulatory agency or licensing body for the state in which the training is located; or

(d) Other education or training which would otherwise be an approved JOBS activity, for example:

1. GED;

2. Literacy;

3. Other approved education attended less than half time.

(7) Good and satisfactory progress.

(a) Each participant in an education or training component shall meet good and satisfactory progress requirements. Good and satisfactory progress criteria for all JOBS educational activities and approved self-initiated education is established by the educational institution. Good and satisfactory progress shall be measured and reported to the DSI at the following intervals:

1. Literacy, adult basic education, or general educational development. Good and satisfactory progress is measured at the end of seventy-five (75) hours or the 12th month of instruction, whichever comes first.

2. High school. Good and satisfactory progress shall be measured at the end of each semester or quarter.

3. Technical. Good and satisfactory progress shall be measured at regularly scheduled intervals, as defined by the institution.

4. Proprietary school. Good and satisfactory progress shall be measured at the end of each regularly scheduled grading period as defined by the institution, never to exceed a twelve (12) month period.

5. College. Good and satisfactory progress shall be measured at the end of a semester or quarter.

6. DES components. Good and satisfactory progress shall be measured on a monthly basis.

(8) Conciliation. A conciliatory meeting shall be conducted in the following instances:

(a) At the request of a JOBS participant;

(b) At the request of a component provider; or

(c) When a situation is identified which could result in a sanction (as specified in subsection (10) of this section).

(d) The DSI, the DES, or both agencies jointly shall conduct the conciliatory meetings. During the meetings, the agency shall determine if additional services are needed to assist with JOBS participation. Participation shall be monitored for thirty (30) days following the initial meeting to ensure that the dispute has been resolved. The thirty (30) day period may be extended for an additional thirty (30) days, if necessary.

(e) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

(9) Good cause.

(a) Good cause for noncompliance in the JOBS program or refusal to accept employment shall be found if:

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

2. Necessary child care is not available;

3. Employment would result in a net loss of cash income;

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

5. Unavailability of transportation (including unavailability due to costs which exceed the reimbursement) with no readily accessible alternative means of transportation available;

6. Travel time to the work site or JOBS component site exceeds two (2) hours round trip daily;

7. Illness of another household member requiring the presence of the participant;

8. The participant is temporarily incarcerated;

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

10. Work demands or conditions render continued employment unreasonable. Examples are:

a. Consistently not being paid on schedule; or

b. The presence of a risk to the individual's health or safety;

11. Wage rates are decreased subsequent to acceptance of employment;

12. The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize;

13. A household emergency occurs, such as:

a. Death of a member of the immediate family;

b. Entry into a spouse abuse center;

c. Natural disasters;

d. Court appearance;

e. Victim of crime; or

f. Flooded basement; or

14. The participant receives temporary military assignment.

(b) The duration of good cause criteria may vary according to individual circumstances.

(10) Sanctions.

(a) When an AFDC recipient fails to comply with the requirements of the JOBS program, he shall be subject to JOBS and AFDC sanctions. Failure to comply shall be found when the participant:

1. Fails without good cause to participate in the required interview, assessment, and employability plan activities;

2. Fails without good cause to participate in the program;

3. Refuses without good cause to accept employment; or

4. Terminates employment or reduces earnings without good cause.

(b) Persons who have failed to comply without good cause shall be sanctioned, as follows:

1. The participant is excluded from JOBS activities and services;

a. For the first failure to comply, until the failure to comply ceases;

b. For the second failure to comply, until the failure to comply ceases, or three (3) months, whichever is longer; and

c. For any subsequent failure to comply, until the failure to comply ceases, or six (6) months, whichever is longer.

2. In determining the amount of the AFDC grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS sanctions begin. In a case based on unemployment, the agency shall not take into account the needs of the sanctioned

individual or the second parent, unless the second parent is participating in JOBS.

3. A sanctioned individual shall participate in a designated activity for two (2) weeks before the failure to comply is considered to have ceased. At that time, the sanctions shall be terminated.

Section 10. [8.] Jobs Through Employment and Training (JET). (1) Effective June 1, 1989, unless exempt from work registration, an individual who has applied for or is receiving AFDC shall be ineligible for benefits if he refuses to participate in the JET Program without good cause. The JET program shall close effective September 30, 1990. During the month of October 1990, JET participants in an education or skills training component shall continue their participation as a self-initiated participant in the JOBS program.

(2) Individuals exempt from JET are as follows:

(a) Individuals who are ill, disabled, or elderly;

(b) Individuals needed in the home to care for a sick or disabled person;

(c) Individuals working thirty (30) hours or more per week;

(d) A child under age sixteen (16) or attending school full time;

(e) A woman in at least the seventh month of pregnancy;

(f) Individuals living in a "remote" (non-JET) county;

(g) A parent or caretaker relative of a child under age six (6) who personally provides full-time care of the child with only very brief and infrequent absences from the home. Brief and infrequent absences without considering time traveled to and from work/school are defined as:

1. Employment by the caretaker relative of less than thirty (30) hours per week;

2. Less than full-time school attendance (or for college attendance, enrollment) by the caretaker relative;

3. Less than full-time school attendance (or for college attendance, enrollment) and less than fifteen (15) hours per week employment by the caretaker relative;

4. Attendance by the child under age six (6) in nursery school;

5. Additional brief and infrequent absences include:

a. Visits by the child under age six (6) with relatives, friends, the absent parent, neighbors, etc.;

b. Visits by the caretaker relative with relatives, friends, neighbors, etc.;

c. Routine shopping and errands;

d. Doctor's visits; and

e. Short-term hospitalization (less than thirty (30) days.

6. If a parent or other caretaker relative is absent from the child for reasons other than these listed, the absence is not considered brief and infrequent.

Section 11. [9.] Cooperation in Child Support Enforcement Activities. (1) Inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities [pursuant to 45 CFR 232.12] and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child[(ren)] made to a protective payee.

(2) If, after exclusion from the grant for failure to cooperate, the individual states that he is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.

(3) [Pursuant to 45 CFR Part 232.40,] The Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall [will] be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child(ren) adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or [/] recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction; and the department believes it would be detrimental to the child to require the applicant's or [/] recipient's cooperation; or

(e) The applicant or [/] recipient is being assisted by a public or licensed private social agency to resolve whether to keep the child or release him for adoption and discussion has not gone on for more than three (3) months and the cabinet believes it would be detrimental to the child to require the applicant's or [/] recipient's cooperation.

(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made [pursuant to the regulation at 45 CFR 232.42 and 45 CFR 232.43].

Section 12. [10.] Potential Entitlement for other Programs. (1) All applicants or [/] recipients shall [must] apply for any benefit[(s)] or benefits if potential entitlement exists.

(2) Failure to apply results in ineligibility for AFDC.

Section 13. [11.] Furnishing of Social Security Account Numbers. All applicants or [/] recipients shall [must] furnish social security account numbers [pursuant to 45 CFR 232.10].

Section 14. [12.] Assignment of Rights to Support. [Pursuant to KRS 205.720,] 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 child support owed for the child not to exceed the amount of AFDC payments made to the recipient.

Section 15. [13.] 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 16. Material Incorporated by Reference. (1) Forms necessary for participation in the JOBS program are being incorporated effective October 1, 1990.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON,, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 5, 1990
FILED WITH LRC: September 11, 1990 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 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 October 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

(1) Type and number of entities affected: 1) JOBS will initially be operational in 18 counties. It is anticipated that 6,070 recipients will participate in the program. In October 1991, 13 additional counties will be added. This should increase participation to 8,464 recipients. It is not possible to project an exact number of participants as it is unknown how many recipients will meet exempt status. 2) The AFDC-UP program will operate statewide. It is anticipated that 9,900 new cases will be added to the AFDC caseload. It is not possible to project an exact number of families which will apply and be eligible under this program. 3) There are currently 1,291 Supplemental Security Income/Medical Support Enforcement (SSI/MSE) cases on the computer system. These are the potential participants as eligible caretakers of SSI children.

(a) Direct and indirect costs or savings to those affected:

1. First year: (A) JOBS benefits will be in the form of supportive services payments. These are discussed in the RIA for 904 KAR 2:016 filed concurrently with this regulation. (B) The Aid to Families with Dependent Children-Unemployed Parents (AFDC-UP) program will pay approximately $17,821,400 in cash benefits the first year. Additionally, Medicaid benefits of $7,800,000 are anticipated for this group. Exact figures are dependent upon the number of eligible applicants. (C) For payments to caretaker relatives of an SSI child, the maximum payment to a household size of one is $162. $209,100 maximum in additional benefits paid if all potential households apply and have little or no countable income.

2. Continuing costs or savings: (A) For JOBS, reference the RIA for 904 KAR 2:016. (B) For AFDC-UP, cash benefits in the second year will increase to $33,247,300 and Medicaid benefits to $18,600,000. (C) For caretaker relatives of SSI children, same as the first year.

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

(b) Reporting and paperwork requirements: 1) JOBS participants shall verify expenses related to participation in order for the Department for Social Insurance to provide payment. Departmental forms required for this verification and additional information related to supportive services is contained in 904 KAR 2:016. 2) AFDC-UP implementation will require no additional reporting or paperwork requirements for recipients. 3) Caretaker relatives of SSI children will not entail additional paperwork or reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Direct costs.

1. First year: (A) JOBS administrative costs are estimated to be $16,237,300, dependent upon recipient participation. (B) AFDC-UP administrative costs are estimated to be $1,011,000, dependent upon recipient participation. (C) For caretaker relatives of SSI children, additional administrative costs are not anticipated.

2. Continuing costs or savings: (A) JOBS administrative costs shall increase to approximately $20,940,600 the second year. This estimate includes additional counties of participation. (B) AFDC-UP administrative costs shall increase to $2,022,000 the second year. This estimate includes a full fiscal year figure and increased participation after the program becomes known to the general public. (C) Costs for caretaker relative cases are expected to remain static, unless AFDC payments are increased.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: 1) JOBS monthly monitoring shall be accomplished through the agency computer system to generate information to be reported quarterly to the federal government. Additionally, the Department for Social Insurance shall exchange information with other agencies on a monthly basis regarding assessment of participants and good and satisfactory progress after component assignment. 2) AFDC-UP - Aside from the increased volume of AFDC cases associated with AFDC-UP, there are no other specific reporting or paperwork requirements. 3) Caretaker relative - same as AFDC-UP.

(3) Assessment of anticipated effect on state and local revenues: The changes in AFDC eligibility criteria were mandated by the

federal government and anticipated in the executive budget. The increase in the number of eligible recipients and the increase in the amount and type of services available to these recipients has necessarily increased administrative and benefit costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is a mandatory federal program.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Eligibility conditions for AFDC must be applied on a consistent and equitable basis throughout the state in accordance with federal regulations at 45 CFR 233.10(a)(1). Even in counties in which the JOBS program is not active, AFDC recipients will have the opportunity to participate in self-initiated education and training activities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 233.10(b)(2)(ii)(b) (caretaker relatives); 45 CFR 250 (JOBS); and 45 CFR 233.100 (AFDC-UP) and 42 U.S.C. 607 (AFDC-UP).

2. State compliance standards. The state compliance standards are the same as the federal minimum requirements.

3. Minimum or uniform standards contained in the federal mandate. (A) An SSI child who meets the definition of "needy" per 45 CFR 233.10(b)(2)(ii)(a) shall nor receive AFDC but may qualify the caretaker relative for assistance. (B) All states administering an AFDC program shall offer a JOBS program as of OCTOBER 1, 1990. (C) All states administering an AFDC program shall offer assistance to families in which a needy child is deprived of parental support due to the unemployment of one of his parents as of October 1, 1990.

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.

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_

This regulation has no direct bearing on services or operations of local governments. However, it is possible that services may be purchased from local government entities if these services are necessary for participation in the JOBS program by an AFDC recipient.

The Department for Social Insurance has contracted with Kentucky Area Development Districts (ADDs) to:

1. Develop local JOBS plans;
2. Develop local resource directories;
3. Expand resources; and
4. Negotiate subcontracts for the delivery of services.

Therefore, it is possible for an ADD to subcontract with a local government agency if this is deemed appropriate in the local setting to facilitate participation.

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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, 255, 256

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) "Approved JOBS activities" means participation in component, precomponent, component preparation, preemployment, transitional extension or self-initiated JOBS activities which have been determined by the Department for Social Insurance to be consistent with employment goals.

(2) [(1)] "Assistance group" means a 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 or unemployed 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.

(3) [(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 extraordinary expenses, that are not included in the AFDC Standard of Need.

(4) "Certified child care providers" means a small family day care in a provider's home serving fewer than four (4) children. This provider has voluntarily registered with the Cabinet for Human Resources, Department for Social Services. Standards for certification are contained in 905 KAR 2:070.

(5) [(16)] "Claimant" means the individual responsible for an overpayment.

(6) [(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.

(7) "Component" means services and activities such as education, job skills training, job readiness, job development and placement, job search, on-the-job training, work supplementation or community work experience program activities available under the Job Opportunities and Basic Skills (JOBS) program. Each individual component is described in 904 KAR 2:006.

(8) "Component preparation" means the period in which assessment, testing, development of the employability plan and referrals for removal of barriers takes place.

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

(10) [(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.

(11) [(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].

(12) "Licensed child care providers" means day care centers serving twelve (12) or more children, or day care in a provider's home serving four (4) to twelve (12) children, which are licensed by the Division of Licensing and Regulation, Office of the Inspector General, as provided in 905 KAR 2:010.

(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) [(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 or [/] legal guardian is considered any person under the age of eighteen (18).

(15) [(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.

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

(17) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(18) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(19) [(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.

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

(21) [(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.

(22) [(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.

(23) "Self-initiated" means approved participation in which education or training activities are initiated by the client and determined to meet agency criteria. Specific criteria is contained in 904 KAR 2:006.

(24) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the AFDC case in which supportive service payments may continue if:

(a) The case is not eligible for transitional child care, as described in Section 9 of this regulation;

(b) The case is not discontinued due to fraudulent activity; and

(c) The case is not discontinued due to failure to comply with procedural requirements; and

(d) The JOBS participant elects to continue the approved component activity in which she is engaged at the time of discontinuance.

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

(26) "Unregulated child care providers" means private providers, such as friends or relatives, who are not required to be certified or licensed.

Section 2. Resource Limitations. (1) Real and personal property owned in whole or in part by an applicant or recipient including a sanctioned individual[(s)] and his parent[(s)], even if the parent[(s)] is not an applicant or recipient, if the applicant or [/] recipient is a dependent child living in the home of the [said] parent, shall be considered.

(2) 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:

(3) [(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 or [/] 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 or [/] benefits mandated by federal regulations.
(4) [(2)] Disposition of resources.
(a) An applicant or [/] recipient shall not have transferred or otherwise divested himself[/herself] of property without fair compensation in order to qualify for assistance.
(b) 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.
(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.
(d) 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 shall [will] apply:
(1) Gross income test.
(a) The total gross non-AFDC income of the assistance group, as well as income of parent[(s)], sanctioned individual and amount deemed available from the parent or [(s)/] legal guardian[(s)] of a minor parent or [/] 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.
(b) Disregards specified in Section 4(1) of this regulation shall apply.
(c) If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.
(2) Applicant eligibility test.
(a) An applicant eligibility test shall be applied if:
1. The gross income is below the gross income limitation standard; and
2. 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].
(b) The total gross income after application of exclusions or [/] 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.
(c) If income exceeds this standard, the assistance group is ineligible.
(d) 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.
(a) 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.
(b) If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible.
(c) 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) Ineligibility period.
(a) A period of ineligibility shall be established [in accordance with 45 CFR 233.20(a)(3)(ii)(F),] for an applicant or [/] recipient 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.
(b) The ineligibility period shall be recalculated if any of the following circumstances occur:
1. [(a)] The standard of need increases and the amount of grant the assistance group would have received also changes.
2. [(b)] Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group.
3. [(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 or [/] Disregarded Income. All gross non-AFDC income received or anticipated to be received by the assistance group, natural parent[(s)] and parent or [(s)/] legal guardian[(s)] of a minor parent or [/] legal guardian living in the home with such assistance group and stepparent[(s)] living in the home, shall be considered with the applicable exclusions or [/] disregards as set forth below:
(1) Gross income test. All incomes listed below shall be excluded or [/] disregarded:
(a) Disregards applicable to stepparent income [and/]or income of the parent or [(s)/] legal guardian[(s)] of a minor parent or [/] 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;]

(d) [(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;

(e) [(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;]

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

(g) [(i)] Nonemergency medical transportation payments;

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

(i) [(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;

(j) [(l)] Highway relocation assistance;

(k) [(m)] Urban renewal assistance;

(l) [(n)] Federal disaster assistance and state disaster grants;

(m) [(o)] Home produce utilized for household consumption;

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

(o) [(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;

(p) [(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;

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

(r) [(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;

(s) [(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;

(t) [(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;

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

(v) [(x)] Payments made under the Low Income Home Energy Assistance Act (LIHEAP) and other energy assistance payments which are made to an energy provider or provided in-kind [permitted to be excluded pursuant to 45 CFR 233.53(c)(5)(i)];

(w) [(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;

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

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

(z) [(bb)] Effective January 3, 1989, loans.

(aa) [(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.

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

(cc) [(ee)] 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].

(dd) [(ff)] Other benefits mandated by federal regulations or legislation.

(2) Applicant eligibility test. The exclusions or [/]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;

(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); and

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

(3) Benefit calculation. After eligibility is established, exclude or [/] 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)], for example [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 (for example [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 exclusions or [/] 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 or [(s)/] legal guardian[(s)] living in the home with a minor parent or [/] 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 or [/] disregards:

(a) The first seventy-five (75) [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 or [(s)/] legal guardian[(s)] of a minor parent or [/] 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 or [(s)/] legal guardian[(s)] of a minor parent or [/] legal guardian as dependents for purposes of determining his federal personal income tax liability;

(c) Any amount actually paid by the stepparent or parent or [(s)/] legal guardian[(s)] of a minor parent or [/] 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 or [(s)/] legal guardian[(s)] of a minor parent or [/] legal guardian for alimony or child support with respect to individuals not living in the household; and

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

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

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

Section 6. Alien Income and Resources. (1) 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.

(2) 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.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or [/] sponsor's spouse is not provided.

(5) 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.

(6) The provisions of this section shall not apply to those aliens identified in subsection (5) of this section [45 CFR 233.51(e)].

(a) [(1)] Income. The gross income of the sponsor is considered available to the assistance group subject to the following

disregards:
1. [(a)] Twenty (20) percent of the total monthly gross earned income, not to exceed $175;
2. [(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;
3. [(c)] Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;
4. [(d)] Actual payments of alimony or child support paid to nonhousehold members; and
5. [(e)] Income of a sponsor receiving SSI or AFDC.

(b) [(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. (1) The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities. [from which]

(2) 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

(3) 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.

(4) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

Section 8. Job Opportunities and Basic Skills (JOBS) Child Care and Supportive Services. (1) Individuals participating in the JOBS program shall be entitled to payment of:
(a) Child care;
(b) Transportation; and
(c) Other supportive service costs necessary for participation in an approved JOBS activity, as described in subsection (10) of this section.
(2) JOBS activities are described in 904 KAR 2:006, Section 9.
(3) Child care eligibility in JOBS components. Child care shall be paid for a child meeting the criteria specified in Section 9(1) of this regulation. Child care shall be provided in the following situations:
(a) Precomponent;
(b) Component preparation;
(c) Component participation;
(d) Preemployment;
(e) Transitional extension; or
(f) On-the-job training (OJT) participants discontinued due to earned income or employment of 100 hours a month or more of the principal wage earner (PWE) in an AFDC-unemployed parent (AFDC-UP) case.
(4) Child care eligibility in self-initiated activities.
(a) Child care shall be provided in the same situations as in JOBS components with the following exceptions:
1. Transitional extension;
2. OJT participants discontinued due to increased earnings or hours of employment;
3. Component preparation; and
4. Precomponent, for persons waiting to enter self-initiated activities for the first time.
(b) Child care shall be provided only for approved self-initiated activities.
(5) Child care limitations.
(a) Child care payments shall be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates.
(b) Payments shall not be made to a provider if the provider is:
1. The parent;
2. The legal guardian;
3. A member of the AFDC assistance unit which includes the child needing care;
4. Not meeting applicable standards of state and local law; or
5. Not allowing parental access.
(c) Local market rates shall be determined by:
1. The type of provider;
2. The age of the child;
3. The special needs of the child. Special needs shall be verified by:
a. Entitlement to disability benefits; or
b. Written statement from a physician or professional from a service agency such as Comprehensive Care, or the Department for Social Services;
4. The amount of time care is needed; and
5. The geographical boundaries of the fifteen (15) area development districts.
(d) Full-time (FT) and part-time (PT) attendance shall be determined by the provider.
(e) FT and PT maximum payment levels shall be established for the following groups of dependent children:
1. "Special needs" includes children in no certain age group;
2. "Infants" includes children under age one (1);
3. "Toddlers" includes children from age one (1) up to age three (3);
4. "Preschool" includes children from age three (3) up to age five (5);
5. "School-age" includes children age five (5) and over.
(f) Child care maximum payments shall be made as follows:

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		Infants		Toddlers	
	FT	PT	FT	PT	FT	PT
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$10	7	10	7
Certified	$ 9	6	9	6
Unregulated	$ 8	5	8	5

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	10	7	9	6
Certified	$ 9	9	9	6	8	5
Unregulated	$ 8	8	8	5	7	4

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$ 9	6	9	6
Certified	$ 8	5	8	5
Unregulated	$ 7	4	7	4

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	9	6	9	6
Certified	$ 9	9	8	5	8	5
Unregulated	$ 8	8	7	4	7	4

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$ 9	6	8	5
Certified	$ 8	5	7	4
Unregulated	$ 7	4	6	3

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$12	12	12	9	10	7
Certified	$11	11	11	8	9	6
Unregulated	$10	10	10	7	8	5

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$10	7	10	7
Certified	$ 9	6	9	6
Unregulated	$ 8	5	8	5

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	10	7	9	6
Certified	$ 9	9	9	6	8	5
Unregulated	$ 8	8	8	5	7	4

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$ 9	6	8	5
Certified	$ 8	5	7	4
Unregulated	$ 7	4	6	3

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$13	13	13	10	13	10
Certified	$12	12	12	9	12	9
Unregulated	$11	11	11	8	11	8

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$11	8	11	8
Certified	$10	7	10	7
Unregulated	$ 9	6	9	6

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$12	12	12	9	12	9
Certified	$11	11	11	8	11	8
Unregulated	$10	10	10	7	10	7

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$12	9	11	8
Certified	$11	8	10	7
Unregulated	$10	7	9	6

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	8	5	8	5
Certified	$ 9	9	7	4	7	4
Unregulated	$ 8	8	6	3	6	3

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$ 8	5	8	5
Certified	$ 7	4	7	4
Unregulated	$ 6	3	6	3

GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	8	5	8	5
Certified	$ 9	9	7	4	7	4
Unregulated	$ 8	8	6	3	6	3

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$ 8	5	8	5
Certified	$ 7	4	7	4
Unregulated	$ 6	3	6	3

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$10	7	9	6
Certified	$ 9	6	8	5
Unregulated	$ 8	5	7	4

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$10	7	10	7
Certified	$ 9	6	9	6
Unregulated	$ 8	5	8	5

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$11	11	11	8	11	8
Certified	$10	10	10	7	10	7
Unregulated	$ 9	9	9	6	9	6

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$ 9	6	9	6
Certified	$ 8	5	8	5
Unregulated	$ 7	4	7	4

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	10	7	10	7
Certified	$ 9	9	9	6	9	6
Unregulated	$ 8	8	8	5	8	5

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$ 9	6	10	7
Certified	$ 8	5	9	6
Unregulated	$ 7	4	8	5

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$10	10	9	6	9	6
Certified	$ 9	9	8	5	8	5
Unregulated	$ 8	8	7	4	7	4

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$ 9	6	9	6
Certified	$ 8	5	8	5
Unregulated	$ 7	4	7	4

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs FT	Special Needs PT	Infants FT	Infants PT	Toddlers FT	Toddlers PT
Licensed	$12	12	12	9	12	9
Certified	$11	11	11	8	11	8
Unregulated	$10	10	10	7	10	7

	Preschool FT	Preschool PT	School-Age FT	School-Age PT
Licensed	$11	8	11	8
Certified	$10	7	10	7
Unregulated	$ 9	6	9	6

(g) Child care payments shall be limited as follows:

1. Six (6) semesters (three (3) years) for a two (2) year postsecondary program;

2. Eight (8) semesters (nine (9) with good cause) for a four (4) year postsecondary program; or

3. No restrictions on other education and training activities.

(h) These limits apply to both full-time and part-time enrollment.

(i) In preemployment or precomponent, child care payments shall be limited to a period of two (2) weeks up to one (1) month if necessary to guarantee the child care arrangement shall not be lost.

(6) Authorization of child care payment.

(a) Child care payments shall be authorized upon the receipt of appropriate verification of the cost of care.

(b) Departmental forms required for verification are incorporated by reference in this regulation.

(c) Payments shall be authorized in accordance with 904 KAR 2:050.

(7) Restrictions on authorization of child care payments. Payment shall not be made if:

(a) Verification is not returned by the end of the month following the month in which the cost was incurred;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

(8) Transportation payments in JOBS components. Transportation reimbursement shall be paid in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Transitional extension; or

(e) On-the-job training (OJT) participants discontinued due to earned income or employment of 100 hours a month or more of the PWE in an AFDC-UP case.

(9) Transportation payments in self-initiated activities.

(a) Transportation shall be provided in the same situations as in JOBS components, with the exceptions of:

1. Transitional extension;

2. OJT participants discontinued due to increased earnings or hours of employment;

3. Component preparation; and

4. Precomponent, for persons waiting to enter self-initiated activities for the first time.

(b) Reimbursement shall be paid only for approved self-initiated activities.

(10) Transportation payment amount and authorization.

(a) A standard rate of three (3) dollars per day shall be paid for individuals participating in approved JOBS activities.

(b) Transportation reimbursement shall be made after receipt of appropriate verification. Departmental forms required for verification are incorporated by reference. Payments shall be made as specified in 904 KAR 2:050.

(c) Transportation payments shall be limited in the same manner as child care payments, as described in subsection (4)(g) of this section.

(d) In precomponent, transportation payments are limited to two (2) weeks up to one (1) month if necessary to guarantee that the arrangements shall not be lost.

(11) Restrictions on authorization of transportation payments. Payments shall not be made if:

(a) Appropriate verification is not returned by the end of the month following the month in which the cost was incurred;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

(12) Other supportive services in JOBS components.

(a) Nonrecurring services shall be provided if necessary for participation in the approved JOBS activities of:

1. Component preparation;

2. Component participation;

3. Transitional extension;

4. Preemployment; or

5. OJT participants discontinued due to earned income or increased hours of employment.

(b) These services shall be approved by the case manager as defined in 904 KAR 2:006.

(c) Examples of services which may be approved are the purchase of:

1. Remedial health care items or services not covered under the Medicaid program;

2. Necessary clothing; or

3. Any other item identified by a referral agency, the case manager, or the participant as being necessary for participation.

(13) Other supportive services in self-initiated activities. Nonrecurring services shall be provided in the same situations as in JOBS components, with the following exceptions:

(a) Transitional extension;

(b) OJT participants discontinued due to increased earnings or hours of employment; or

(c) Component preparation.

(14) Limitations on other supportive services.

(a) A cumulative limit of $300 in a twelve (12) month period, beginning with the first day of the month in which the first supportive service payment is made, shall be in effect for any participant in these approved JOBS activities:

1. Component preparation;

2. Component-related;

3. Transitional extension; or

4. OJT participants discontinued due to increased earnings or hours of employment.

(b) A separate $300 limit, per job, for preemployment supportive services may be paid.

(c) Other supportive services shall be limited in the same manner as child care payments, as described in subsection (4)(g) of this section.

(15) Restrictions on authorization of supportive service payments. Payments shall not be made for the period during which:

(a) Verification is not returned by the service provider;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

[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). (1) Effective April 1, 1990, child care assistance shall be provided by the state to families whose eligibility for AFDC assistance has ceased due to:

(a) Increased hours of, or earnings from, employment; or

(b) As a result of the loss of income disregards due to the expiration of the time limits at Section 4(3)(b) of this regulation [45 CFR 233.20(a)(11)].

(2) TCC shall be administered by the Cabinet for Human Resources, Department for Social Insurance through an interagency agreement with the Department for Social Services.

(3) Child care assistance shall be provided for children if the criteria in subsection (4) [(1)] of this section are met.

(4) [(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 Section 4(3)(b) of this regulation [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.

(5) [(2)] Time limitations.

(a) 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.

(b) Families may begin to receive child care in any month during the twelve (12) month eligibility period.

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

(7) [(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.
12. Employment would result in a net loss of cash income.

(b) Fails to cooperate with the state IV-A agency in establishing payments and enforcing child support obligations, per 904 KAR 2:006, Section 11 [as defined in 45 CFR 232.12].

(8) [(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.

(9) [(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 equivalent to seven and five-tenths (7.5) percent of gross income 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.

(10) [(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. 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 claimant;
(b) The overpaid assistance unit;
(c) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or
(d) 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) 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) 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. Provisions contained in this regulation shall become effective October 1, 1990 [April 1, 1990].

Section 12. Material Incorporated by Reference. (1) Forms necessary for verification of child care and supportive service payments in the JOBS program are incorporated effective October 1, 1990.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON,, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 5, 1990
FILED WITH LRC: September 11, 1990 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 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 October 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

(1) Type and number of entities affected: JOBS will initially be operational in 18 counties. It is anticipated that 6,070 recipients will participate in the program. In October 1991, 13 additional counties will be added. This should increase participation to 8,464 recipients. It is not possible to predict an exact number of participants as it is unknown how many recipients will meet exempt status.

(a) Direct and indirect costs or savings to those affected:

1. First year: $4,385,700 has been budgeted to provide child care and supportive services in state fiscal year 1990.

2. Continuing costs or savings: $10,983,400 has been budgeted for benefits in SFY 1991.

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

(b) Reporting and paperwork requirements: Participants shall submit verification of expenses related to JOBS child care and supportive services needs for the Department for Social Insurance to provide payment. Departmental forms required for this verification are incorporated by reference in this administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Benefit costs are stated above. Administrative costs associated with jobs are described in the RIA for 904 KAR 2:006.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Monthly monitoring shall be accomplished through the agency computer system to generate information to be reported quarterly to the federal government.

(3) Assessment of anticipated effect on state and local revenues: The provision of child care and supportive services to JOBS participants was mandated by the federal government and anticipated in the executive budget. The new amounts and types of services available to participants has necessarily increased administrative and benefit costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None. This is a mandatory federal program.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 255

2. State compliance standards. The state compliance standards are the same as the federal minimum requirements.

3. Minimum or uniform standards contained in the federal mandate. All states which administer an AFDC program shall offer a JOBS program and shall guarantee child care and other supportive services necessary to permit participation.

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.

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_

This regulation has no direct bearing on services or operations of local governments. However, it is possible that services may be purchased from local government entities if these services are necessary for participation in the JOBS program by an AFDC recipient.

The Department for Social Insurance has contracted with Kentucky Area Development Districts (ADDs) to:

1. Develop local JOBS plans;
2. Develop local resource directories;
3. Expand resources; and
4. Negotiate subcontracts for the delivery of services.

Therefore, it is possible for an ADD to subcontract with a local government agency if this is deemed appropriate in the local setting to facilitate participation.

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:022. Kentucky administrative process for child support.

RELATES TO: KRS Chapters 205, 405, 45 CFR Parts 301-307
STATUTORY AUTHORITY: KRS 405.405 through 405.991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility for administering the child support program in accordance with Title IV-D of the Social Security Act, Title 45 CFR Sections 301, 302, 303, 304, 305, 306, and 307 and KRS 205.710 to 205.800. In addition, KRS 405.405 to 405.991, the Kentucky Administrative Process for Child Support Act, provides for the establishment and enforcement of child support obligations through administrative process when paternity is not in question. The administrative process supplements existing judicial remedies for nonsupport. Administrative process may be used to establish and enforce support obligations for children receiving Aid to Families with Dependent Children (AFDC) benefits as well as for non-AFDC children. This regulation sets forth the procedures the cabinet shall employ in administratively establishing and enforcing child support obligations.

Section 1. Definitions. In addition to the terms defined in KRS 205.710, the following terms shall be defined as set forth below.
(1) "Administrative process" means a method for establishing and enforcing child support obligations pursuant to KRS 405.405 to 405.991 and the provisions of this regulation.
(2) "Appointment letter" means the cabinet's notification to the obligor that his liability for support of the child is being determined. A financial statement for the obligor's [parent's] completion will be included with the appointment letter.
(3) "Default" means the obligor's failure to return the financial statement or to keep an appointment to determine a support obligation under administrative process.
(4) "Notice of monthly support obligation" means an administrative order issued by the cabinet pursuant to KRS 405.440 notifying the obligor of the amount of the child support obligation and of the obligor's rights to request a hearing.
(5) "Dispute hearing" means the process whereby an [the] obligor's objections to administrative determinations of the cabinet [a notice of monthly support obligation] are heard by an impartial hearing officer upon a timely request.
(6) "Person in possession or control" means the person who has custody of the earnings or property.
[(7) "Order to withhold" means an administrative order issued by the cabinet to a person in possession or control of the obligor's earnings or property to withhold an amount equal to a stated arrearage to satisfy a delinquent child support obligation.]
[(8) "Order to deliver" means an administrative order issued by the cabinet to have earnings or property, belonging to the obligor, forwarded by the person in possession or control of the earnings or property to the cabinet to satisfy delinquent child support.]
(7) [(9)] "Delinquent support" means past due and unpaid installments on an obligation determined under a court order or a Cabinet for Human Resources administrative order (KRS 405.430) for support of a dependent child, which is owed to or on behalf of the child, or for maintenance to the spouse (or former spouse) with whom the child is living, only if a maintenance obligation has been established with respect to the spouse and the support obligation established with respect to the child is being enforced under the state's IV-D plan.
[(10) "Order to release withholding" means an order to the person in possession or control of an obligor's earnings or property notifying that person that the cabinet is releasing any claim to the designated earnings or property.]
(8) [(11)] "Order to withhold earnings" means an administrative order issued by the cabinet to an obligor's employer to withhold an amount equal to the current obligation plus an amount to be applied toward liquidation of the delinquent support.

Section 2. Administrative Establishment. The cabinet may administratively establish a child support obligation when paternity is not in question, there is no existing order for support of the child and the parent resides or is employed in Kentucky. The cabinet shall send an appointment letter and a financial statement to the parent to assure the parent's right to participate in the establishment of the support obligation. Additionally, the cabinet may administratively establish the debt which accumulated during the first ninety (90) days of AFDC eligibility as an arrearage due the cabinet. Pursuant to KRS 205.792, the ninety (90) days may be extended.
(1) The cabinet shall determine the monthly support obligation in accordance with the Kentucky Child Support Guidelines [as set forth in 904 KAR 2:025].
(2) In default cases, or cases in which the obligor [responsible parent] fails or refuses to provide sufficient information to determine gross income, the cabinet shall set the obligation based on the needs of the child or children as follows: one (1) child - $207; two (2) children - $325; three (3) children - $436; four (4) or more children - $542. Such child support obligations may be retroactively modified upward, without a showing of change in circumstances, if, within two (2) years of the establishment of the order, evidence of gross income is presented which would have established a higher amount of child support pursuant to the child support guidelines. [at such time as sufficient evidence becomes available.]
[(3) If subsequent to the establishment of the child support obligation, the cabinet determines that the obligor's actual income was greater than what was reported, the cabinet may retroactively increase the support obligation to the correct amount and may recover the additional support which should have been paid under the correct obligation.]
(3) [(4)] After the monthly support obligation and arrearage due the cabinet have been determined, the cabinet shall serve the notice of monthly support obligation upon the obligor either in person or by certified or restricted mail, return receipt requested, in accordance

with KRS 405.440.

(4) [(5)] The effective date of the obligation shall be twenty (20) days after the absent parent receives or refuses to accept the notice of monthly support obligation [CS-66] and does not contest it.

(5) [(6)] In accordance with KRS 405.430(2), the cabinet may modify the monthly support obligation as established by the cabinet. The cabinet shall not modify any obligation which was established by a court of competent jurisdiction.

Section 3. Appeal Procedures. The obligor may request a dispute hearing in accordance with KRS 405.440. An impartial hearing officer shall conduct the dispute hearing in the county of the child's or obligor's residence. The hearing shall be scheduled within sixty (60) days of the request. The obligor may request a hearing pursuant to the instructions in the notice of monthly support obligation.

(1) The request for a dispute hearing shall be considered timely if:

(a) Made within twenty (20) days of receipt of a notice of monthly support obligation;

(b) Made within twenty (20) days after the obligor is notified that a request for modification of the obligation will not be honored; or

(c) Made after thirty (30) days but before fifty (50) days have passed since the obligor requested a modification of the obligation, but the cabinet has not acted upon the request.

(2) If the request is not made within the time period specified in subsection (1) of this section, the obligor must show good cause for the late request. Good cause reasons may include, but are not limited to:

(a) The obligor's being away from home during the entire filing period;

(b) The obligor's inability to read the notice of monthly support obligation; or

(c) The obligor's incapacity due to a serious illness during the entire filing period.

(3) The obligor or his authorized representative may review case material pertinent to the reason for the dispute and may present witnesses at the hearing.

(4) If the objection is being filed on an original notice of monthly support obligations, the obligation shall be stayed pursuant to KRS 405.450(2).

(5) If the objection is being filed on a request for modification of obligation, the amount on the prior notice is enforceable and that amount must be paid while the hearing is pending.

(a) If the obligor prevails, the cabinet shall promptly return to the obligor any overpayments made since the hearing was requested.

(b) If the cabinet prevails, the obligation will be retroactive to the effective date on the notice of monthly support obligation.

(6) The obligor may withdraw the hearing request by writing to the area [local] IV-D office or the Hearing Branch in the Department for Social Insurance's Division of Administrative Review.

(7) The obligor or the cabinet may file an appeal to the circuit court within twenty (20) days after receipt of the hearing officer's decision pursuant to KRS 405.450.

Section 4. Mandatory Withholding of Earnings. The cabinet shall initiate withholding of earnings procedures when a delinquency equal to the amount of support payable for one (1) month is identified for cases in which the order was entered prior to July 15, 1988. The cabinet shall issue advance notice to the obligor prior to the implementation of the withholding.

(1) The advance notice to the obligor is to be sent by certified or restricted mail, return receipt requested, and shall contain at a minimum the following information:

(a) The amount of the delinquent support and the amount to be withheld, including the amount to be applied toward the liquidation of overdue support;

(b) Notification that the order to withhold earnings applies to the obligor's current and any subsequent employers;

(c) That only mistakes of fact, i.e., wrong person identified or incorrect amount of overdue or current support, may be contested;

(d) Procedures for contesting the order; and

(e) Notification that the obligor shall contact the cabinet within ten (10) days from the date the notice was received or refused to contest the order. Failure to contact the cabinet in a timely fashion shall result in the implementation of the withholding.

(2) If the obligor contests the withholding of earnings, he shall be given an opportunity to state and defend his case, including the right to present to the cabinet copies of subsequent support orders or payment records.

(a) Within forty-five (45) days of the date of the advance notice, the cabinet shall determine whether withholding of earnings is appropriate and notify the obligor of the results of the case review.

(b) If withholding is to begin, a copy of the order to withhold earnings shall be sent to the obligor.

(3) The order to withhold earnings shall be served on the employer by certified or restricted mail, return receipt requested. It shall include at a minimum the following information:

(a) The obligor's Social Security number;

(b) The amount to be withheld, including amounts to be applied toward delinquent support;

(c) Notification that the total amount withheld cannot exceed the maximum permissible under the Consumer Credit Protection Act;

(d) Notification that withholding shall begin no later than the first pay period that occurs after fourteen (14) days following the date the order to withhold earnings was mailed;

(e) That the employer shall send the remittance to the agency designated by the cabinet within ten (10) days of date the obligor is paid and include the IV-D number or Social Security number, and the date the money was withheld from the obligor;

(f) That the employer may combine amounts due the agency designated by the cabinet into one (1) transmittal if the employer identifies by IV-D account number or Social Security number and the date withheld the amount attributable to each obligor.

(g) That the order to withhold earnings is binding until further notice and that the employer shall be liable for the accumulated amount if he fails to abide by the order;

(h) That pursuant to KRS 405.991, the employer shall be subject to a fine or a jail sentence

for discharging, refusing to employ, or taking disciplinary action against the obligor because of the withholding of earnings;

(i) That the employer shall notify the cabinet when the obligor's employment is terminated, giving the cabinet the new employer's name and address and the obligor's last known address, if known; and

(j) That the employer may deduct an additional sum of one (1) dollar for each payment made pursuant to the order to cover his administrative costs.

(4) The order to withhold earnings may be terminated as deemed appropriate by the secretary; however, payment of the delinquent support shall not constitute the sole basis for the prevention or termination of the order to withhold earnings.

(5) For those cases in which the order was entered prior to July 15, 1988, the cabinet may initiate withholding of earnings procedures prior to the accumulation of one (1) month's arrearage upon the request of the obligor.

(6) Withholding shall take effect immediately for cases in which the order is entered on or after July 15, 1988, unless the obligor shows good cause.

(a) Good cause shall be determined to exist if payment records indicate the obligor has voluntarily contributed support in an amount equal to at least seventy-five (75) percent of the newly established obligation.

(b) If good cause is shown, withholding shall take effect when an arrearage accrues that is equal to the amount of support payable for one (1) month.

Section 5. Additional Administrative Enforcement Remedies. When the cabinet determines that the obligor owes delinquent support, the cabinet may implement administrative enforcement remedies to collect the delinquent support amounts. Personal property shall be exempted from attachment as specified in KRS 427.060.

[(1) Order to withhold. When a delinquency equal to the amount of support payable for one (1) month is identified, the cabinet shall determine the total amount of support owed. The cabinet shall serve an order to withhold to the person(s) in possession or control of the obligor's earnings or property. A copy of the order to withhold shall be provided to the obligor. The order shall state the basis for and the amount of the delinquent support and shall state that the obligor may offer a bond satisfactory to the cabinet to avoid losing possession of the property.]

[(a) When one (1) or more person(s) in possession or control of the obligor's earnings or property is identified, the cabinet may issue and serve an order to withhold for each person in possession or control. When more than one (1) person in possession or control answers the order to withhold and the combined assets exceed the amount of the delinquent support, the cabinet shall:]

[1. Decide which person in possession or control to serve with an order to deliver. The cabinet may take into consideration the obligor's request as to which source to withhold.]

[2. Send an order to release withholding to any person in possession or control not being served with an order to deliver.]

[3. Request only a portion of an asset to satisfy the delinquent support when the total asset exceeds the amount of delinquent support.]

[(b) The obligor may contact the cabinet for an explanation of administrative enforcement. The cabinet may accept partial payment sufficient to release the order to withhold when deemed appropriate by the secretary.]

[(2) Order to deliver. When the employer or the person in possession or control of the earnings or property responds to the order to withhold, the cabinet may complete and serve on the person in possession or control an order to deliver the earnings or property to the cabinet. Earnings or property delivered to the cabinet in accordance with an order to deliver shall be applied to the amount of delinquent support pursuant to federal law.]

[(3) Order to release withholding. The cabinet shall issue and serve an order to release withholding on its claim on the obligor's earnings or property when the stated delinquent support is satisfied.]

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 10, 1990
FILED WITH LRC: September 14, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 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 October 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 unelss 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
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition) None:
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Federal and state statutes mandate that administrative process of child support be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Family Support Act of 1988.
2. State compliance standards. Due to enactment of HB 639 by the Kentucky General Assembly, certain administrative procedures regarding establishment of enforcement of orders are not specified in statute form. Therefore, it is unnecessary to include procedures in regulatory form.
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

PROPOSED REGULATIONS RECEIVED THROUGH SEPTEMBER 15, 1990

REVENUE CABINET
Department of Administrative Services

103 KAR 44:040. Motor vehicle valuation.

RELATES TO: KRS 138.450, 138.460, 138.470
STATUTORY AUTHORITY: KRS Chapter 13A, 131.130
NECESSITY AND FUNCTION: This regulation establishes procedures for the valuation of certain motor vehicles for motor vehicle usage tax purposes.

Section 1. Definitions. "New motor vehicle" means a motor vehicle, as defined in KRS 138.450, of the current model year which has not previously been registered in any state or country. "New motor vehicle" shall not include a vehicle not previously registered in any state or country which is:

(1) Not of the current model year. A vehicle shall be deemed to be of the current model year until January 1 of the subsequent model year or the date subsequent model year vehicles of the same make are offered for sale by local dealers, whichever is earlier; or

(2) Used for demonstration purposes only by a registered dealer having a franchise to sell new the particular make of vehicle being offered for sale (dealer demonstrator vehicle), if such vehicle has an odometer reading of at least 1,000 miles before it is registered in this state; or

(3) Used by representatives of the manufacturer (factory executive vehicle), if such vehicle has an odometer reading of at least 1,000 miles before it is registered in this state.

Section 2. Tax Base for New Motor Vehicles. A new motor vehcile shall be subject to usage tax based on its retail price as provided in KRS 138.450.

Section 3. Tax Base for Other Vehicles Not Previously Registered in Any State or Country. Any motor vehicle which has not previously been registered in any state or country but which is not a new motor vehicle as defined in Section 1 of this regulation shall be subject to usage tax based upon a retail price determined as follows:

(1) The greater of:

(a) Seventy-five (75) percent of the Manufacturer's Suggested Retail price, including all options (whether installed by the manufacturer, distributor or dealer) and transportation charges;

(b) The average retail value of the vehicle as reflected in the automotive price reference manual prescribed by the Revenue Cabinet for valuing used motor vehicles, exclusive of any trade-in allowance; or

(c) The actual selling price of the vehicle to the customer registering the vehicle, exclusive of any trade-in allowance.

(2) In no case shall the tax base determined pursuant to subsection (1) of this section exceed the retail price of the vehicle as determined under Section 2 of this regulation for new motor vehicles.

Section 4. Documentation of Taxable Base. For any motor vehicle being registered in this state pursuant to Section 3, the selling dealer shall complete, in duplicate, and give to the county clerk a Certification of Motor Vehicle Usage Tax Valuation, Revenue Form 71A216. A copy of the vehicle window sticker or manufacturer's invoice reflecting the Manufacturer's Suggested Retail Price of the vehicle shall be attached to the form together with a copy of the sales contract evidencing the actual selling price of the vehicle to the customer.

C. EMMETT CALVERT, Secretary
APPROVED BY AGENCY: September 13, 1990
FILED WITH LRC: September 14, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on October 23, 1990, at 10 a.m. at Room 406, Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1990, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the public hearing is received by this 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: Scott Akers, Revenue Cabinet, Division of Tax Policy and Research, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: Due to the absence of a statutory definition for "new" motor vehicles for motor vehicle usage tax purposes, this proposed regualtion establishes such a definition so as to reasonably recognize a potentially lower valuation for vehicles not previously registered in any state or country if the vehicles have been used for demonstration purposes by a registered sealer, used by representatives of the manufacturer, or sold after the end of the model year. The effect of this regulation is similar to, but simpler and less costly than, that which resulted from former regulation 103 KAR 44:010 which expired July 13, 1990. Sellers and purchasers of motor vehicles qualifying for the lower valuation estalished by this proposed regulation would be affected. In 1989, there were approximately 21,500 vehicles registered which qualified for the similar valuation reduction procedure provided under the expired regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: None. This regulation essentially continues valuation reduction procedures previously provided by the expired regulation.

2. Continuing costs or savings: Same as above.

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

(b) Reporting and paperwork requirements: None. This regulation essentially continues the reporting and paperwork requirements previously required for affected vehicles under the expired regulation.

(2) Effects on the promulgating administrative body: There would be no practical effect on the Revenue Cabinet since the regulation essentially continues a valuation procedure previously provided for affected vehicles under the expired regulation.

(a) Direct and indirect costs or savings:

1. First year: Forms printing and distribution costs are estimated at $1,000

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None. This regulation essentially continues the reporting and paperwork requirements previously required for affected vehicles under the expired regulation.

(3) Assessment of anticipated effect on state and local revenues: The expired regulation reduced state revenue by approximately $1.75 million annually as a result of lowered vehicle valuations. This proposed regulation would decrease that revenue reduction to approximately $1.25 million annually. There is no effect on local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to this proposed regulation was to value the qualifying vehicles in the same manner as vehicles sold during the current model year or without use a dealer demonstrator or factory executive vehicles. This alternative was rejected since it very possibly would not fairly reflect the actual value of such vehicles.

(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: This proposed regulation, the the absence of specific statutory provisions, simply recognizes that certain motor vehicles have a lower actual value than that which would other wise apply for usage tax computation purposes.

TIERING: Was tiering applied? No. This lower valuation applies to all qualifying dealer demonstrator, factory executive and prior year model vehicles which have not previously been registered in any state or country. There is no statutory authority to provide preferential treatment on the basis of size or other criteria.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure

201 KAR 9:300. Interpretation of KRS 311.900(1).

RELATES TO: KRS 311.900(1)

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 311.908(1) empowers the State Board of Medical Licensure to adopt rules and regulations as necessary to fulfill their statutory duty and obligation to certify qualified athletic trainers to practice within the Commonwealth of Kentucky. The purpose of this regulation is to clearly delineate when an athletic trainer can be employed in the private practice of a duly licensed physician.

Section 1. No provision of KRS 311.900 to 311.928 shall be construed to limit or prevent athletic trainers certified by the board from working in a private practice for a licensed physician as long as they have a written contract from a bona fide educational institution, professional athletic organization or other bona fide athletic organization and practice under the advice and consent of that institution's or organization team physician. Nothing in this regulation shall prohibit a patient/athlete from having the freedom to choose his own physician/athletic trainer.

ROYCE E. DAWSON, M.D., President

APPROVED BY AGENCY: September 6, 1990

FILED WITH LRC: September 6, 1990 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on October 22, 1990, at 10 a.m. at the Office of the Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by October 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: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

(1) Type and number of entities affected: All certified athletic trainers in the Commonwealth of Kentucky who choose to be employed in a physician's private practice..

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs are anticipated. In fact, it is anticipated this regulation will benefit both athletic trainers and physicians by more effectively and efficiently utilization of athletic trainers.

1. First year: Savings are anticipated through the employment relationship. No costs anticipated.

2. Continuing costs or savings: Savings are anticipated throughout the employment relationship. No costs anticipated.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors increasing or decreasing costs are anticipated.

(b) Reporting and paperwork requirements: No

additional reporting and/or paperwork requirements.

(2) Effects on the promulgating administrative body: No effect on the Kentucky Board of Medical Licensure. We will continue to monitor athletic trainers wherever their practice location may be located.

(a) Direct and indirect costs or savings: No direct or indirect costs or savings are anticipated by the board.

1. First year: No direct or indirect costs or savings are anticipated.

2. Continuing costs or savings: No direct or indirect costs or savings are anticipated.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs are anticipated by promulgating this regulation.

(b) Reporting and paperwork requirements: Only additional requirement anticipated is that the athletic trainer must advise the board of any change in practice location.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were assessed and board felt the proposed regulation adequately addresses when an athletic trainer can be employed in the private practice of a licensed Kentucky physician.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The board is not aware of any statute, regulation or policy which is in conflict, overlaps or is duplicated by this proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not in conflict.

(6) Any additional information or comments: The purpose of this regulation is to clearly delineate when an athletic trainer can be employed in the private practice of a Kentucky physician.

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure

201 KAR 9:305. Recertification of athletic trainers.

RELATES TO: KRS 311.900 to 311.928

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 311.908(1) empowers the State Board of Medical Licensure to adopt rules and regulations as necessary to fulfill their statutory duty and obligation to certify qualified athletic trainers to practice within the Commonwealth of Kentucky. The purpose of this regulation is to establish the criteria for recertification.

Section 1. National athletic trainer association (NATA) certified athletic trainers shall:

(1) Complete six (6) continuing education units (CEU) in a three (3) year period beginning July 1, 1990, and ending July 1, 1993, and on a continuous three (3) year cycle thereafter;

(2) Have current certification with the NATA; and

(3) Pay the required recertification fee.

Section 2. Athletic trainers without NATA certification shall:

(1) Complete six (6) CEUs in a three (3) year period beginning July 1, 1990, and ending July 1, 1993, and on a continuous three (3) year cycle thereafter; and submit them to the athletic trainer council for approval within thirty (30) days of completion for credit; and

(2) Pay the required recertification fee.

ROYCE E. DAWSON, M.D., President

APPROVED BY AGENCY: September 6, 1990

FILED WITH LRC: September 6, 1990 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on October 22, 1990, at 10 a.m. at the Office of the Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by October 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: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

(1) Type and number of entities affected: All athletic trainers certified to practice in the Commonwealth of Kentucky.

(a) Direct and indirect costs or savings to those affected: Direct costs to all athletic trainers will be the costs associated with obtaining continuing education credits and payment of the recertification fee.

1. First year: Costs will be spread over a 3 year period and recertification fee is minimal.

2. Continuing costs or savings: Costs will be spread over a 3 year period.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The Kentucky Association of Athletic Trainers provides yearly conference in which all required continuing education credits can be obtained at minimal costs. This will decrease costs associated with regulation.

(b) Reporting and paperwork requirements: The athletic trainer must report to the board every 3 years on completion of required CEU and complete recertification forms.

(2) Effects on the promulgating administrative body: This regulation will increase workload of the board. It must develop recertification forms and a recertification procedure.

(a) Direct and indirect costs or savings:

Direct costs will include the drafting and presenting of recertification forms and the staff costs associated with the recertification process.

1. First year: Costs will be more appreciable in the first year. However, the costs will be offset by the required recertification fee.

2. Continuing costs or savings: The board anticipates this to be a break-even process, therefore, no anticipated continued costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs are anticipated by promulgating this regulation.

(b) Reporting and paperwork requirements: Reporting (on a 3 year cycle) and completion of recertification forms are the only paperwork requirements anticipated.

(3) Assessment of anticipated effect on state and local revenues: No real effect on state or local revenues anticipated as the costs associated with recertification will be absorbed by staff administering the athletic trainers.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were assessed and board felt the proposed regulation adequately addresses and sets the criteria for recertification.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The board is not aware of any statute, regulation or policy which is in conflict, overlaps or is duplicated by this proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not in conflict.

(6) Any additional information or comments: The purpose of this regulation is to set out criteria for recertification (on a 3 year cycle) to practice as an athletic trainer in the Commonwealth of Kentucky.

TIERING: Was tiering applied? Yes

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

401 KAR 42:011. Definitions of terms used in 401 KAR Chapter 42, program scope, and interim prohibition.

RELATES TO: KRS 224.033, 224.814, 40 CFR Part 280 Subpart A, 40 CFR Part 281, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.033, 224.814, 40 CFR Part 280 Subpart A, 40 CFR Part 281, 42 U.S.C. 6991c

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs which provide for the prevention, abatement, and control of contaminants which may threaten the environment. KRS 224.814(2) requires the cabinet to regulate underground storage tanks by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, financial responsibility and other requirements to protect public health and the environment. KRS 224.814(3) requires the cabinet to establish a regulatory program which implements federal requirements for underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations. This chapter identifies requirements for underground storage tanks. This regulation establishes essential terms pertaining to the underground storage tank program and establishes interim prohibition requirements for deferred underground storage tank systems.

Section 1. Applicability, definitions and interim prohibition requirements for the underground storage tank program are governed by 40 CFR Part 280, Subpart A(1990).

Section 2. 401 KAR 42:010 entitled General provisions for underground storage tanks is hereby repealed.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 14, 1990 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted on October 23, 1990, at 10 a.m., in Capital Plaza Tower, Ground Floor Auditorium. Persons interested in attending this public hearing shall notify in writing at least five (5) days prior to the hearing: Susan C. Bush, Director, Division of Waste Management, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort office of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 23, 1990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan C. Bush, Director

(1) Type and number of entities affected: The proposed regulation will affect approximately 12,000 facilities with underground storage tanks containing regulated substances. The number is tabulated daily and is subject to fluctuation. Each facility may have more than one tank. There are approximately 32,000 tanks of this type in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are direct or indirect costs or savings to those affected.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to be promulgating administrative body.

2. Continuing costs or savings: There are no

continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed regulation adopts without change 40 CFR 280.10 through 40 CFR 280.12. Alternative: 1. Less stringent: The cabinet could not be less stringent and apply for and receive authorization for the Underground Storage Tank Program.

2. More stringent: The federal regulations are adopted without change because they adequately protect human health and the environment.

3. Present proposal: The present proposal establishes requirements for definitions for the Underground Storage Tank (UST) Program, applicability, and regulatory exclusions. Four classes of tanks are excluded from these regulations: UST systems containing mixtures of hazardous waste and regulated substances; equipment and machinery that contain regulated substances for operational purposes; waste water treatment tanks regulated under the Clean Water Act; and other tanks with small capacity, low concentration, or used for emergency backup.

(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: There is no conflict.

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

(6) Any additional information or comments: Promulgation of these regulations does not cause any financial impact on the regulated community because the federal regulations have been in effect since December 22, 1988. The Resource Conservation and Recovery Act permits the Environmental Protection Agency to authorize states to implement their own UST programs in place of the federal program if the states' requirements are no less stringent than the federal. Kentucky is, therefore, adopting the federal regulations without change. The financial impact at the national level is outlined in Federal Register Vol. 53 No. 185 dated September 23, 1988.

TIERING: Was tiering applied? Yes. This regulation applies to all owners and operators of underground storage tank systems containing regulated substances. Regulated substances consist of either petroleum or any substance defined in Section 101(14) of CERCLA, but do not include any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The proposed regulation is further tiered to consider tank system type, tank size, the type of substance stored, tank construction, and the date on which the UST system was installed and brought into use. This tiering is justified because of differing technologies, risks and impacts to the various classes of regulated entities due to compliance with these regulations. The nature of the particular classes of regulated entities permits reduction of the number of inspections or other compliance activities without violating the applicable statutes, defeating the purpose of the regulation or contributing to the problem the regulation was designed to correct. The phasing in of the requirements with respect to existing UST systems reduces the disproportionate economic effect of compliance of these entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed regulation adopts without change federal regulations published in FR Vol. 53 No. 185 at 40 CFR 280.10 through 280.12. There is no federal mandate requiring states to submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator of the United States Environmental Protection Agency (EPA). However, a state may submit such a program, and, if approved, the state program is adopted in lieu of the federal program. The state then has the primary enforcement responsibility with respect to the requirements of its UST program. In order to be approved by EPA, the state program must include the requirements and standards set forth at 42 U.S.C. 6991c(a) and must provide for adequate enforcement of compliance with such requirements and standards. A state program may only be approved if these requirements and standards are no less stringent than the corresponding requirements and standards promulgated by EPA pursuant to 42 U.S.C. 6991b(a) and published in FR Vol. 53 No. 185 at 40 CFR Part 280.

2. State compliance standards. The proposed regulation adopts without change federal regulations which establish definitions for the Underground Storage Tank (UST) Program, applicability, and regulatory exclusions. Four classes of tanks are excluded from these regulations: UST systems containing mixtures of hazardous waste and regulated substances; equipment and machinery that contain regulated substances for operational purposes; waste water treatment tanks regulated under the Clean Water Act; and other tanks with small capacity, low concentration, or used for emergency backup.

3. Minimum or uniform standards contained in the federal mandate. The proposed regulation adopts without change federal regulations at 40 CFR 280.10 through 280.12. Section 9004 of the Resource conservation and Recovery Act permits the Environmental Protection Agency to authorize states to implement their own UST programs in place of the federal program if the states' requirements are no less stringent and provide adequate enforcement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed regulation adopts without change federal regulations at 40 CFR 280.10 through 280.12.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

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

401 KAR 42:020. Performance standards for new UST systems.

RELATES TO: KRS 224.033, 224.814, 40 CFR Part 280 Subpart B Appendix II, 40 CFR Part 281, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.033, 224.814, 40 CFR Part 280 Subpart B Appendix II, 40 CFR Part 281, 42 U.S.C. 6991c

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs which provide for the prevention, abatement, and control of contaminants which may threaten the environment. KRS 224.814(2) requires the cabinet to regulate underground storage tanks by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.814(3) requires the cabinet to establish a regulatory program which implements federal requirements for underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations. This chapter identifies requirements for underground storage tanks. This regulation establishes requirements concerning performance standards, notification, and alternatives for upgrading existing UST systems.

Section 1. (1) The requirements concerning performance standards, notification, and alternatives for upgrading UST systems are governed by 40 CFR Part 280, Subpart B (1990) and Appendix II (1990).

(2) 40 CFR 280.22(b) allows for state forms to be used in lieu of federal forms for notification of underground storage tanks. The notification form for underground storage tanks in Kentucky is being incorporated by reference into this section. This form became effective in June 1989, and is available for distribution and inspection from the Underground Storage Tank Program, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601. The business hours of the division are from 8 a.m. to 4:30 p.m. Monday through Friday.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: September 12, 1990

FILED WITH LRC: September 14, 1990 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted on October 23, 1990, at 10 a.m., in Capital Plaza Tower, Ground Floor Auditorium. Persons interested in attending this public hearing shall notify in writing at least five (5) days prior to the hearing: Susan C. Bush, Director, Division of Waste Management, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort office of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 23, 1990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan C. Bush, Director

(1) Type and number of entities affected: The proposed regulation will affect approximately 12,000 facilities with underground storage tanks containing regulated substances. The number is tabulated daily and is subject to fluctuation. Each facility may have more than one tank. There are approximately 32,000 tanks of this type in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings to those affected.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the promulgating administrative body.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed regulation adopts without change federal regulations at 40 CFR 280.20 through 280.22. Alternative: 1. Less stringent: The cabinet could not be less stringent and apply for and receive authorization for the Underground Storage Tank Program.

2. More stringent: The federal regulations are adopted without change because they adequately protect human health and the environment.

3. Present proposal: The present proposal establishes requirements for performance standards, notification, and alternatives for upgrading existing UST systems. Performance standards have been established to prevent release due to structural failure, spills, and overfills. These standards include design, construction and installation, and certification of installation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

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

conflict.

(6) Any additional information or comments: Promulgation of these regulations does not cause any financial impact on the regulated community because the federal regulations have been in effect since December 22, 1988. Section 9004 of the Resource Conservation and Recovery Act permits the Environmental Protection Agency to authorize states to implement their own Underground Storage Tank programs in place of the federal program if states' requirements are no less stringent than the federal. Kentucky is, therefore, adopting the federal regulations without change. The financial impact at the national level is outlined in Federal Register Vol. 53 No. 185 dated September 23, 1988.

TIERING: Was tiering applied? Yes. This regulation applies to all owners and operators of UST systems containing regulated substances. Regulated substances consist of either petroleum or any substances defined in Section 101(14) of CERCLA, but do not include any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The proposed regulation is further tiered to consider tank system type, tank size, the type of substance stored, tank construction, and the date the UST system was installed and brought into use. This tiering is justified because of differing technologies, risks and impacts to the various classes of regulated entities due to compliance with these regulations. The nature of the particular classes of regulated entities permits reduction of the number of inspections or other compliance activities without violating the applicable statutes, defeating the purpose of the regulation or contributing to the problem the regulation was designed to correct. The phasing in of the requirements with respect to existing UST systems reduces the disproportionate economic effect of compliance on these entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed regulation adopts without change federal regulations at 40 CFR 280.20 through 280.22 as published in the FR Vol. 53 No. 185 on September 23, 1988. There is no federal mandate requiring states to submit an underground storage tank release detection, prevention, and correction program for review and approval of the Administrator of the United States Environmental Protection Agency (EPA). However, a state may submit such a program, and, if approved, the state program is adopted in lieu of the federal program. The state then has the primary enforcement responsibility with respect to the requirements of its UST program. In order to be approved by EPA, the state program must include the requirements and standards set forth at 42 U.S.C. 6991c(a) and must provide for adequate enforcement of compliance with such requirements and standards. A state program may only be approved if these requirements and standards are no less stringent than the corresponding requirements and standards promulgated by EPA pursuant to 42 U.S.C. 6991b(a) and published in FR Vol. 53 No. 185 at 40 CFR Part 280.

2. State compliance standards. This proposed regulation adopts without change federal regulations which establish requirements for performance standards, notification, and alternatives for upgrading existing UST systems. Performance standards have been established to prevent releases due to structural failure, spills, and overfills. These standards include design, construction and installation, and certification of installation.

3. Minimum or uniform standards contained in the federal mandate. The proposed regulation adopts without change federal regulations at 40 CFR 280.20 through 280.22 as published in the FR Vol. 52 No. 185 on September 23, 1988. Section 9004 of the Resource Conservation and Recovery Act permits the EPA to authorize states to implement their own UST programs in place of the federal program if the states' requirements are no less stringent and provide adequate enforcement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed regulation is identical to federal regulations at 40 CFR 280.20 through 280.22.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards. The notification form for underground storage tanks is adopted with Kentucky specific language as allowed by the federal regulations at 40 CFR 208.22(b).

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

401 KAR 42:030. General operating requirements.

RELATES TO: KRS 224.033, 224.814, 40 CFR Part 280 Subpart C, 40 CFR Part 281, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.033, 224.814, 40 CFR Part 280 Subpart C, 40 CFR Part 281, 42 U.S.C. 6991c

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs which provide for the prevention, abatement, and control of contaminants which may threaten the environment. KRS 224.814(2) requires the cabinet to regulate underground storage tanks by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.814(3) requires the cabinet to establish a regulatory program which implements federal requirements for underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations. This chapter identifies requirements for underground storage tanks. This regulation establishes requirements for spill and overfill control, operation and maintenance of corrosion protection, compatibility, repairs, and reporting and recordkeeping.

Section 1. The requirements for spill and overflow control, operation and maintenance of corrosion protection, compatibility, repairs,

reporting and recordkeeping for underground storage tanks are governed by 40 CFR Part 280, Subpart C (1990).

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 14, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted on October 23, 1990, at 10 a.m., in Capital Plaza Tower, Ground Floor Auditorium. Persons interested in attending this public hearing shall notify in writing at least five (5) days prior to the hearing: Susan C. Bush, Director, Division of Waste Management, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort office of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 23, 1990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan C. Bush, Director
(1) Type and number of entities affected: The proposed regulation will affect approximately 12,000 facilities with underground storage tanks containing regulated substances. The number is tabulated daily and is subject to fluctuation. Each facility may have more than one tank. There are approximately 32,000 tanks of this type in Kentucky.
(a) Direct and indirect costs or savings to those affected:
1. First year: There are no direct or indirect costs or savings to those affected.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: There are no direct or indirect costs or savings to the promulgating administrative body.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs: There are no factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed regulation adopts without change 40 CFR 280.30 through 280.34. Alternative: 1. Less stringent: The cabinet could not be less stringent and apply for and receive authorization for the Underground Storage Tank Program.
2.More stringent: The federal regulations are adopted without change because they adequately protect human health and the environment.
3. Present proposal: The proposed regulation establishes requirements for spill and overfill control. The transfer operation must be constantly monitored. The owner and operator must report, investigate, and clean up any spills. The proposed regulation also requires operation and maintenance of corrosion protection by inspection and testing. UST systems must be compatible with substances stored in the UST system. Reporting and recordkeeping requirements are also included.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed regulation.
(a) Necessity of proposed regulation if in conflict: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.
(6) Any additional information or comments: Promulgation of these regulations does not cause any financial impact on the regulated community because the federal regulations have been in effect since December 22, 1988. Section 9004 of the Resource Conservation and Recovery Act permits the Environmental Protection Agency to authorize states to implement their own UST programs in place of the federal program if states' requirements are no less stringent than the federal. Kentucky is, therefore, adopting the federal regulations without change. The financial impact at the national level is outlined in Federal Register Vol. 53 No. 185 dated September 23, 1988.
TIERING: Was tiering applied? Yes. This regulation applies to all owners and operators of UST systems containing regulated substances. Regulated substances consist of either petroleum or any substances defined in Section 101(14) of CERCLA, but do not include any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The proposed regulation is further tiered to consider tank system type, tank size, the type of substance stored, tank construction, and the date on which the UST system was installed and brought into use. This tiering is justified because of differing technologies, risks and impacts to the various classes of regulated entities due to compliance with these regulations. The nature of the particular classes of regulated entities permits reduction of the number of inspections or other compliance activities without violating the applicable statutes, defeating the purpose of the regulation or contributing to the problem the regulation was designed to correct. The phasing in of the requirements with respect to existing UST systems reduces the disproportionate economic effect of compliance on these entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed regulation adopts without change federal regulations published in FR Vol. 53 No. 185 at 40 CFR 280.30 through 280.34 on September 23, 1988. There is no federal mandate requiring states to submit an underground storage tank release detection, prevention, and correction program for review

and approval by the Administrator of the U.S. EPA. However, a state may submit such a program, and, if approved, the state program is adopted in lieu of the federal program. The state then has the primary enforcement responsibility with respect to the requirements of its UST program. In order to be approved by EPA, the state program must include the requirements and standards set forth at 42 U.S.C. 6991c(a) and must provide for adequate enforcement of compliance with such requirements and standards. A state program may only be approved if these requirements and standards are no less stringent than the corresponding requirements and standards promulgated by EPA pursuant to 42 U.S.C. 6991b(a) and published in FR Vol. 53 No. 185 at 40 CFR Part 280.

2. State compliance standards. The proposed regulation adopts without change federal regulations which establish requirements for spill and overfill control. The transfer operation must be constantly monitored. The owner and operator must report, investigate, and clean up any spills. The proposed regulation also requires operation and maintenance of corrosion protection by inspection and testing. UST systems must be compatible with the substance stored in the UST system. Requirements for repairs, reporting, and recordkeeping are also included.

3. Minimum or uniform standards contained in the federal mandate. The proposed regulation adopts without change federal regulations at 40 CFR 280.30 through 280.34. Section 9004 of the Resource Conservation and Recovery Act permits the EPA to authorize states to implement their own UST programs in place of the federal program if the states' requirements are no less stringent and provide adequate enforcement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed regulation adopts without change 40 CFR 280.30 through 280.34.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

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

401 KAR 42:040. Release detection.

RELATES TO: KRS 224.033, 224.814, 40 CFR Part 280 Subpart D, 40 CFR Part 281, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.033, 224.814, 40 CFR Part 280 Subpart D, 40 CFR Part 281, 42 U.S.C. 6991c

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs which provide for the prevention, abatement, and control of contaminants which may threaten the environment. KRS 224.814(2) requires the cabinet to regulate underground storage tanks by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.814(3) requires the cabinet to establish a regulatory program which implements federal requirements for underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulation. This chapter identifies requirements for underground storage tanks. This regulation establishes the requirements for release detection and recordkeeping for all UST systems.

Section 1. The requirements for release detection and recordkeeping for underground storage tank systems are governed by 40 CFR Part 280 Subpart D (1990).

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 14, 1990 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted on October 23, 1990, at 10 a.m., in Capital Plaza Tower, Ground Floor Auditorium. Persons interested in attending this public hearing shall notify in writing at least five (5) days prior to the hearing: Susan C. Bush, Director, Division of Waste Management, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort office of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 23, 1990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan C. Bush, Director

(1) Type and number of entities affected: The proposed regulation will affect approximately 12,000 facilities with underground storage tanks containing regulated substances. The number is tabulated daily and is subject to fluctuation. Each facility may have more than one tank. There are approximately 32,000 tanks of this type in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect savings to those affected.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the promulgating administrative body.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed regulation adopts without change 40 CFR 280.40 through 280.45. Alternative: 1. Less stringent: The cabinet could not be less stringent and apply for and receive authorization for the Underground Storage Tank Program.

2.More stringent: The federal regulations are adopted without change because they adequately protect human health and the environment.

3. Present proposal: The proposed regulation establishes release detection and recordkeeping requirements for petroleum UST systems and hazardous substances UST systems.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

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

(6) Any additional information or comments: Promulgation of these regulations does not cause any financial impact on the regulated community because the federal regulations have been in effect since December 22, 1988. Section 9004 of the Resource Conservation and Recovery Act permits the EPA to authorize states to implement their own UST programs in place of the federal program if states' requirements are no less stringent than the federal. Kentucky is, therefore, adopting the federal regulations without change. The financial impact at the national level is outlined in FR Vol. 53 No. 185 dated September 23, 1988.

TIERING: Was tiering applied? Yes. This regulation applies to all owners and operators of UST systems containing regulated substances. Regulated substances consist of either petroleum or any substances defined in Section 101(14) of CERCLA, but do not include any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The proposed regulation is further tiered to consider tank system type, tank size, the type of substance stored, tank construction, and the date on which the UST system was installed and brought into use. This tiering is justified because of differing technologies, risks and impacts to the various classes of regulated entities due to compliance with these regulations. The nature of the particular classes of regulated entities permits reduction of the number of inspections or other compliance activities without violating the applicable statutes, defeating the purpose of the regulation or contributing to the problem the regulation was designed to correct. The phasing in of the requirements with respect to existing UST systems reduces the disproportionate economic effect of compliance on these entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed regulation adopts without change federal regulations published in FR Vol. 53 No. 185 at 40 CFR 280.40 through 280.45 on September 23, 1988. There is no federal mandate requiring states to submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator of the U.S. EPA . However, a state may submit such a program, and, if approved, the state program is adopted in lieu of the federal program. The state then has the primary enforcement responsibility with respect to the requirements of its UST program. In order to be approved by EPA, the state program must include the requirements and standards set forth at 42 U.S.C. 6991c(a) and must provide for adequate enforcement of compliance with such requirements and standards. A state program may only be approved if these requirements and standards are no less stringent than the corresponding requirements and standards promulgated by EPA pursuant to 42 U.S.C. 6991b(a) and published in FR Vol. 53 No. 185 at 40 CFR Part 280.

2. State compliance standards. The proposed regulation adopts without change federal regulations which establish release detection and recordkeeping requirements for petroleum UST systems and hazardous substances UST systems.

3. Minimum or uniform standards contained in the federal mandate. The proposed regulation adopts without change federal regulations at 40 CFR 280.40 through 280.45. Section 9004 of the Resource Conservation and Recovery Act permits the EPA to authorize states to implement their own UST programs in place of the federal program if the states' requirements are no less stringent and provide adequate enforcement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed regulation adopts without change is identical to federal regulations at 40 CFR 280.40 through 280.45.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

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

401 KAR 42:050. Release reporting, investigation, and confirmation.

RELATES TO: KRS 224.033, 224.814, 40 CFR Part 280 Subpart E, 40 CFR Part 281, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.033, 224.814, 40 CFR Part 280 Subpart E, 40 CFR Part 281, 42 U.S.C. 6991c

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs which provide for the prevention, abatement, and control of contaminants which may threaten the environment. KRS 224.814(2) requires the cabinet to regulate underground

storage tanks by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closures, financial responsibility, and other requirements to protect public health and the environment. KRS 224.814(3) requires the cabinet to establish a regulatory program which implements federal requirements for underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations. This chapter identifies requirements for underground storage tanks. This regulation establishes the requirements for reporting of suspected releases, and investigation of off-site impacts.

Section 1. The requirements for reporting of suspected releases and investigation of off-site impacts for underground storage tank systems are governed by 40 CFR Part 280 Subpart E (1990).

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 14, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted on October 23, 1990, at 10 a.m., in Capital Plaza Tower, Ground Floor Auditorium. Persons interested in attending this public hearing shall notify in writing at least five (5) days prior to the hearing: Susan C. Bush, Director, Division of Waste Management, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort office of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 23, 1990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan C. Bush, Director
(1) Type and number of entities affected: The proposed regulation will affect approximately 12,000 facilities with underground storage tanks containing regulated substances. The number is tabulated daily and is subject to fluctuation. Each facility may have more than one tank. There are approximately 32,000 tanks of this type in Kentucky.
(a) Direct and indirect costs or savings to those affected:
1. First year: There are no direct or indirect costs to those affected.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: There are no direct or indirect costs or savings to the promulgating administrative body.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs: There are no factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed regulation adopts without change 40 CFR 280.50 through 280.53. Alternative: 1. Less stringent: The cabinet could not be less stringent and apply for and receive authorization for the Underground Storage Tank Program.
2.More stringent: The federal regulations are adopted without change because they adequately protect human health and the environment.
3. Present proposal: The proposed regulation establishes requirements for reporting of suspected releases and investigation of off-site impacts.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed regulation.
(a) Necessity of proposed regulation if in conflict: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.
(6) Any additional information or comments: Promulgation of these regulations does not cause any financial impact on the regulated community because the federal regulations have been in effect since December 22, 1988. Section 9004 of the Resource Conservation and Recovery Act permits the EPA to authorize states to implement their own UST programs in place of the federal program if states' requirements are no less stringent than the federal. Kentucky is, therefore, adopting the federal regulations without change. The financial impact at the national level is outlined in FR Vol. 53 No. 185 dated September 23, 1988.
TIERING: Was tiering applied? Yes. This regulation applies to all owners and operators of UST systems containing regulated substances. Regulated substances consist of either petroleum or any substances defined in Section 101(14) of CERCLA, but do not include any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The proposed regulation is further tiered to consider tank system type, tank size, the type of substance stored, tank construction, and the date on which the UST system was installed and brought into use. This tiering is justified because of differing technologies, risks and impacts to the various classes of regulated entities due to compliance with these regulations. The nature of the particular classes of regulated entities permits reduction of the number of inspections or other compliance activities without violating the applicable statute, defeating the purpose of the regulation or contributing to the problem the regulation was designed to correct. The phasing in of the requirements with respect to existing UST

systems reduces the disproportionate economic effect of compliance on these entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed regulation adopts without change federal regulations published in FR Vol. 53 No. 185 at 40 CFR 280.50 through 280.53 on September 23, 1988. There is no federal mandate requiring states to submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator of the U.S. EPA. However, a state may submit such a program, and, if approved, the state program is adopted in lieu of the federal program. The state then has the primary enforcement responsibility with respect to the requirements of its UST program. In order to be approved by EPA, the state program must include the requirements and standards set forth at 42 U.S.C. 6991c(a) and must provide for adequate enforcement of compliance with such requirements and standards. A state program may only be approved if these requirements and standards are no less stringent than the corresponding requirements and standards promulgated by EPA pursuant to 42 U.S.C. 6991b(a) and published in FR Vol. 53 No. 185 at 40 CFR Part 280.

2. State compliance standards. The proposed regulation adopts without change federal regulations which establish requirements for reporting of suspected releases and investigation of off-site impacts.

3. Minimum or uniform standards contained in the federal mandate. The proposed regulation adopts without change federal regulations at 40 CFR 280.50 through 280 53. Section 9004 of the Resource Conservation and Recovery Act permits the EPA to authorize states to implement their own UST programs in place of the federal program if the states' requirements are no less stringent and provide adequate enforcement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed regulation adopts without change is identical to federal regulations at 40 CFR 280.50 through 280.53.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

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

401 KAR 42:060. Release response and corrective action for UST systems containing petroleum or hazardous substances.

RELATES TO: KRS 224.033, 224.814, 40 CFR Part 280 Subpart F, 40 CFR Part 281, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.033, 224.814, 40 CFR Part 280 Subpart F, 40 CFR Part 281, 42 U.S.C. 6991c

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs which provide for the prevention, abatement, and control of contaminants which may threaten the environment. KRS 224.814(2) requires the cabinet to regulate underground storage tanks by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.814(3) requires the cabinet to establish a regulatory program which implements federal requirements for underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations. This chapter identifies requirements for underground storage tanks. This regulation establishes the requirements for release response, site characterization, corrective action, and public participation.

Section 1. The requirements for release response, site characterization, corrective action and public participation for underground storage tanks are governed by 40 CFR Part 280 Subpart F (1990).

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: September 12, 1990

FILED WITH LRC: September 14, 1990 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted on October 23, 1990, at 10 a.m., in Capital Plaza Tower, Ground Floor Auditorium. Persons interested in attending this public hearing shall notify in writing at least five (5) days prior to the hearing: Susan C. Bush, Director, Division of Waste Management, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort office of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 23, 1990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan C. Bush, Director

(1) Type and number of entities affected: The proposed regulation will affect approximately 12,000 facilities with underground storage tanks containing regulated substances. The number is tabulated daily and is subject to fluctuation. Each facility may have more than one tank. There

are approximately 32,000 tanks of this type in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs to those affected.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the promulgating administrative body.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed regulation adopts without change 40 CFR 280.60 through 280.67. Alternative: 1. Less stringent: The cabinet could not be less stringent and apply for and receive authorization for the Underground Storage Tank Program.

2.More stringent: The federal regulations are adopted without change because they adequately protect human health and the environment.

3. Present proposal: The proposed regulation establishes requirements for release response and corrective action. Upon confirmation of a release, owners and operators are required to perform initial response actions, initial abatement measures, site checks, and site characterizations. Also included are requirements for free product removal, investigations for soil and groundwater cleanup, corrective action plans, and public participation.

(5) Identify any statute, rule or government policy which may be in conflict, overlapping or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

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

(6) Any additional information or comments: Promulgation of these regulations does not cause any financial impact on the regulated community because the federal regulations have been in effect since December 22, 1988. Section 9004 of the Resource Conservation and Recovery Act permits the EPA to authorize states to implement their own UST programs in place of the federal program if states' requirements are no less stringent than the federal. Kentucky is, therefore, adopting the federal regulations without change. The financial impact at the national level is outlined in FR Vol. 53 No. 185 dated September 23, 1988.

TIERING: Was tiering applied? Yes. This regulation applies to all owners and operators of UST systems containing regulated substances. Regulated substances consist of either petroleum or any substances defined in Section 101(14) of CERCLA, but do not include any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The proposed regulation is further tiered to consider tank system type, tank size, the type of substance stored, tank construction, and the date on which the UST system was installed and brought into use. This tiering is justified because of differing technologies, risks and impacts to the various classes of regulated entities due to compliance with these regulations. The nature of the particular classes of regulated entities permits reduction of the number of inspections or other compliance activities without violating the applicable statutes, defeating the purpose of the regulation or contributing to the problem the regulation was designed to correct. The phasing in of the requirements with respect to existing UST systems reduces the disproportionate economic effect of compliance on these entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed regulation adopts without change federal regulations published in FR Vol. 53 No. 185 at 40 CFR 280.60 through 280.67 on September 23, 1988. There is no federal mandate requiring states to submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator of the U.S. EPA. However, a state may submit such a program, and, if approved, the state program is adopted in lieu of the federal program. The state then has the primary enforcement responsibility with respect to the requirements of its UST program. In order to be approved by EPA, the state program must include the requirements and standards set forth at 42 U.S.C. 6991c(a) and must provide for adequate enforcement of compliance with such requirements and standards. A state program may only be approved if these requirements and standards are no less stringent than the corresponding requirements and standards promulgated by EPA pursuant to 42 U.S.C. 6991b(a) and published in FR Vol. 53 No. 185 at 40 CFR Part 280.

2. State compliance standards. The proposed regulation adopts without change federal regulations which establish requirements for release response and correction action. Upon confirmation of a release, owners and operators are required to perform initial response actions, initial abatement measures, site checks, and site characterizations. Also included are requirements for free product removal, investigations for soil and groundwater cleanup, corrective action plans, and public participation.

3. Minimum or uniform standards contained in the federal mandate. The proposed regulation adopts without change federal regulations at 40 CFR 280.60 through 280.67. Section 9004 of the Resource Conservation and Recovery Act permits the EPA to authorize states to implement their

own UST programs in place of the federal program if the states' requirements are no less stringent and provide adequate enforcement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed regulation adopts without change is identical to federal regulations at 40 CFR 280.60 through 280.67.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

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

401 KAR 42:070. Out-of-service UST systems and closure.

RELATES TO: KRS 224.033, 224.814, 40 CFR Part 280 Subpart G, 40 CFR Part 281, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.033, 224.814, 40 CFR Part 280 Subpart G, 40 CFR Part 281, 42 U.S.C. 6991c

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs which provide for the prevention, abatement, and control of contaminants which may threaten the environment. KRS 224.814(2) requires the cabinet to regulate underground storage tanks by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.814(3) requires the cabinet to establish a regulatory program which implements federal requirements for underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations. This chapter identifies requirements for underground storage tanks. This regulation establishes the requirements for release detection and recordkeeping for all UST systems.

Section 1. (1) The requirements for out-of-service UST systems and closure are governed by 40 CFR Part 280 Subpart G (1990).

(2) The forms for the notice of intent to permanently close underground storage tanks and the closure assessment report are being incorporated by reference into this section. These forms became effective in June of 1989, and are available for distribution and inspection from the Underground Storage Tank Program, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601. The business hours of the division are from 8 a.m. to 4:30 p.m. Monday through Friday.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 14, 1990 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted on October 23, 1990, at 10 a.m., in Capital Plaza Tower, Ground Floor Auditorium. Persons interested in attending this public hearing shall notify in writing at least five (5) days prior to the hearing: Susan C. Bush, Director, Division of Waste Management, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort office of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 23, 1990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan C. Bush, Director

(1) Type and number of entities affected: The proposed regulation will affect approximately 12,000 facilities with underground storage tanks containing regulated substances. The number is tabulated daily and is subject to fluctuation. Each facility may have more than one tank. There are approximately 32,000 tanks of this type in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs to those affected.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the promulgating administrative body.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed regulation adopts without change 40 CFR 280.70 through 280.74. Alternative: 1. Less stringent: The cabinet could not be less stringent and apply for and receive authorization for the Underground Storage Tank Program.

2.More stringent: The federal regulations are adopted without change because they adequately protect human health and the environment.

3. Present proposal: The proposed regulation establishes requirements for out-of-service UST systems and closure. The proposed regulation specifies requirements for temporary closure, permanent closure and changes in service, assessing the site at closure or change in service, and closure records.

(5) Identify any statute, administrative

regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

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

(6) Any additional information or comments: Promulgation of these regulations does not cause any financial impact on the regulated community because the federal regulations have been in effect since December 22, 1988. Section 9004 of the Resource Conservation and Recovery Act permits the EPA to authorize states to implement their own UST programs in place of the federal program if states' requirements are no less stringent than the federal. Kentucky is, therefore, adopting the federal regulations without change. The financial impact at the national level is outlined in FR Vol. 53 No. 185 dated September 23, 1988.

TIERING: Was tiering applied? Yes. This regulation applies to all owners and operators of UST systems containing regulated substances. Regulated substances consist of either petroleum or any substances defined in Section 101(14) of CERCLA, but do not include any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The proposed regulation is further tiered to consider tank system type, tank size, the type of substance stored, tank construction, and the date on which the UST system was installed and brought into use. This tiering is justified because of differing technologies, risks and impacts to the various classes of regulated entities due to compliance with these regulations. The nature of the particular classes of regulated entities permits reduction of the number of inspections or other compliance activities without violating the applicable statutes, defeating the purpose of the regulation or contributing to the problem the regulation was designed to correct. The phasing in of the requirements with respect to existing UST systems reduces the disproportionate economic effect of compliance on these entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed regulation adopts without change federal regulations published in FR Vol. 53 No. 185 at 40 CFR 280.70 through 280.74 on September 23, 1988. There is no federal mandate requiring states to submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator of the U.S. EPA. However, a state may submit such a program, and, if approved, the state program is adopted in lieu of the federal program. The state then has the primary enforcement responsibility with respect to the requirements of its UST program. In order to be approved by EPA, the state program must include the requirements and standards set forth at 42 U.S.C. 6991c(a) and must provide for adequate enforcement of compliance with such requirements and standards. A state program may only be approved if these requirements and standards are no less stringent than the corresponding requirements and standards promulgated by EPA pursuant to 42 U.S.C. 6991b(a) and published in FR Vol. 53 No. 185 at 40 CFR Part 280.

2. State compliance standards. The proposed regulation adopts without change federal regulations which establish requirements for out-of-service UST systems and closure. The proposed regulation specifies requirements for temporary closure, permanent closure and changes in service, assessing the site at closure or change in service, and closure records.

3. Minimum or uniform standards contained in the federal mandate. The proposed regulation adopts without change federal regulations at 40 CFR 280.70 through 280.74. Section 9004 of the Resource Conservation and Recovery Act permits the EPA to authorize states to implement their own UST programs in place of the federal program if the states' requirements are no less stringent and provide adequate enforcement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed regulation adopts without change 40 CFR 280.70 through 280.74.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards. Forms are incorporated by reference concerning the notice of intent to permanently close underground storage tanks and the closure assessment report, to comply with the requirements of 40 CFR 280.71(a) and 280.72 respectfully.

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

401 KAR 42:090. Financial responsibility.

RELATES TO: KRS 224.033, 224.814, 40 CFR Part 280 Subpart H, 40 CFR Part 281, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.033, 224.814, 40 CFR Part 280 Subpart H, 40 CFR Part 281, 42 U.S.C. 6991c

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs which provide for the prevention, abatement, and control of contaminants which may threaten the environment. KRS 224.814(2) requires the cabinet to regulate underground storage tanks by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.814(3) requires the cabinet to establish a regulatory program which implements federal requirements for underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations. This chapter identifies requirements for underground storage tanks. This regulation establishes requirements for demonstrating financial responsibility for taking corrective action and compensating third

parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of underground storage tanks containing petroleum.

Section 1. The requirements for demonstrating financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of underground storage tanks containing petroleum are governed by 40 CFR Part 280 Subpart H (1990).

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: September 12, 1990
FILED WITH LRC: September 14, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted on October 23, 1990, at 10 a.m., in Capital Plaza Tower, Ground Floor Auditorium. Persons interested in attending this public hearing shall notify in writing at least five (5) days prior to the hearing: Susan C. Bush, Director, Division of Waste Management, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Persons wishing to submit written comments without attending the hearing may do so, if the written comments are received in the Frankfort office of the Department for Environmental Protection by 4:30 p.m. (EDT) on October 23, 1990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan C. Bush, Director
(1) Type and number of entities affected: The proposed regulation will affect approximately 12,000 facilities with underground storage tanks containing regulated substances. The number is tabulated daily and is subject to fluctuation. Each facility may have more than one tank. There are approximately 32,000 tanks of this type in Kentucky.
(a) Direct and indirect costs or savings to those affected:
1. First year: There are no direct or indirect savings to those affected.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: There are no direct or indirect costs or savings to the promulgating administrative body.
2. Continuing costs or savings: There are no continuing costs or savings.
3. Additional factors increasing or decreasing costs: There are no factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed regulation adopts without change 40 CFR 280.90 through 280.111. Alternative: 1. Less stringent: The cabinet could not be less stringent and apply for and receive authorization for the Underground Storage Tank Program.
2.More stringent: The federal regulations are adopted without change because they adequately protect human health and the environment.
3. Present proposal: The proposed regulation establishes requirements for demonstrating financial responsibility for taking corrective action, and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operation of UST's containing petroleum.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict with the proposed regulation.
(a) Necessity of proposed regulation if in conflict: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.
(6) Any additional information or comments: Promulgation of these regulations does not cause any financial impact on the regulated community because the federal regulations have been in effect since January 24, 1988. Section 9004 of the Resource Conservation and Recovery Act permits the Environmental Protection Agency to authorize states to implement their own UST programs in place of the federal program if states' requirements are no less stringent than the federal. Kentucky is, therefore, adopting the federal regulations without change. The financial impact at the national level is outlined in FR Vol. 53 No. 207 dated October 26, 1988.
TIERING: Was tiering applied? Yes. This regulation applies to all owners and operators of UST systems containing regulated substances. Regulated substances consist of either petroleum or any substances defined in Section 101(14) of CERCLA, but do not include any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The proposed regulation is further tiered to consider tank system type, tank size, the type of substance stored, tank construction, and the date on which the UST system was installed and brought into use. This tiering is justified because of differing technologies, risks and impacts to the various classes of regulated entities due to compliance with these regulations. The nature of the particular classes of regulated entities permits reduction of the number of inspections or other compliance activities without violating the applicable statute, defeating the purpose of the regulation or contributing to the problem the regulation was designed to correct. The phasing in of the requirements with respect to existing UST systems reduces the disproportionate economic effect of compliance on these entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed regulation

adopts without change federal regulations published in FR Vol. 53 43370-43382 at 40 CFR 280.90 through 280.111 on October 26, 1988, 53 FR 51274, December 21, 1988; 54 FR 5452, February 3, 1989; 54 FR 47081-47082, November 9, 1989; and 55 FR 18567, May 2, 1990. There is no federal mandate requiring states to submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator of the U.S. EPA. However, a state may submit such a program, and, if approved, the state program is adopted in lieu of the federal program. The state then has the primary enforcement responsibility with respect to the requirements of its UST program. In order to be approved by EPA, the state program must include the requirements and standards set forth at 42 U.S.C. 6991c(a) and must provide for adequate enforcement of compliance with such requirements and standards. A state program may only be approved if these requirements and standards are no less stringent than the corresponding requirements and standards promulgated by EPA pursuant to 40 U.S.C. 6991b(d).

2. State compliance standards. The proposed regulation adopts without change federal regulations which establish requirements for demonstrating financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operation of UST's containing petroleum.

3. Minimum or uniform standards contained in the federal mandate. The proposed regulation adopts without change federal regulations at 40 CFR 280.90 through 280.111. Section 9004 of the Resource Conservation and Recovery Act permits the EPA to authorize states to implement their own UST programs in place of the federal program if the states' requirements are no less stringent and provide adequate enforcement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed regulation adopts without change 40 CFR 280.90 through 280.111.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

CORRECTIONS CABINET

501 KAR 6:160. Correctional Industries.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on September 14, 1990 and hereinafter should be referred to as Correctional Industries 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.

CI 01-01-01	Establishment and Issuance of Policies and Procedures
CI 01-01-02	Administration and Use of the Policy and Procedures Manual, Including Issuance, Revision and Dissemination
CI 01-02-01	Organization of Correctional Industries
CI 01-03-01	Annual Planning Document
CI 01-04-01	Personnel Records
CI 01-04-04	New Employee Orientation
CI 02-01-01	Budgeting
CI 02-02-01	Purchasing
CI 02-03-01	Equipment Inventory and Other Nonexpendable Items
CI 02-04-01	Accounts Receivable
CI 03-01-01	Raw Material and Work In-Process Inventory
CI 03-01-02	Finished Goods Inventory
CI 03-01-03	Stocking of Warehouse
CI 03-02-01	Delivery of Goods and Services
CI 03-02-02	Pickup of Reupholstery and Repair Items
CI 04-01-01	Marketing
CI 04-02-01	Advertising Correctional Industry Products and Services
CI 04-02-02	Correctional Industries Catalog
CI 04-02-03	Prototypes and Samples Not For Sale
CI 04-03-01	Pricing of Correctional Industries Products
CI 04-03-02	Preparation of Bids
CI 04-03-03	Customer Orders
CI 04-03-04	Sale of Industry Products to Private Individuals
CI 04-03-05	Sales and Sales Reporting
CI 04-04-02	Warranty of Products
CI 05-01-01	Inmate Job Descriptions
CI 05-01-02	Equal Opportunity Employment
CI 05-01-03	Job Performance Evaluations
CI 05-01-04	Inmate Compensation
CI 05-01-05	Job Assignments
CI 05-02-01	Inmate Orientation
CI 05-03-01	Standards for Working in Correctional Industries Plants
CI 06-01-01	Safety and Working Conditions
CI 06-02-01	Tool Control
CI 06-02-02	Searches
CI 06-02-03	Use of State Vehicles
CI 06-03-01	Inmate Supervision
CI 07-01-01	Production Scheduling
CI 07-01-02	New Production Development
CI 07-02-01	Quality Control

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: September 14, 1990

FILED WITH LRC: September 14, 1990 at noon

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 23, 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: 45 employees, 480 inmates and all visitors of Correctional Industries.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 13:070. School attendance and academic sufficiency verification.

RELATES TO: KRS 186.440, 186.450, 186.470, 186.560
STATUTORY AUTHORITY: KRS 186.400
NECESSITY AND FUNCTION: HB 43 passed in the Regular Session of the 1990 General Assembly is applicable only in those counties of Kentucky served by a school district which has an alternative education program approved by the Department of Education. The bill requires anyone under the age of eighteen (18) years who is applying for either a learner's permit or operator's license and who has not graduated from high school to present verification issued by his school within the preceding thirty (30) days that he is enrolled in school and has not been found academically deficient. Further, KRS 186.560 requires the Transportation Cabinet as soon as notified to revoke the license of a person under the age of eighteen (18) years who has dropped out of school or is academically deficient. This administrative regulation sets forth the information which is to be submitted to the Transportation Cabinet and the circuit court clerk in order for them to meet their statutory duties. It further sets forth the times when a school attendance form is to be presented and the steps to be followed by a youth in having his driving privilege restored.

Section 1. No person shall be declared to be academically deficient for any school semester prior to the fall semester of 1990.

Section 2. School Enrollment Verification. An applicant under the age of eighteen (18) years seeking either an operator's license or a learner's permit who resides within the boundaries of a school district which has alternative education program approved by the Department of Education shall submit a school enrollment verification form from either a public, common or private school as provided in 704 KAR 7:100, Section 4 or shall submit proof of high school graduation to the circuit court clerk in his county of residence. The school enrollment verification form shall contain at a minimum the following information:
(1) Applicant's full name;
(2) Applicant's Social Security Number;
(3) Applicant's full address;
(4) Applicant's date of birth;
(5) Name of the school district;
(6) Name of the school;
(7) School district address;
(8) Signature and title of the school district official executing the verification form;
(9) Certification of the applicant's school enrollment in accordance with KRS Chapter 159;
(10) After the end of the 1990 fall semester, certification that the applicant is not academically deficient in accordance with KRS Chapter 159; and
(11) Date of verification which shall be within the preceding thirty (30) days but shall not be prior to July 13, 1990.

Section 3. Home Schooling Verification. An applicant for a learner's permit or operator's license who resides within the boundaries of a school district which has an alternative education program approved by the Department of Education, who is under the age of eighteen (18) years, who has not graduated from high school and who is being schooled at home shall present schooling verification to the circuit court clerk in his county of residence. The verification shall contain at least the following information:
(1) Applicant's full name;
(2) Applicant's Social Security Number;
(3) Applicant's full address;
(4) Applicant's date of birth;
(5) Parent or guardian's full name;
(6) Parent or guardian's address;
(7) Signature of parent or guardian;
(8) Certification that applicant is being schooled at home;
(9) After the 1990 fall semester, certification that the applicant is not academically deficient in accordance with KRS Chapter 159; and
(10) Date of verification which shall be within the preceding thirty (30) days but shall not be prior to July 13, 1990.

Section 4. Certification of School Dropout or Academic Deficiency. (1) When the superintendent of a school district which has an alternative program approved by the Department of Education certifies to the Transportation Cabinet that a

student has dropped out of school or is academically deficient, the superintendent shall provide the following information to the Division of Driver Licensing, State Office Building, Second Floor, High and Clinton Streets, Frankfort, Kentucky 40622:

(a) Student's full name;
(b) Student's address;
(c) Student's Social Security Number;
(d) Student's date of birth;
(e) Certification that the student has dropped out of school or after the 1990 fall semester, is academically deficient as defined in KRS Chapter 159;
(f) Certification that the school district has an alternative education program approved by the Department of Education;
(g) Superintendent's name;
(h) Name of school district;
(i) Signature of superintendent or other person authorized by the superintendent to submit the certification; and
(j) Date of certification.

(2) The Transportation Cabinet shall prepare a form containing space for the above information and certifications. The forms shall be made available to the Department of Education for distribution.

Section 5. Return to School or Academic Sufficiency. A student who is reapplying for driving privilege after a return to school or achieving academic sufficiency shall submit a verification of this from his school district to the circuit court clerk in his county of residence. The verification shall contain at least the following:

(1) Applicant's full name;
(2) Applicant's address;
(3) Applicant's Social Security Number;
(4) Applicant's date of birth;
(5) Name and address of the school district;
(6) Name and address of the school;
(7) Signature and title of the school district official executing the verification form;
(8) Certification of applicant's reenrollment in school in accordance with KRS Chapter 159;
(9) Certification that the applicant is not academically deficient in accordance with KRS Chapter 159; and
(10) Date of the verification.

Section 6. Driving Privilege Restoration. Any person who is eligible to have his driving privilege restored only because he has reached his 18th birthday, that is, he neither has been certified by his school district as once again being a student in good standing nor has a court ordered the restoration of his driving privilege, shall pay the thirty (30) dollar reinstatement and relicensing fee required by KRS 186.440 and KRS 186.450 and the Kentucky State Police shall again examine the applicant.

Section 7. Any person denied an instruction permit or operator's license because he was not eligible for a school enrollment or home schooling verification form may, for the reasons set forth in KRS Chapter 159, petition the jurisdictional court for an operator's license eligibility order so that he might apply for an instruction permit or operator's license.

Section 8. Counties with Multiple School Districts. In a county with multiple school districts, if at least one (1) but not all have an alternative education program approved by the Department of Education, then all applicants for an instruction permit or operator's license under the age of eighteen (18) years shall present to the circuit clerk's office either a school enrollment or home schooling verification form as described in Sections 2 and 3 of this regulation, proof of high school graduation or proof from his school on a form approved by Department of Vehicle Regulation that he resides in a district which does not have an approved alternative education program.

JEROME LENTZ, Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: August 23, 1990
FILED WITH LRC: August 28, 1990 at 4 p.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on October 23, 1990 at 9 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by October 18, 1990 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be accepted until October 18, 1990. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All 175 public school districts as well as the private high schools and district courts in Kentucky and all 16 and 17 year old youth in Kentucky. However, at the present time only Jefferson County youth and school districts and district court are effected since only Jefferson County has an approval alternative education program. It is possible that other school districts will apply for and receive approval of their alternative education programs.

(a) Direct and indirect costs or savings to those affected: It will cost each school district which has an approved alternative education program approximately $1-$3 in administrative costs per 16 or 17 year old living in the school district who requests a school enrollment verification form. Further, beginning in 1991 it will cost an additional $1-$3 per student found to be academically deficient. However, preparation of the forms is mandated by HB 43 and therefore is not a new requirement imposed by this administrative regulation. HB 43 does not address allowing 16 or 17 year old youth who are denied the opportunity to apply for an operator's license

apply to the district court. HB 43 does allow students whose driving privilege is withdrawn after having received an operator's license or permit to apply to court for restoration of their driving privilege. Testimony on HB 43 indicated that anyone with special needs could apply to the district court for restoration of eligibility to obtain an operator's license. Therefore, while the administrative regulation possibly expands the number of district court appeals and the cost to the general fund, this expansion is in keeping with the overall intent of HB 43.

1. First year: The first year cost will likely be limited to Jefferson County schools and courts. There will be approximately 20,000 students who need school verification forms with an administrative cost mandated by HB 43 of between $20,000 and $60,000. The number of school dropouts will be about 4,000 causing a HB 43 mandated administrative cost of between $4,000 and $12,000. The district court appeals as a result of this administrative regulation and HB 43 will be abolut $45 for each appeal. It is likely that the cost as a result of HB 43 will be $25,000 with an additional cost of $25,000 as a result of this administrative regulation.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition): If the Department of Education approves additional alternative education programs, the cost will increase.

(b) Reporting and paperwork requirements: Paperwork - HB 43 mandated the paperwork detailed in this administrative regulation. Each 16 or 17 year old applicant for a learner's permit or operator's license who lives in a school district with an approved alternative education program must submit a school enrollment verification form. The schools which are located in districts with an approved alternative education program will have to notify the Transportation Cabinet when a student drops out or becomes academically deficient.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: One employee will have to be dedicated to this program initially, at a cost of $25,000 per year. As more alternative education programs are approved another person might have to be dedicated to this program.

1. First year: $25,000

2. Continuing costs or savings: $25,000

3. Additional factors increasing or decreasing costs: If the Department of Education approves additional alternative education programs, the cost will increase.

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not addressing allowing persons denied the opportunity to appeal to district court was discussed. It was rejected because all 16 and 17 year old youths should have the same opportunity under hardship conditions of applying for their driving privilege. The alternative of accepting academic deficiency statements based on last year's efforts was rejected because discussions with the Attorney General's Office led us to believe that would be unconstitutional.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied to accommodate the differences in public (common) and private schools and home schooling.

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___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. The local boards of education will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The school board, through its employees, will be required to complete several forms relating to school enrollment verification and academic sufficiency in order to meet the requirements of KRS 159.051, 186.440, 186.450 and 186.470.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): Since at first only Jefferson County is affected, the HB 43 imposed cost to the Jefferson County Board of Education is estimated to be $40,000 for the first year. The cost will be an administrative cost split between all of the high schools. The remaining cost incurred will be borne by the private schools or parents of children schooled at home.

Other Explanation: N/A

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance

702 KAR 3:220. Guidelines for waiver of school fees.

RELATES TO: KRS 160.330

STATUTORY AUTHORITY: KRS 160.330

NECESSITY AND FUNCTION: KRS 160.330 provides that local school districts shall establish, consistent with State Board for Elementary and Secondary regulations, a process to waive fees for qualifying students and a procedure for notice of such. This regulation provides guidelines for the waiver of school fees by local districts.

Section 1. Beginning with the 1990-91 school year, local school districts shall establish a process by which to waive any applicable fees charged by the district for pupils who qualify for free or reduced price lunches, including a process by which at least all such students shall be informed of the fee waiver provisions.

Districts that do not charge fees to any students shall not be subject to these requirements.

Section 2. Local school districts shall adopt specific policies and procedures whereby, at the beginning of the school year, all or at least qualifying pupils and their parents shall be given clear and prominent written notice of the fee waiver process, including the applicable income guidelines. Such policies and procedures shall also insure that the written notice of the fee waiver process shall include a form that parents shall use to request waiver of applicable fees.

Section 3. Local districts shall keep records for documentation and compliance purposes, which shall be made available to the Department of Education upon request. These records shall include:

(1) The number of pupils receiving free lunches and reduced price lunches;

(2) The number of pupils who request that fees be waived and the number of pupils for who fees are waived;

(3) Copies of any forms, notices or instructions used by schools in the collection or waiver of fees.

Section 4. Mandatory waiver of fees shall not apply to those fees charged and applicable to extracurricular activities and any fees beyond those charged for minimum participation in and full credit for instructional courses.

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: September 12, 1990

FILE WITH LRC: September 13, 1990 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 30, 1990, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: J. Gary Bale

(1) Type and number of entities affected: 176 local school districts and parents eligible for free and reduced lunch for students.

(a) Direct and indirect costs or savings to those affected: Not known (indigent fees already waived to some extent).

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: Eligible parent must file some type of application.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Unknown (some districs waiving fees for all students now, plus some indigents' fees were already being waived).

(4) Assessment of alternative methods; reasons why alternatives were rejected: Statute requires waiver of fees on this basis.

(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. Statute mandates application to free and reduced lunch eligibles.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance

702 KAR 3:230. Vocational allocation of add-on SEEK funds.

RELATES TO: KRS 157.360

STATUTORY AUTHORITY: KRS 157.320

NECESSITY AND FUNCTION: KRS 157.360 gives local shcool districts additional funds for students enrolled in secondary vocational education. This regulation is necessary to establish the amount of such add-on appropriation for 1990-91 and 1991-92 and the procedures relative to such allocation.

Section 1. Funds appropriated to serve secondary vocational education students in local school districts shall be allocated at twenty (20) dollars per student for those students identified as vocational students through the vocational educational occupational data system rosters.

Section 2. School districts shall be required to submit a vocational roster by October 1 with updates at the end of the school year for each program that has been reviewed and approved by the Office of Secondary Vocational Education, Kentucky Department of Education. The school district shall receive seventy-five (75) percent of its allocation in September of the school year, and twenty-five (25) percent shall be disbursed the following March. The amount of

money allocated to the school districts shall be based upon the previous year's enrollment as identified on the rosters.

Section 3. School districts shall utilize these funds to purchase instructional supplies and approvable equipment for the vocational programs and shall keep adequate accounting and inventory records to document that funds have been spent for these purposes.

Section 4. The Kentucky Department of Education shall review and approve vocational programs, enrollment reports and audit financial records in the school district as part of the program improvement process.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: September 12, 1990

FILE WITH LRC: September 13, 1990 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 30, 1990, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 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: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ron Moubray/Melissa Briscoe

(1) Type and number of entities affected: 172 local school districts.

(a) Direct and indirect costs or savings to those affected:

1. First year:

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 previous years. Requires verified vocational education occupational data system rosters.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Similar to previous years.

(3) Assessment of anticipated effect on state and local revenues: These funds ($4,000,000) are appropriated in the budget bill to meet the higher per student cost of operating secondary vocational education programs.

(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:

(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:

(6) Any additional information or comments: Regulation is necessary to allocate funds designated in the Kentucky Education Reform Act.

TIERING: Was tiering applied? Yes

REPRINTS

COMPILER'S NOTE: When 401 KAR 10:050 was filed with the Regulation Compiler's Office on July 14, 1988, the Department for Surface Mining Reclamation and Enforcement proposed to delete the words "or the surety" in Section 1(2). Due to an oversight in the Compiler's Office, these words were not bracketed when the regulation was published in the August 1988 Administrative Register. The regulation was adopted (effective) on December 13, 1988 and was published in the 1989 Administrative Regulations Service with these words ("or the surety") still erroneously contained in Section 1(2).

401 KAR 10:050 is being reprinted in this Administrative Register to show the correct deletion of those words.

405 KAR 10:050. Bond forfeiture.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.110, 350.130, 350.151, 350.465

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to regulate surface coal mining and reclamation operations in a manner as to insure that satisfactory reclamation is accomplished. This regulation sets forth the procedures and criteria by means of which a bond may be forfeited to the cabinet. This regulation sets forth that certain violations of KRS Chapter 350 and regulations promulgated pursuant to that chapter may cause a bond to be forfeited. This regulation sets forth that a hearing may be requested before such forfeiture can be effected. This regulation also specifies a method to determine the amount of bond forfeiture.

Section 1. General. (1) The cabinet shall forfeit all of the remaining bond amount for any permit or increment pursuant to the procedures and criteria of this regulation.

(2) The cabinet may withhold forfeiture if the permittee [or the surety] agrees to a compliance schedule to correct the violations of the permit or bond conditions.

(3) The cabinet shall withhold forfeiture and allow the surety or other financial institution providing bond to complete the reclamation plan if the surety or other financial institution can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the postmining land use approved by the cabinet, and will undertake to do so within a reasonable time frame and agrees to a compliance schedule. Neither the surety company nor other financial institution shall employ anyone to perform said measures who has been barred from mining pursuant to the provisions of KRS Chapter 350.

Section 2. Procedures. (1) In the event forfeiture of the bond is required by Section 3 of this regulation, the cabinet shall:

(a) Send written notification by certified mail, return receipt requested, to the permittee, and to the surety on the bond, if applicable, of the cabinet's determination to initiate forfeiture of the bond and the reasons for the forfeiture;

(b) Advise the permittee and surety, if applicable, of their right to challenge the determination pursuant to 405 KAR 7:090; and

(c) If no hearing is requested within thirty (30) days following notification and the bond proceeds are not received, the secretary shall enter a final order of forfeiture and the cabinet shall proceed in an action for collection on the bond.

(2) The cabinet may, as an alternative to following the procedures of subsection (1) of this section, initiate formal hearing procedures concerning forfeiture of the bond alone or in conjunction with the cabinet's action for other appropriate remedies against the permittee pursuant to 405 KAR 7:090.

(3) The cabinet shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area or increment on which bond coverage applied, and to cover associated administrative expenses. Such funds shall be deposited in an appropriate account for the payment of such costs. Funds remaining after reclamation shall be returned to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or setoff such proceeds under state law.

(4) In the event the amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The cabinet may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

Section 3. Criteria for Forfeiture. (1) A bond for a permit area or increment shall be forfeited, if the cabinet finds that:

(a) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;

(b) The permittee has failed to conduct the surface mining and reclamation operations in accordance with KRS Chapter 350, the conditions of the permit or Title 405, Chapters 7 through 24 within the time required;

(c) The permit for the area or increment under bond has been revoked or the operation terminated, unless the permittee, surety, or other financial institution providing bond assumes liability pursuant to an agreement for the completion of reclamation; or

(d) The permittee, surety, or other financial institution providing bond has failed to comply with a compliance schedule approved pursuant to Section 1(2) or (3) of this regulation.

(2) A bond may be forfeited if the cabinet finds that:

(a)1. The permittee has become insolvent; or

2. A creditor of the permittee has attached or executed judgment against the permittee's equipment, materials, or facilities, at the permit area; and

(b) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with KRS Chapter 350, Title 405, Chapters 7 through 24, and the permit.

(3) The cabinet may forfeit a bond solely upon the permittee's failure to pay penalties or fines (where all reclamation requirements have been fully met) and retain the bond proceeds, or portion thereof as necessary to offset the penalty or fine owed (including administrative costs incurred by the cabinet), but the cabinet shall forfeit a bond under this circumstance only after the five (5) year liability period has expired; except that for surety bonds or bonds secured by a letter of credit:

(a) In no event shall the cabinet take any action to forfeit a surety bond or bond secured by a letter of credit under this circumstance until reclamation phase I and II monies have been released and the five (5) year liability period has expired; and

(b) Where a forfeiture of a surety bond or a bond secured by a letter of credit under this circumstance has occurred, the cabinet shall not retain the surety bond or bond secured by letter of credit or any proceeds thereof and the permittee shall continue to be responsible for payment of the penalties or fines as well as administrative costs incurred by the cabinet.

Section 4. Forfeiture Amount. The cabinet shall forfeit the entire amount of the bond for the permit area or increment. (8 Ky.R. 1521; eff. 1-6-83; Am. 15 Ky.R. 451; 1073; eff. 12-13-88.)

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the September 12 & 13, 1990 Meeting

The September meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, September 12, 1990 at 10 a.m. and on Thursday, September 13, 1990 at 10 a.m. in Room 110 of the Capitol Annex. Representative Mark D. O'Brien, Chairman, called the meeting to order, and the secretary called the roll. The minutes of the August 13 & 14, 1990 meeting were approved.

Present September 12, 1990 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Gene Huff, Pat McCuiston, and Bill Quinlan; Representatives Jim Bruce, Tom Kerr and Ronny Layman.

Present September 13, 1990 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Gene Huff and Bill Quinlan; Representatives Jim Bruce, Ronny Layman and Tom Kerr.

Guests: Ray Kring, Scott Akers, Revenue Cabinet; Stephen Gagel, William M. Mercer, Mark Roberts, Kentucky Retirement System; Nathan Goldman, Judith Alexander, Carol McGuire, Board of Nursing; Pat Haight, Betty Beshoar, Linda Stacy, Division of Waste Management; Mike Bradley, Ellen Tharpe, Corrections Cabinet; David Garnett, Motor Vehicle Commission; Sandra Pullen, Jerry Lentz, David I. Hampton, Transportation Cabinet; Cooper Whitt, Nancy F. Kelly, Rita Lindsay Osborne, Clara DeMoss, Hanson Williams, JoAnne Brooks, Allen K. Day, Clarence E. Salyer, Sylvie Elam, Roy Prince, George G. Clark, Department of Education; Milton Skeen, Tom Fields, Ken Clevidence, University of Kentucky; Patrick Watts, Department of Insurance; Catherine Staib, Alcoholic Beverage Control; Wanda S. Harrod, Thomas Stout, Edward Hatchett, Department of Financial Institutions; Jack Rhorer, Chuck Cotton, Department of Housing, Buildings and Construction; George Parsons, Dwayne Gateood, John Hicks, Tim Hughes, William Duke, Audrey Carr, Workforce Development Cabinet: Roy Butler, Ked Fitzpatrick, Anita Moore, David Nichols, Mark Yancey, Barbara Coleman, Gary Bevill, Karen Doyle, Janice Kline, John Draper, Kenneth Wade, Dudley Conner, Cabinet for Human Resources; Cindy Schweickart, Commission for Health Economics Control; Marie Wheeler, Social Work Student; Dan Walton, KADA; Roy Strange, Kentucky Auto Dealers Association; David Beck, Sam Crawford, Kentucky Farm Bureau; V. Maurer, Marlene Helfrick, Kentucky PTA.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Donna Pierce, Peggy Jones, and Susan Eastman.

The Administrative Regulation Review Subcommittee met on September 12 and 13, 1990, and submits this report:

The Subcommittee determined that the following administrative regulation does not comply with statutory authority:

Education and Humanities Cabinet: Department of Education: Office of Instruction: Instructional Services

704 KAR 3:304 (Required program of studies.) After comments from representatives of the State PTA and discussion by the Subcommittee, Representative Kerr moved that this regulation be found deficient because it "subverts the intent of the Education Reform Package." KRS 156.070(3)(c) "forbids the use of television or related facilities at any time or in any manner...for commercial advertising." Although this statute is referring to using Kentucky Educational Television in the classroom, it carries with it a strong legislative intent that commercial advertising not be utilized. Motion passed.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Corrections Cabinet: Office of the Secretary

The following regulations were amended to comply with the drafting requirements of KRS Chapter 13A.

501 KAR 6:020 (Corrections policies and procedures.) This regulation was also amended to correct the date on which the removal of noncomplying televisions shall occur. With regard to CPP 14.3, a question had been raised relating to the marriage of inmates. The Subcommittee accepted the Cabinet's opinion that approval for all inmate requests is required.

501 KAR 6:060 (Northpoint Training Center.) This regulation was also amended to correct conflicting instructions; require proper notification; and, provide additional language for clarification in various policies.

501 KAR 6:080 (Corrections Cabinet manuals.)

501 KAR 6:090 (Frankfort Career Development Center.) This regulation was also amended to reword policies in order to make them clear.

501 KAR 6:120 (Blackburn Correctional Complex.) This regulation was also amended to provide the authority for a staff canteen and references to statutory authority.

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:240 (Naming of roads and bridges.) This regulation was amended to provide the proper statutory citation; to delete the requirement in Section 1(3) that the petitioner state the reason for his involvement in the petition; and, to delete the requirement in Section 1(5) that the petition contain a supportive statement from all units of local government. In addition, a new Section 4 was added to provide that the Secretary of the Cabinet shall request a resolution from local government units indicating support or nonsupport of a petition. Cabinet personnel stated that the Secretary's decision would not be determined solely by the support or lack of support of local governmental bodies; that other factors relating to the event or person would be considered in determining whether or not they were of historical significance.

Education and Humanities Cabinet: Department of Education: Office of School Administration and Finance: School District Finance

702 KAR 3:030 (Insurance requirements.) This regulation was amended to clarify insurance coverage would cover replacement cost.

702 KAR 3:130 (Internal accounting.) This regulation was amended to put the correct date

(July, 1990) for the material incorporated by reference.

Pupil Transportation

702 KAR 5:030 (Superintendents' responsibilities.) This regulation was amended to provide that a criminal records and driving history check will be conducted at the beginning of each school year for all bus drivers; and that any bus driver shall report within ten days any revocation of his driver's license or conviction for DUI.

702 KAR 5:110 (Vocational pupils, reimbursement for.) This regulation was amended to clarify that more than one bus would be used when the numbers of pupils exceeded seating capacity.

Food Service Programs

702 KAR 6:075 (Reports and funds.) This regulation was amended to incorporate by reference the required monthly forms.

Workforce Development Cabinet: Department for Adult and Technical Education: Management of the Kentucky Tech System

The following regulations were technically amended to comply with the drafting requirements of KRS Chapter 13A.

780 KAR 2:050 (Regional program.)

Personnel System for Certified and Equivalent Employees

780 KAR 3:020 (Compensation plan.) This regulation was also amended by changing the word "continuing" to "nonprobationary".

Instructional Programs

780 KAR 4:010 (General standards.)

780 KAR 4:020 (Diploma requirements for postsecondary students.)

Veterans' Approval Agency

780 KAR 5:010 (Institutional courses, approval of.)

780 KAR 5:020 (Apprenticeship and OJT courses, approval of.)

780 KAR 5:030 (Revisions and amendments approval.)

780 KAR 5:040 (Denial or revocation of approval.)

780 KAR 5:050 (Inspection and supervision.)

Facilities and Equipment

780 KAR 7:010 (Definitions.)

780 KAR 7:020 (Area center for public high school, standards for department of.)

780 KAR 7:030 (Vocational-technical, public or state; standards.)

780 KAR 7:040 (Facility maintenance.)

780 KAR 7:050 (Construction.)

780 KAR 7:060 (Equipment inventory.)

780 KAR 7:070 (Equipment insurance.)

Vocational and Teachers Education

780 KAR 8:010 (Vocational teacher education.)

Adult Education

780 KAR 9:010 (Testing program.) This regulation was also amended by changing the word "certificate" to the word "diploma" wherever it appears in the regulation.

780 KAR 9:020 (High school equivalency certification.) This regulation was also amended by changing the word "certificate" to the word "diploma" wherever it appears in the regulation.

780 KAR 9:030 (Eighth grade equivalency certificate.)

780 KAR 9:040 (Approval of applications under Section 322 of Adult Education Act.)

780 KAR 9:050 (Approval of applications under Section 353 of Adult Education Act.)

780 KAR 9:060 (Approval of applications under English literacy program.)

780 KAR 9:070 (Approval of applications for migrant farmworker and immigrant education.)

780 KAR 9:080 (Reporting requirements for adult education programs.) This regulation was also amended by adding the words "approved in the contract" in subsection (18).

780 KAR 9:090. Approval of applications under workplace literacy program.)

Public Protection and Regulation Cabinet: Department of Housing, Buildings and Construction: Kentucky Building Code

The following regulations were amended to comply with the objections raised by the initial staff review. A copy of the initial staff reviews are attached to the regulations accompanying this report. In a few instances, changes were not made because the Subcommittee determined that the position of the Cabinet was correct.

815 KAR 7:010 (Administration and enforcement.)

815 KAR 7:025 (Kentucky Building Code.)

Plumbing

815 KAR 20:020 (Parts or material lists.)

Cabinet for Human Resources: Department for Health Services: Sanitation

902 KAR 10:040 (Youth camps.) This regulation was amended to delete Section 1 that provided for a citation of this regulation by title. It was pointed out that KRS Chapter 13A did not permit such a section, and that an amendment to the title would suffice. This regulation was also amended to conform to the drafting requirements of KRS Chapter 13A, and to the requirement that forms be incorporated by reference. Finally, this regulation was amended to delete certain items that were provided for in other administrative regulations.

902 KAR 10:120 (Kentucky public swimming and bathing facilities.) This regulation was amended to conform to the drafting requirements of KRS Chapter 13A, and to the requirement that forms be incorporated by reference. This regulation was also amended to delete certain items that were provided for in other administrative regulations; and, to provide appropriate cross references to other regulations.

Mobile Homes and Recreational Vehicle Parks; Facilities Standards

902 KAR 15:010 (Mobile homes.) This regulation was amended to conform to the drafting requirements of KRS Chapter 13A, and to the requirement that forms be incorporated by reference. This regulation was also amended to delete certain items that were provided for in other administrative regulations; and, to provide appropriate cross references to other regulations. An objection had been made to Section 2(10) because it did not specify the appropriate fee. The regulation was amended to cross reference another regulation in which the fee appears. In response to questions by Chairman O'Brien and Representative Kerr, agency personnel stated that minimum lot size requirements were not new and that preexisting parks and homes in existence when these were established were not required to meet the new requirements since they had complied with existing law or regulations at the time they were established.

Food and Cosmetics

902 KAR 45:005 (Retail food code.) This regulation was amended to correct deficiencies and confusing language in definitions; to cross reference forms and form numbers; to comply with the drafting requirements of KRS Chapter 13A; and to redefine "sewage" in Sections 20 and 24 in order to clarify the term.

902 KAR 45:150 (School sanitation.) This regulation was amended to specify required forms.

Department for Social Insurance: Public Assistance

904 KAR 2:050 (Time and manner of payments.) This regulation was amended to provide citation to applicable federal regulations; to correct the references to dates upon which payment shall be made; to reorganize the format in order to comply with the drafting requirements of KRS Chapter 13A; to amend the language in order to make the regulation's requirements clearer; and, to incorporate applicable forms.

Department for Medicaid Services: Medicaid Services

These regulations and those 907s that were approved without amendment may need to be amended to specify applicable federal law and regulations as statutory authority. The Subcommittee agreed that agency personnel would meet with Subcommittee staff to determine what amendments were necessary. Any necessary amendments would then be filed with LRC.

907 KAR 1:016 (Psychiatric hospital services.) This regulation was amended to conform to the drafting requirements of KRS Chapter 13A.

907 KAR 1:036 (Amounts payable for skilled nursing and intermediate care facilities.) This regulation was amended to correct the dates upon which various reimbursable items and reimbursement costs are effective. Representative Bruce and Senator Quinlan questioned agency personnel on the determination of allowable costs for facilities. The Subcommittee approved a motion to request that the appropriate Interim Joint Committee thoroughly review this issue of reimbursable items and cost.

907 KAR 1:061 (Payments for medical transportation.) This regulation was amended to comply with the drafting requirements of KRS Chapter 13A relating to mandatory language and expression of dollar amounts.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Revenue Cabinet: Sales and Use Tax; General Exemptions

103 KAR 30:095 (Farm chemicals.)

Kentucky Employee's Retirement System: General Rules

105 KAR 1:010 (Contributions and interest rates.)

General Government Cabinet: Board of Nursing

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

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: Standards Applicable to Generators of Hazardous Waste

A number of the following regulations may need to be corrected with regard to citation of federal regulations. In addition, Natural Resources staff may need some help in properly completing the Regulatory Impact Analysis. The Subcommittee requested Cabinet staff to meet with Subcommittee staff with regard to these matters.

401 KAR 32:050 (Special conditions.)

Standards for Owners and Operators of Hazardous Waste Storage, Treatment and Disposal Facilities

401 KAR 34:020 (General facility standards.)

401 KAR 34:050 (Manifest system, recordkeeping and reporting.)

401 KAR 34:060 (Groundwater protection.)

401 KAR 34:070 (Closure and postclosure.)

401 KAR 34:090 (Closure financial requirements.)

401 KAR 34:100 (Postclosure financial requirements.)

401 KAR 34:130 (Incapacity of owners or operators, guarantors, or financial institutions.)

401 KAR 34:165 (Wording of the instrument for a corporate guarantee.)

401 KAR 34:360 (Appendix on the list of hazardous constituents for underground monitoring.)

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

401 KAR 35:010 (General provisions for facilities (IS).)

401 KAR 35:020 (General facility standards (IS).)

401 KAR 35:130 (Incapacity of owners and operators, guarantors, or financial institutions (IS).)

401 KAR 35:190 (Tanks (IS).)

Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

401 KAR 36:070 (Spent lead-acid batteries being reclaimed.)

Land Disposal Restrictions

401 KAR 37:010 (General provisions for land disposal restrictions.)

401 KAR 37:030 (Prohibitions on land disposal.)

401 KAR 37:040 (Treatment standards.)

401 KAR 37:050 (Prohibitions on storage.)

401 KAR 37:110 (Appendix on the California list of halogenated organic compounds regulated under the land ban.)

Hazardous Waste Permitting Process

401 KAR 38:010 (General provisions for permitting.)

401 KAR 38:050 (Public information procedures.)

401 KAR 38:060 (Special types of permits.)

401 KAR 38:070 (Application procedures.)

401 KAR 38:090 (General contents of Part B application.)

401 KAR 38:100 (Specific Part B requirements for groundwater protection.)

401 KAR 38:500 (Provisions for approval by the local government or the Kentucky Regional Integrated Treatment and Disposal Facility Siting Board.)

Underground Storage Tanks

401 KAR 42:200 (Underground storage tank owner registration fees.)

Corrections Cabinet: Office of the Secretary
501 KAR 6:040 (Kentucky State Penitentiary.)
Asset Forfeiture
501 KAR 11:010 (Asset forfeiture.)

Transportation Cabinet: Department of Vehicle Regulation: Motor Vehicle Tax
601 KAR 9:125 (Dealer plates.)

Education and Humanities Cabinet: Department of Education: Office of Superintendent
701 KAR 5:020 (Elementary and secondary education hearing officer.)
701 KAR 5:050 (Summary hearing procedures.)
Office of School Administration and Finance: General Administration
702 KAR 1:035 (Group health and life insurance.)
702 KAR 1:080 (Transfer of annexed property; hearing.)
702 KAR 1:100 (Merger of independent and county school districts.)
702 KAR 1:130 (Secondary funding for state-operated vocational schools.)
School District Finance
702 KAR 3:120 (Uniform school financial accounting system.)
Pupil Transportation
702 KAR 5:010 (Responsibilities of division.)
702 KAR 5:020 (Program cost calculation.)
702 KAR 5:060 (Buses; specifications and purchases.)
702 KAR 5:090 (Pupils' responsibilities.)
702 KAR 5:100 (Handicapped, reimbursement for.)
702 KAR 5:120 (Blind and deaf pupils, reimbursement for.)
702 KAR 5:130 (Vehicles designed to carry fewer than ten passengers, standards for.)
702 KAR 5:140 (Reimbursement for midday transportation of kindergarten pupils.)
School Terms, Attendance and Operation
702 KAR 7:010 (Terms and months.)
702 KAR 7:020 (Calendar.)
702 KAR 7:030 (Census.)
702 KAR 7:040 (Experimental schools.)
702 KAR 7:061 (Repeal of 702 KAR 7:060.)
702 KAR 7:080 (Recruiting of student athletics prohibited.)
702 KAR 7:090 (Requirements for coaches and other personnel staffing interscholastic athletic programs.)
Office of Instruction: Instructional Services
704 KAR 3:390 (Extended school services.)
704 KAR 3:400 (Principal assessment centers.)
Student Services
704 KAR 7:100 (Approval of operation of alternative education programs for proposes of driver's license revocation.)
Teacher Education
704 KAR 15:015 (Approval of teacher preparation programs.)
Teacher Certification
704 KAR 20:005 (Kentucky standards for preparation-certification of professional school personnel program approval.)

University of Kentucky: Board of Trustees
765 KAR 1:010 (Acquisition of disbursement of funds, accounting system-records and annual report.)
765 KAR 1:020 (Delegation of financial management responsibility.)
765 KAR 1:030 (Annual audit.)
765 KAR 1:040 (Purchase-inventories-sales of surplus property-capital construction procedures.)
765 KAR 1:050 (Issuance of bonds.)
765 KAR 1:060 (Fund for excellence.)
765 KAR 1:070 (Affiliated corporations.)

Education and Humanities Cabinet: Department of Education: Office of Vocational Rehabilitation: Administration
706 KAR 1:001 (Repeal of existing Vocational Rehabilitation regulations.)
Office of Programs: Adult Education
709 KAR 1:001 (Repeal of existing adult education regulations currently under the State Board of Adult, Vocational Education and Vocational Rehabilitation.)

Workforce Development Cabinet: Department for Adult and Technical Education: General Administration
780 KAR 1:010 (1991-92 program plan.)
Management of the Kentucky Tech System
780 KAR 2:010 (Administration of area vocational education schools.)
780 KAR 2:020 (Occupational appeals officer.)
780 KAR 2:030 (Steering committee.)
780 KAR 2:040 (Live work projects, selection of.)
780 KAR 2:060 (Suspension and expulsion of students.)
780 KAR 2:070 (Veteran's preference procedure.)
780 KAR 2:080 (Program costs, tuition and fees paid under contract or agreement with other public or private organizations.)
780 KAR 2:090 (Postsecondary vocational technical school admission priorities.)
780 KAR 2:100 (Attendance policies for long-term adults in state-operated vocational schools.)
780 KAR 2:110 (Student medical and accident insurance.)
780 KAR 2:120 (Standard for academic progress for postsecondary and adult students.)
780 KAR 2:130 (Minimum standards of admission for long-term adult students in vocational programs.)
780 KAR 2:140 (Tuition and fees.)
Personnel System for Certified and Equivalent Employees
780 KAR 3:010 (Classification plan.)
780 KAR 3:030 (Appointments.)
780 KAR 3:040 (Special appointments.)
780 KAR 3:050 (Employment lists.)
780 KAR 3:060 (Probationary periods.)
780 KAR 3:070 (Attendance.)
780 KAR 3:080 (Extent and duration of school term, use of school days and extended employment.)
780 KAR 3:090 (Records and reports.)
780 KAR 3:100 (Employee actions.)
780 KAR 3:110 (Disciplinary actions.)
780 KAR 3:120 (Appeals and hearings.)
780 KAR 3:130 (Employee grievances.)
780 KAR 3:140 (Certification.)
780 KAR 3:150 (Staff development and inservice.)
Department of Vocational Rehabilitation: Administration
781 KAR 1:040 (Rehabilitation engineering services.)
781 KAR 1:050 (Carl D. Perkins Comprehensive Rehabilitation Center.)
781 KAR 1:060 (Admission and discharge from Colonial Inn Rehabilitation Facility, work

training centers and community facilities.)
781 KAR 1:070 (Fees for service.)

Public Protection and Regulation Cabinet: Department of Alcohol and Beverage Control: Advertising Malt Beverages
804 KAR 2:007 (Inside signs.)
Department of Insurance: Agents, Consultants, Solicitors and Adjustors
806 KAR 9:220 (Agent continuing education.)
Health Insurance Contracts
806 KAR 17:066 (Medicare supplement insurance policies.)
Department of Financial Institutions: Mortgage Loan Companies and Mortgage Loan Brokers
808 KAR 12:020 (Claims of exemption.)

Cabinet for Human Resources: Department for Health Services: Mobile Homes and Recreational Vehicle Parks; Facilities Standards
902 KAR 15:020 (Recreational vehicles.)
Health Services and Facilities
902 KAR 20:133 (Repeal of 902 KAR 20:132, Certificate of need expenditure minimums.)
Food and Cosmetics
902 KAR 45:110 (Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, and vending machine companies.)
902 KAR 45:120 (Inspection fees; permit fees; hotels, mobile home and recreational vehicle parks.)
Department for Social Insurance: Public Assistance
904 KAR 2:035 (Right to apply and reapply.)
Department for Medicaid Services: Medicaid Services
907 KAR 1:004 (Resource and income of standard of medically needy.)
907 KAR 1:006 (Coverage for persons eligible for Title XVIII benefits.)
907 KAR 1:011 (Technical eligibility requirements.)
907 KAR 1:014 (Outpatient hospital services.)
907 KAR 1:027 (Payments for dental services.)
907 KAR 1:031 (Payments for home health services.)
907 KAR 1:039 (Payments for hearing services.)
907 KAR 1:040 (Payments for vision care services.)
907 KAR 1:045 (Payments for mental health center services.)
907 KAR 1:280 (Payments for podiatry services.)
Department for Mental Health and Mental Retardation Services: Institutional Care
908 KAR 3:180 (Policies and Procedures of Oakwood ICF/MR.)

The following regulations were deferred at the promulgating agency's request:

General Government Cabinet: Board of Pharmacy
201 KAR 2:074 (Pharmacy services in hospitals.) This administrative regulation was deferred until federal agency personnel can provide explicit guidance on federal requirements relating to the dispensing of drugs in hospitals.)

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Public Water Supply
401 KAR 8:050 (Fees.)
401 KAR 8:060 (Variances and exemptions.)
401 KAR 8:250 (Inorganic chemical sampling, analytical techniques and maximum contaminant levels.)
401 KAR 8:300 (Lead.)
401 KAR 8:400 (Organic chemicals.)
401 KAR 8:420 (Volatile organic chemicals.)
401 KAR 8:440 (Special testing for unregulated synthetic organic chemicals.)
401 KAR 8:500 (Disinfection by-products.)
401 KAR 8:550 (Radionuclides.)
401 KAR 8:600 (Secondary standards.)
401 KAR 8:650 (Supplemental fluoridation.)
401 KAR 8:700 (Bottled water.)

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 11:15 a.m. until October 11, 1990 at 10 a.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE
Meeting of August 2, 1990

Regulation 103 KAR 18:100, promulgated by the Revenue Cabinet, was on the Committee's August 2, 1990 meeting agenda. The Committee, after noting the approval of the regulation by the Administrative Regulation Review Subcommittee, voted to concur with that Subcommittee's action.

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of August 17, 1990

The Interim Joint Committee on Business Organizations and Professions met on Friday, August 17, 1990, and submits this report:

The Committee approved the following administrative regulations as being in compliance with statutory authority:

Board of Physical Therapy
201 KAR 22:052
201 KAR 22:053 (with amendments)
201 KAR 22:101
201 KAR 22:110

KY Board of Examiners of Psychology
201 KAR 26:160

The Committee disapproved the following regulations as not being in compliance with statutory authority:

KY State Racing Commission
810 KAR 1:003
810 KAR 1:006

INTERIM JOINT COMMITTEE ON CITIES
Meeting of August 22, 1990

The Interim Joint Committee on Cities met on August 22, 1990, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A and has approved such regulations without objection:

815 KAR 10:040. Fire Prevention Code
815 KAR 15:020. Boilers and Pressure Vessels (administrative procedures; requirements)
815 KAR 20:010. Plumbing (definitions)
815 KAR 20:071. Plumbing (storage and installation of Schedule 40, ABS and PVC plastic pipe and fittings)
815 KAR 20:076. Plumbing (installation recommendations for Polybutylene (PB) cold water building supply, yard piping and tubing)
815 KAR 20:120. Plumbing (water supply and distribution)
815 KAR 20:130. Plumbing (house sewers and storm water piping; methods of installation)
815 KAR 35:030. Kentucky Certification of Electrical Contractors

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of August 22, 1990

The Interim Joint Committee on Agriculture and Natural Resources met August 22, 1990, and submits this report:

The committee determined that administrative regulations 302 KAR 1:055, 302 KAR 1:070, and 301 KAR 2:110 comply with KRS Chapter 13A.

The committee adjourned at 1:55 p.m., August 22, 1990.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of September 4, 1990

The Interim Joint Committee on Transportation met on Tuesday, September 4, 1990, and submits this report:

The Committee determined that the following administrative regulations complied with KRS Chapter 13A:

601 KAR 1:025
601 KAR 1:029 & E
601 KAR 1:160 & E
601 KAR 14:010

The Committee adjourned at 2:35 p.m.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates.....D2

KRS Index.....D11

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LOCATOR INDEX -- EFFECTIVE DATES

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

VOLUME 16

Emergency Regulation	16 Ky.R. Page No.	Effective Date
902 KAR 17:020E	2646	4-17-90
Replaced		9-13-90

Regulation	16 Ky.R. Page No.	Effective Date
201 KAR 2:074	1713	
Amended	2150	
201 KAR 22:052		
Amended	2440	8-17-90
201 KAR 22:053	2616	(See 17 Ky.R.)
201 KAR 22:101		
Amended	2441	8-17-90
201 KAR 22:110		
Amended	2443	8-17-90
808 KAR 12:020	2811	
810 KAR 1:003		
Amended	2744	8-17-90
810 KAR 1:006		
Amended	2748	8-17-90

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Emergency Regulation	17 Ky.R. Page No.	Effective Date
11 KAR 5:030E	5	5-21-90
Replaced	256	9-13-90
11 KAR 5:130E	7	5-21-90
Replaced		8-9-90
11 KAR 5:140E	7	5-21-90
Replaced		8-9-90
11 KAR 5:160E	9	5-21-90
Replaced		8-9-90
11 KAR 6:010E	11	5-21-90
Replaced		8-9-90
11 KAR 8:010E	13	5-21-90
Replaced		8-9-90
11 KAR 8:020E	14	5-21-90
Replaced		8-9-90
11 KAR 8:030E	16	5-21-90
Replaced		8-9-90
11 KAR 8:040E	18	5-21-90
Replaced		8-9-90
11 KAR 11:010E	20	5-21-90
Replaced		8-9-90
11 KAR 11:020E	20	5-21-90
Replaced		8-9-90
11 KAR 11:030E	21	5-21-90
Replaced		8-9-90
11 KAR 11:040E	23	5-21-90
Replaced		8-9-90
11 KAR 11:050E	23	5-21-90
Replaced		8-9-90
30 KAR 2:010E	24	6-13-90
Replaced	155	9-13-90
31 KAR 4:010E	870	7-26-90
31 KAR 4:020E	871	7-26-90
31 KAR 4:030E	871	7-26-90
31 KAR 4:040E	877	7-26-90
31 KAR 4:050E	877	7-26-90
101 KAR 2:035E	878	8-3-90
101 KAR 2:045E	881	8-3-90
101 KAR 2:055E	885	8-3-90
101 KAR 2:065E	886	8-3-90
101 KAR 2:075E	887	8-3-90
101 KAR 2:095E	888	8-3-90
101 KAR 3:045E	889	8-3-90
103 KAR 30:095E	183	6-20-90
103 KAR 44:040E	1321	9-14-90
105 KAR 1:010E	891	8-1-90
105 KAR 1:040E	184	6-28-90
Replaced	99	9-12-90
201 KAR 14:100E	893	7-23-90
201 KAR 14:130E	893	7-23-90
201 KAR 14:140E	894	7-23-90
301 KAR 2:044E	1322	8-23-90
302 KAR 1:055E	894	7-27-90
Replaced	157	8-22-90
302 KAR 1:070E	896	7-27-90
Replaced	1060	8-22-90
401 KAR 6:320E	898	7-20-90
401 KAR 8:010E	899	7-19-90
401 KAR 8:020E	902	7-19-90
401 KAR 8:030E	906	7-19-90
401 KAR 8:040E	909	7-19-90
401 KAR 8:050E	911	7-19-90
401 KAR 8:060E	912	7-19-90
401 KAR 8:070E	914	7-19-90
401 KAR 8:100E	918	7-19-90
401 KAR 8:150E	920	7-19-90
401 KAR 8:200E	921	7-19-90
401 KAR 8:250E	924	7-19-90
401 KAR 8:300E	926	7-19-90
401 KAR 8:350E	928	7-19-90
401 KAR 8:400E	929	7-19-90
401 KAR 8:420E	930	7-19-90
401 KAR 8:440E	934	7-19-90
401 KAR 8:500E	935	7-19-90
401 KAR 8:550E	938	7-19-90
401 KAR 8:600E	939	7-19-90
401 KAR 8:650E	940	7-19-90
401 KAR 8:700E	941	7-19-90
500 KAR 6:210E	942	7-18-90
500 KAR 6:220E	944	7-18-90
500 KAR 9:010E	944	7-19-90
Replaced	162	9-13-90
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