

Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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Administrative Regulation Review Subcommittee, July Agenda.....	1
Regulation Review Procedure.....	3
Emergency Regulations Now In Effect:	
Personnel Department.....	4
Petroleum Storage Tank Environmental Assurance Fund.....	7
Justice.....	9
Education.....	10
Human Resources.....	15
As Amended:	
Fish and Wildlife Resources.....	18
Natural Resources & Environmental Protection - Water.....	22
Education.....	45
Workforce Development Cabinet.....	47
Mines and Minerals.....	49
Human Resources.....	52
Amended After Hearing:	
Military Affairs.....	54
Fish and Wildlife Resources.....	74
Education.....	75
Mines and Minerals.....	77
Human Resources.....	78
Proposed Amendments Received through June 15, 1991:	
Personnel Board.....	82
Personnel Department.....	83
Board of Medical Licensure.....	88
Fish and Wildlife Resources.....	90
Natural Resources & Environmental Protection - Waste Management.....	92
Justice.....	148
Corrections.....	150
Education.....	157
Labor - OSHA.....	165
Alcoholic Beverage Control.....	186
Mines and Minerals.....	187
Public Service Commission.....	191
Financial Institutions.....	199
Human Resources.....	201
Proposed Regulations Received Through June 15, 1991:	
Board of Medical Licensure.....	210
Fish and Wildlife Resources.....	212
Petroleum Storage Tank Environmental Assurance Fund.....	214
Education.....	217
Workforce Development Cabinet.....	232
Mines and Minerals.....	233
Insurance.....	239
Public Service Commission.....	241
Financial Securities.....	244
Human Resources.....	246
June Minutes of the Administrative Regulation Review Subcommittee.....	249
Other Committee Reports.....	252

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates.....	A2
KRS Index.....	A6
Subject Index.....	A8

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is tentatively scheduled on July 1-2, 1991. See tentative agenda on pages 1-3 in this Administrative Register.

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

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

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ADMINISTRATIVE REGISTER - 1

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - July 1, 1991 @ 2 p.m.
Room 327, State Capitol

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Kentucky Higher Education Assistance Authority

11 KAR 4:040. Educational institution participation requirements.

KHEAA Grant Program

11 KAR 5:030. Student eligibility requirements.

11 KAR 5:130. Student application.

11 KAR 5:140 & E. Award determination procedure.

Teacher Scholarship Loan Program

11 KAR 8:030. Teacher scholarships.

College Access Program

11 KAR 11:020. Student application.

11 KAR 11:030 & E. Award determination procedure.

Kentucky Educational Savings Plan Trust

11 KAR 12:010. Kentucky educational savings plan trust definitions.

11 KAR 12:020. General rules for investments and fund transfers.

11 KAR 12:030. Eligibility of beneficiary and participant.

11 KAR 12:040. Residency classification for Kentucky educational savings plan trust vested participation agreements.

11 KAR 12:050. Substitution of beneficiary.

11 KAR 12:060. Cancellation and payment of refund.

11 KAR 12:070. Benefits payable from the Kentucky educational savings plan trust program fund.

11 KAR 12:080. Benefits payable from the Kentucky educational savings plan trust endowment fund.

11 KAR 12:090. Transfer of ownership of Kentucky educational savings plan trust program fund.

GENERAL GOVERNMENT CABINET

Secretary of State

30 KAR 1:040. Indistinguishable names.

30 KAR 1:050. Dishonored checks.

DEPARTMENT FOR MILITARY AFFAIRS

Disaster and Emergency Services

106 KAR 1:080. Kentucky Emergency Response Commission fee system requirements. (Amended After Hearing)

106 KAR 1:090. Kentucky Emergency Response Commission fee account grant requirements for local emergency planning committees. (Amended After Hearing)

106 KAR 1:100. Kentucky Emergency Response Commission fee account grants requirements for state agencies. (Amended After Hearing)

106 KAR 1:110. Kentucky Emergency Response Commission fee account grant review committee. (Not Amended After Hearing)

106 KAR 1:120. Kentucky Emergency Response Commission fee account grant distribution formula. (Amended After Hearing)

106 KAR 1:130. Kentucky Emergency Response Commission civil penalty assessment and hearings. (Not Amended After Hearing)

FINANCE AND ADMINISTRATION CABINET

State Investment Commission

200 KAR 14:010. General rules.

200 KAR 14:061. Repeal of 200 KAR 14:060.

200 KAR 14:080. Repurchase agreement.

200 KAR 14:090. Guidelines for money market instruments.

Kentucky Infrastructure Authority

200 KAR 17:020. Guidelines for solid waste revolving fund and solid waste grant program. (Deferred from June Meeting)

200 KAR 17:030 & E. Guidelines for drinking water loan fund. (Deferred from June Meeting)

200 KAR 17:040 & E. Guidelines for drinking water grant fund. (Deferred from June Meeting)

200 KAR 17:050 & E. Guidelines for federally assisted wastewater revolving fund. (Deferred from June Meeting)

GENERAL GOVERNMENT CABINET

Board of Veterinary Examiners

201 KAR 16:010. Code of conduct.

Kentucky Real Estate Appraisers Board

201 KAR 30:100. Appraisers classification, fees, education, continuing education, experience, testing, application, renewal and report requirements.

201 KAR 30:110. Appraiser roster, transmission, fees, deletions, notification, and hearing.

201 KAR 30:120. Temporary appraisal permits.

201 KAR 30:130. Standards for education approval - fees.

TOURISM CABINET

Department of Fish and Wildlife Resources

Fish

301 KAR 1:085. Mussel shell harvesting. (Amended After Hearing)

Game

301 KAR 2:111. Deer and turkey hunting on special areas.

ADMINISTRATIVE REGISTER - 2

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Petroleum Storage Tank Environmental Assurance Fund Commission

- 415 KAR 1:010 & E. Definitions for terms used in 415 KAR Chapter 1.
- 415 KAR 1:020 & E. General provisions for state financial responsibility.
- 415 KAR 1:030 & E. Guidelines for financial assistance applications.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

TENTATIVE AGENDA - July 2, 1991 @ 10 a.m.

Room 327, State Capitol

CORRECTIONS CABINET

Office of the Secretary

- 501 KAR 6:030. Kentucky State Reformatory.
- 501 KAR 6:040. Kentucky State Penitentiary
- 501 KAR 6:060. Northpoint Training Center.
- 501 KAR 6:070. Kentucky Correctional Institution for Women.

TRANSPORTATION CABINET

Division of Motor Carriers

- 601 KAR 1:025. Transporting hazardous materials; permit.

Motor Vehicle Commission

- 605 KAR 1:190. Motor vehicle advertising.

EDUCATION AND HUMANITIES CABINET

Department of Education

Education Professional Standards Board

- 704 KAR 20:580 & E. Certification revocation procedures. (Repeals 704 KAR 20:450.) (Amended After Hearing)

WORKFORCE DEVELOPMENT CABINET

Department for Adult and Technical Education

General Administration

- 780 KAR 1:010. 1992-94 program plan.

Adult Education

- 780 KAR 9:100. Provision of instruction for individuals sentenced by a court to participate in educational programs.

- 780 KAR 9:110. Standards for successful completion of "Sentenced to Learn" program.

- 780 KAR 9:120. Maintenance of records and reporting to courts for "Sentenced to Learn" program.

LABOR CABINET

Occupational Safety and Health

- 803 KAR 2:309. Adoption of 29 CFR Part 1910.141 - 1910.149.
- 803 KAR 2:320. Adoption of 29 CFR Part 1910.1000 - 1910.1500.
- 803 KAR 2:408. Adoption of 29 CFR Part 1926.300 - 1926.305.
- 803 KAR 2:411. Adoption of 29 CFR Part 1926.450 - 1926.452.
- 803 KAR 2:412. Adoption of 29 CFR Part 1926.500 - .502.
- 803 KAR 2:416. Adoption of 29 CFR Part 1926.
- 803 KAR 2:423. Adoption of 29 CFR Part 1026.1050 - .1060.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Mines and Minerals

Division of Explosives and Blasting

- 805 KAR 4:010. Licensing and classification of blasters. (Amended After Hearing)

Public Service Commission

- 807 KAR 5:014. Management and Operation audits. (Not Amended After Hearing) (Deferred from June)

Department of Housing, Buildings and Construction

Plumbing

- 815 KAR 20:030. License application; qualifications for examination, examination revival or reinstatement of licenses.

Mobile Homes and Recreational Vehicles

- 815 KAR 25:010. Mobile homes.
- 815 KAR 25:020. Recreational vehicles.

CABINET FOR HUMAN RESOURCES

Department for Health Services

Office of the Secretary

Family Resource & Youth Services Centers

- 900 KAR 4:010 & E. Criteria for awarding grants for family resource and youth services centers. (Amended After Hearing) (Agency requests deferral to August)

Health Services and Facilities

- 902 KAR 20:008. License procedures and fee schedule.
- 902 KAR 20:290 & E. Nursing home standards for freestanding facilities limited to the care of patients with Alzheimer's or related disorders.

Controlled Substances

- 902 KAR 55:075. Sale of seized and forfeited controlled substances.
- 902 KAR 55:080. Written prescriptions to be signed by practitioner.

Department for Social Insurance

Public Assistance

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

ADMINISTRATIVE REGISTER - 3

Department for Social Services

Child Welfare

- 905 KAR 1:180. DSS policy and procedures manual.
- 905 KAR 1:320. Fair hearing.
- 905 KAR 1:330. Child protective services.

Adult Services

- 905 KAR 5:070. Adult protective services.

Department for Medicaid Services

Medicaid Services

- 907 KAR 1:013 & E. Payments for hospital inpatient services.
- 907 KAR 1:017 & E. Hospital indigent care assurance program (HICAP). (Deferred from June Meeting)
- 907 KAR 1:019 & E. Pharmacy services.
- 907 KAR 1:382. Incorporation by reference of the preventive health services manual.
- 907 KAR 1:390. Incorporation by reference of the hearing services manual.
- 907 KAR 1:400. Incorporation by reference of the renal dialysis services manual.
- 907 KAR 1:476. Incorporation by reference of the advanced registered nurse practitioner manual.

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.

The administrative body shall notify the Compiler if the public hearing will be held or if it has been cancelled. 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 120 days from publication or upon replacement or repeal.)

STATEMENT OF EMERGENCY
101 KAR 2:035E

This emergency regulation is necessary to provide procedures governing the compensation and leave of former Department of Education employees whose employment will be terminated effective at the close of business on June 30, 1991 and who will be reemployed or reinstated within the Department of Education pursuant of KRS 156.016. The purpose of this emergency regulation is to establish a transitional framework upon which compensation and transfer of preexisting leave may be based until such time as appropriate amendments are made to KRS Chapters 18A and 156, clarifying the personnel structure of the Department of Education. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which shall be filed with the Regulations Compiler on June 14, 1991.

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

DEPARTMENT OF PERSONNEL

101 KAR 2:035E. Compensation plan and pay incentive systems.

RELATES TO: KRS 18A.030, 18A.110, 18A.165, 156.016

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.110
EFFECTIVE: June 14, 1991

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the classified service. This regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements. Additionally, this regulation specifically implements KRS 156.016, relating to reemployed or reinstated Department of Education employees who are terminated on June 30, 1991. Pursuant to the terms of KRS 156.016, the statute is specifically designated for single time use only and is only to apply to the Department of Education. [and replaces 101 KAR 2:030.]

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

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

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

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

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

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

(2) Former employees who were separated from state service by layoff and who are reinstated or reemployed in the same or a similar job classification within five (5) years from the date of layoff may receive the salary they were receiving at the time of layoff, even if such salary is above the maximum of the pay grade. Former Department of Education employees who were separated from state service pursuant to KRS 156.016 and who are reinstated or reemployed in the same or similar classification with the Department of Education may receive the salary they were receiving at the time of separation, even if such salary is above the maximum of the pay grade. Any Department of Education employee who is reinstated or reemployed into the Department of Education pursuant to the provisions of this regulation and KRS 156.016 shall retain his accumulated annual leave, sick leave, and compensatory leave, the provisions of 101 KAR 2:100 notwithstanding.

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

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

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

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

previous salary. A promotional increase shall not change the employee's regular increment date.

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

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

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

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

(6) Reversion.

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

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

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

(8) Other salary adjustments.

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, effective on or after January 3, 1986, may have his salary adjusted upon request by the appointing authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

(b) Subject to approval by the commissioner, an appointing authority may request a five (5) percent salary adjustment when a special

entrance rate is established under Section 7(3) of this regulation.

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

(2) Annual increment dates shall be established:

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

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

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

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

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

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Receives an educational achievement award;

(g) Returns from military leave;

(h) Is reclassified; [or]

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

(j) Is reemployed or reinstated into the Department of Education under the provisions of KRS 156.016 and this regulation.

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

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

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

(1) For satisfactorily completing outside of work hours 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses, must have been completed after a merit employee initially gained permanent status in state government. Employees shall not

receive credit for courses taken while on educational leave, for hours paid for by the agency through tuition assistance, or for courses which previously counted toward an educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than \$2,500. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) For receiving outside of work hours an approved high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test. The approved diploma, certificate, or passing score must have been obtained on or after January 1, 1984 while in state service. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary but not more than \$2,500. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

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

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

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

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

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

(2) Change in pay grade. Whenever it becomes necessary to assign a class a different pay grade due to changes defined in Section 7(1) of this regulation, the commissioner may make a new or different pay grade applicable to a class of positions. Persons currently employed in positions of that class at the effective date of the change in pay grade shall have their salary placed at least at the minimum salary of the higher grade, and may be eligible for a salary

adjustment under Section 3(7) of this regulation. In no event shall an employee's salary be placed at a rate less than he received prior to the change in the pay grade. Employees in a class assigned to a lower pay grade through class reevaluation shall retain their current salary.

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

Section 8. Paid Overtime. Overtime for which pay is authorized shall be in accordance with 101 KAR 2:100, Section 4, and the Fair Labor Standards Act 29 USC §201, et seq. and have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet. Overtime payments shall not be added to base salary or wages.

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

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

Section 11. Outstanding Merit Increase. (1) Subject to the approval of the commissioner and contingent upon the availability of sufficient budgeted funds, an appointing authority may within his sole discretion, recommend any permanent, full-time, classified employee with at least twelve (12) months continuous service for an outstanding merit increase equal to five (5) percent of his base pay. An outstanding merit increase shall consist of a lump sum payment which shall not be added to base pay.

(2) An employee may be recommended for an outstanding merit increase if:

(a) His job performance is judged to be outstanding by the appointing authority; or

(b) In the discretion of the appointing authority, the employee's acts or ideas have resulted in significant financial savings or

improvement in services to the Commonwealth and its citizens.

(3) An employee shall not be eligible for recommendation for an outstanding merit increase if he has received an outstanding merit increase within the preceding twelve (12) months.

(4) The appointing authority shall submit written justification to the commissioner and the personnel action form shall be approved by the appointing authority and the commissioner to be effective.

Section 12. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly. (17 Ky.R. 1233; Am. 2171; eff. 12-6-90.)

This is to certify that pursuant to KRS 18A.110(6), the regulations listed below were submitted to the Personnel Board by the Commissioner of Personnel on May 17, 1991. The board at its regular scheduled meeting on June 7, 1991, reviewed the department's proposals and made certain recommendations which were forwarded to the commissioner for his consideration. The regulations reviewed were as follows: 101 KAR 2:035E and 101 KAR 2:035.

JAMES M. SHAKE, Chairman

WALLACE G. WILKINSON, Governor

THOMAS C. GREENWELL, Commissioner

APPROVED BY AGENCY: May 10, 1991

FILED WITH LRC: June 14, 1991 at 9 a.m.

STATEMENT OF EMERGENCY

415 KAR 1:040E

This regulation is being promulgated in response to House Bill 194 of the 1990 Legislative Session which provides for the creation of a program to assist owners and operators in meeting federal financial responsibility requirements for petroleum storage tanks under 401 KAR 42:090. It has been determined that an emergency exists which requires immediate action. Spills, leaks, discharges, and other releases into the environment from petroleum storage tanks, have occurred and are occurring, and such releases pose a threat to public health and safety and the environment. Adequate financial resources must be readily available to provide a means for investigation in cleanup of contamination without delay. This regulation shall provide the means for these tank owners to take corrective action for cleanup of contamination to the environment. Due to the time restraints involved in promulgation, an ordinary regulation would not provide the Petroleum Storage Tank Environmental Assurance Fund Commission the opportunity to assist tank owners who are experiencing financial difficulties in eliminating pollution hazards posed by leaking petroleum storage tanks. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 7, 1991.

WALLACE G. WILKINSON, Governor
WILLIAM C. EDDINS, Chairman

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:040E. Guidelines for reimbursement from the fund.

RELATES TO: KRS 224.810, 224.814 through 224.825

STATUTORY AUTHORITY: KRS Chapter 13A, 224.815, 224.817, 224.819

EFFECTIVE: June 13, 1991

NECESSITY AND FUNCTION: KRS 224.810 to 224.825 relate to the regulation of petroleum storage tanks. KRS 224.815 through 224.825 provide for the creation of a program to assist owners and operators in meeting federal financial responsibility requirements for petroleum storage tanks under 401 KAR 42:090. KRS 224.819 requires the Petroleum Storage Tank Environmental Assurance Fund Commission to promulgate regulations to establish the policy, guidelines, and procedures to administer the petroleum storage tank environmental assurance fund. This regulation establishes the policies, guidelines, and procedures for eligibility for reimbursement from the fund, the procedure for filing a claim for payment against the fund, and the procedures for appealing decisions and hearing complaints brought before the commission.

Section 1. General Provisions. (1) The commission shall execute an assistance agreement with the applicant in accordance with 415 KAR 1:030 upon approval of the application for assistance. The assistance agreement states the responsibilities of both parties for completion of the project and shall stipulate an amount to be committed to the project. No monies shall be reimbursed or secured as a guarantee until the assistance agreement is executed.

(2) Upon execution of the assistance agreement, funds obligated shall be considered a guarantee to a contractor performing corrective action for an owner or operator.

(3) Any amendment required to the amount of funds obligated in the assistance agreement shall be requested and documented by the owner or operator as necessary, and as more complete information regarding a site becomes available. Payment shall not exceed the obligated amount.

(4) Upon completion of the project and determination of the exact costs, any amendments to the assistance agreement shall be requested and documented by the owner or operator and executed following revision of those amendments.

(5) Any amendment to the assistance agreement shall be requested by the applicant and shall require the same documentation as the original application for assistance. Any amendment shall be administratively processed consistent with 415 KAR 1:030.

(6) The owner or operator or the selected corrective action contractor shall maintain detailed records demonstrating compliance with the approved corrective action plan, and all invoices and financial records associated with costs for which reimbursement is requested.

Section 2. Application Process. (1) Applications. Any applicant, upon receipt of an executed assistance agreement, shall be eligible to receive compensation from the fund. The claim shall be on a form prescribed to the commission on the claim form dated June, 1991, hereby incorporated by reference. This form may be

copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky, 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m., Monday through Friday. The claim form and attachments shall be administratively complete when it contains at least the following:

- (a) The name of the person making the claim;
- (b) The name of the person or persons authorized for payment from the fund;
- (c) A description of the site of release;
- (d) A copy of the corrective action plan and the Department for Environmental Protection's approval of the plan; and
- (e) An itemized list of all corrective actions taken, the eligible costs associated with the actions, and the name of the engineer, contractor, or subcontractor who performed the action;
- (f) Third party liability information in accordance with Section 4(6) of this regulation, if applicable.

(2) Time of application. The claim form and all accompanying documentation shall be received by the commission's office thirty (30) days before a commission meeting in order for reimbursement to be considered at that meeting. The commission may waive the thirty (30) day requirement, if it finds that undue financial hardship to the applicant will result if action is delayed.

(3) Signatures. A claim form shall be signed as follows:

(a) For a corporation, by a principal executive officer of at least the level of vice president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for the overall operation of the subject of the application or a person whom the board of directors designates by means of a corporate resolution;

(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor, or individual respectively; or

(c) For a municipality, state, federal or public agency, by either a principal, executive officer, or ranking elected official.

(4) Request for payment.

(a) Requests for payment may be submitted following the Department for Environmental Protection's approval of the corrective action plan.

(b) Requests for payment for the implementation of corrective action may be submitted sixty (60) days following initiation of work to implement the corrective action plan and at sixty (60) day intervals thereafter until completion of the authorized activities. Upon request, the commission may approve interim payments at more frequent intervals.

(c) All payments shall be subject to approval by the commission. Should a site inspection or other information available to the commission reveal a discrepancy between the work performed and the work addressed by a request for payment, the commission shall deny payment or institute proceeding to recover any cost paid, or adjust payment to eligible costs.

(d) A request for payment shall be received within one (1) year from the date of closure by the Department for Environmental Protection in order to be eligible for payment from the fund.

(e) Except for the situations provided for in

415 KAR 1:030, Section 1(6), payment shall not be made for corrective actions performed at a site until the commission has reviewed and approved an application for that work, and until monies have been obligated from the fund for completion of that particular stage of work.

(f) For payment of third party liability claims, the petroleum storage tank owner or operator shall submit a request for payment to the commission attaching the original or a certified copy of a final judgment with proof of payment of state financial responsibility no later than thirty (30) days after notification of final judgment.

(g) Request for payment shall be certified by the owner or operator and submitted to the commission. The amount requested shall be supported and documented as prescribed on the listing of invoices form and shall show that the deductible has been applied and evidenced with invoices and cancelled checks attached. The commission shall consider only eligible costs. The listing of invoices form dated June, 1991, herein incorporated by reference, may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky, 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m., Monday through Friday.

(8) The authorized representative who signs a claim form shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I further certify that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this affidavit."

Section 3. Review and Determination. (1) Review. The commission's staff shall review all claims. If the commission's staff finds that the claim form is incomplete or otherwise deficient, the commission staff shall within fifteen (15) days advise the applicant of the incompleteness or deficiency. Further processing of the application affected by the deficiency shall be suspended until the applicant has supplied the necessary information or otherwise corrected the deficiency.

(2) Determination. After a claim form is administratively complete, the commission shall make a decision whether to approve or disapprove the claim. The commission shall determine the amount of reimbursement based on those costs it finds are eligible. The applicant shall be notified within ten (10) days of the commission's determination. If the application or any portion thereof is denied, and a request for a panel review as set forth in subsection 3 of this section was not made, the determination shall be considered final.

(3) Panel review. If the applicant is aggrieved by the commission's determination as to eligibility for participation, funds to be obligated toward a request or claims made for corrective action, the applicant may, within twenty (20) days of receipt of the determination, ask to appear before a three (3)

member panel of the commission to present additional documentation and supplemental information explaining the application. The panel shall be comprised of three (3) commission members appointed by the chairman of the commission with the consent of the commission. The panel may establish a fair and reasonable limit on time allowed for oral presentation. The panel shall make recommendations to the commission on the application.

(4) Final determination. The commission shall determine the amount of reimbursement based on those costs it finds are eligible, actually incurred, and reasonable. The final determination shall be made on the basis of the written record and, if applicable, panel recommendation. The applicant shall be notified, in writing, within fifteen (15) days of the commission's decision. If the commission rejects any portion of the request for reimbursement, a statement of the reasons for rejection shall be included with the notification.

(5) Right to appeal. A final determination by the commission shall be a final order or determination for the purpose of KRS 224.081.

Section 4. Fund Payment Procedures. (1) Where the owner or operator submitted an acceptable request for payment for corrective actions or third party liability claims in excess of the state financial responsibility, but has not paid for these actions or claims, payments from the commission may be made by a check written to both the eligible owner or operator and the provider of the corrective action services or to the third party.

(2) Payments from the fund shall be made directly to the eligible owner or operator in cases where the owner or operator submits documentation verifying the owner or operator has paid in excess of the required state financial responsibility.

(3) Contingent upon availability of funds, the commission shall process all requests for payment within ninety (90) days of receipt of administratively complete application.

WILLIAM C. EDDINS, Chairman

APPROVED BY AGENCY: June 5, 1991

FILED WITH LRC: June 13, 1991 at 9 a.m.

STATEMENT OF EMERGENCY 500 KAR 8:010E

The DUI legislation enacted by the General Assembly in the 1991 Extraordinary Session will take effect on July 1, 1991. That legislation requires any breath test given to be valid must be administered by peace officer holding a certificate as an operator of a breath analysis instrument, issued by the Secretary of the Justice Cabinet. Currently only the Department of Criminal Justice Training provides the training necessary for such certification. Due to the necessity to have sufficient numbers of certified operators prior to July 1, 1991, this regulation also permitting the Kentucky State Police to provide such training to its own personnel is necessary. This regulation will be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on May 29, 1991.

WALLACE G. WILKINSON, Governor
W. MICHAEL TROOP, Secretary of Justice

JUSTICE CABINET Office of the Secretary

500 KAR 8:010E. Certification of operators.

RELATES TO: KRS 15A.070, 186.565

STATUTORY AUTHORITY: KRS 15A.160

EFFECTIVE: May 31, 1991

NECESSITY AND FUNCTION: KRS 186.565 provides that the state shall supply each county with one (1) breath analysis and simulating unit. KRS 15A.070 authorizes the Secretary of Justice to establish, supervise, and coordinate training programs for law enforcement personnel. This regulation establishes the certification of breath analysis operators.

Section 1. (1)(a) To become certified to operate a breath alcohol analysis instrument, the person shall successfully complete the training program of the Department of Criminal Justice Training or the Department of State Police.

(b) The Department of State Police shall not provide training on operation of breath alcohol analysis instruments to any law enforcement officers other than its own employees.

(2) Successful completion shall mean receiving a passing score on a standardized written examination as provided by the department providing the training and the satisfactory completion of a standardized practical proficiency examination administered by a certified instructor or an intoxilyzer service technician employed by the department providing the training.

(3) The examinations shall be included in a minimum of forty (40) hours of instruction which shall also include the demonstration of physiological effects of alcohol in the human body, general instrumentation theory, and operation of approved instruments which measure alcohol concentration.

Section 2. (1) Operator certification shall be valid for a period of two (2) years from the date of issuance.

(2) Certification shall be terminated if it is not renewed with a two (2) year period or the operator ceases to be employed by a criminal justice agency.

(3) An operator whose certification has been revoked pursuant to this section shall be eligible for recertification pursuant to Section 4 of this regulation for six (6) months following revocation.

Section 3. The employer of a certified operator shall notify the Department of Criminal Justice Training which issued the certificate in writing within two (2) weeks of the change in the event of change of employment to a different criminal justice agency or termination of employment with a criminal justice agency.

Section 4. To obtain recertification, a certified operator shall review standards and procedures for a minimum of four (4) hours of recertification instruction.

Section 5. (1) The following are grounds for revocation of certification to operate a breath

analysis instrument:

(a) Misuse of the instrument by the operator in violation of law;

(b) Refusal or failure to perform procedures in an acceptable manner;

(c) Failure to testify at an administrative revocation hearing held pursuant to KRS 186.570 without just cause; and

(d) Dismissal of an operator from his employment with a criminal justice agency.

(2) Revocation will be held only following a hearing conducted by the Commissioner of the Department of Criminal Justice Training which issued the certificate, or his designee, following written notice to the certified operator of the basis for revocation.

Section 6. A person who has received training from the Department of Criminal Justice Training, the Department of State Police, or the Lexington-Fayette Urban County Government Division of Police in breath analysis instrument operation before January 1, 1991, shall be exempt from the requirements of Section 1 of this regulation. Each person who has not received this training more recently than January 1, 1989, shall comply with Section 4 of this regulation.

W. MICHAEL TROOP, Secretary

APPROVED BY AGENCY: May 29, 1991

FILED WITH LRC: May 31, 1991 at 2 p.m.

STATEMENT OF EMERGENCY 701 KAR 5:090E

This emergency regulation is necessary in order to immediately clarify practice and procedure, and other, issues which have arisen in hearings held to date under KRS 161.790 and to begin recouping unbudgeted travel expenses for a Department of Education - provided legal advisor. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on May 20, 1991.

WALLACE G. WILKINSON, Governor
JOSEPH W. KELLY, Chairman

EDUCATION AND HUMANITIES CABINET Department of Education Office of Chief State School Officer

701 KAR 5:090E. Teacher disciplinary hearings.

RELATES TO: KRS 161.770, 161.790

STATUTORY AUTHORITY: KRS 156.029, 156.070, 161.790

EFFECTIVE: May 29, 1991

NECESSITY AND FUNCTION: KRS 161.770 and 161.790 provide for the chief state school officer, now the Commissioner of Education, to appoint an impartial three (3) member tribunal to hear evidence and make the final administrative determination whenever a local school district proposes to discipline or place on involuntary leave a certificated employee. This regulation establishes necessary administrative and hearing procedures with respect to the tribunal process.

Section 1. A local board of education or superintendent, as applicable under statute, proposing to discipline (except for a private reprimand) or place on involuntary leave a certificated employee shall immediately after notice to the employee transmittal copy of the notice of the action to the chief state school officer, along with advice as to the date of the receipt of the notice by the employee.

Section 2. If the employee fails to contest the proposed action, by written intent filed with the chief state school officer and the local superintendent within ten (10) days of receipt of the notice of the proposed action by the employee, the chief state school officer shall transmit appropriate notice that the district's action has become final. Failure to transmit such notice shall not affect the finality of the local district's action.

Section 3. (1) If, after a requested hearing has been scheduled by the chief state school officer, or his designee, a continuance is requested by the certificated employee, the employee shall specifically and in writing waive the statutory hearing deadlines and any subsequent backpay award for the period of the requested continuance, unless the continuance request was initiated by the school district. No continuance initiated by the employee shall be granted without the appropriate waiver.

(2) A continuance requested by the certificated employee may be granted for good cause shown, including but not limited to pending criminal charges making it inadvisable for the employee to testify at any administrative hearing and late entry of an attorney into the case on behalf of the employee. Objections to a continuance request by the school district shall be considered on a case-by-case basis.

(3) A continuance requested by the school district, and not agreed to by the employee, shall be granted only upon documentation of the existence of an emergency or other circumstances making it impossible or prejudicially impractical for the district to adequately present its case at the scheduled hearing.

(4) All requests for continuances prior to the three (3) member tribunal convening shall be directed in writing to the office of the chief state school officer, and the chief state school officer or his designee shall consider and grant or deny all such requests.

(5) After convening a hearing, the three (3) member tribunal shall consider and rule upon all other requests for continuances.

Section 4. (1) The chief state school officer shall, whenever practicable, provide a legal advisor for the three (3) member tribunal, and the local school district shall pay all travel expenses of the legal advisor.

(2) The local school district shall, no later than the convening of the hearing, advise the tribunal members how to claim their per diem and travel expenses.

Section 5. (1) No later than seven (7) days after an employee files a notice to contest, the school district shall provide the employee, and the chief state school officer and the panel members, with a proposed witness list and general summary of testimony and a list of

proposed exhibits. The employee shall provide such documents no later than two (2) days prior to the scheduled hearing. No proposed witness or exhibit not on the list shall be utilized at the hearing except for good cause demonstrated to the tribunal or for rebuttal.

(2) No later than one (1) day prior to a scheduled hearing, any party may submit to the other, and to the chief state school officer and the tribunal members, proposed findings of fact and conclusions of law. If a tribunal continues a hearing once convened or defers its decision, any right to submit proposed findings and conclusions shall be governed by ruling of the tribunal.

(3) Prehearing documents shall be submitted to panel members through the chief state school officer, and the chief state school officer or his designee shall have discretion to eliminate potentially prejudicial or inadmissible information from prehearing documents and from the notice of charges to be supplied to panel members until the panel has an opportunity to rule upon such matters.

Section 6. At the hearing, both the school district and the certificated employee shall be allowed to direct reasonable voir dire to the tribunal members, such voir dire going solely to the tribunal members' possible bias, meeting statutory eligibility requirements, or improper prior knowledge of the case.

Section 7. (1) Once the hearing has been convened and the parties given the opportunity for appropriate motions and responses, voir dire, and opening statements, the local school district shall have the burden of proof and the burden of going forward with its evidence.

(2) Technical rules of evidence shall not apply, but all witnesses shall be subject to cross examination and any finding of fact by a tribunal shall be supported by some substantial and legally competent evidence.

Section 8. (1) If, for any reason and after testimony has commenced, a tribunal member becomes unavailable to complete the hearing of the evidence of both parties, an appropriate substitute tribunal member shall be appointed by the chief state school officer and provided by the school district with a written transcript of all prior proceedings at the hearing.

(2) A hearing may be concluded and a decision rendered in such circumstances by a two (2) member tribunal only upon express agreement of both parties.

Section 9. The three (3) member tribunal shall render its decision by findings of fact and conclusions of law spread upon the stenographic record of the proceedings or by separate written decision incorporating appropriate findings and conclusions. Any decision spread upon the stenographic record shall be considered final as of the date such decision is read into the record.

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).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: May 20, 1991
FILED WITH LRC: May 29, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
904 KAR 3:020E

This emergency administrative regulation implements the federal clarification of Public Law 101-508 which excludes Earned Income Tax Credit (EITC) income as a resource for two (2) months in the Food Stamp Program. Failure to implement this policy change on a timely basis could jeopardize federal financial participation in the Kentucky Food Stamp Program. This is effective June 1, 1991. This emergency administrative regulation deletes the title "Eligibility requirements" and is retitled "Financial requirements". This emergency administrative regulation revises the current language of the regulation to comply with the drafting requirements of KRS Chapter 13A. This emergency administrative regulation deletes the technical eligibility requirements of the Food Stamp Program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler for the June 1991 filing.

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

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

904 KAR 3:020E. Financial [Eligibility] requirements.

RELATES TO: KRS 194.050, 7 CFR 273.1, 273.2, 273.8, 273.9, 273.11, PL 101-508

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4
EFFECTIVE: June 5, 1991

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

Section 1. Financial Eligibility Requirements.
(1) In accordance with regulations promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, national uniform standards of financial eligibility for the Food Stamp Program shall be [,] composed of the following [both financial and nonfinancial] criteria: [, shall be utilized. Financial criteria shall consist of]

(a) Income limitations; and

(b) Resource limitations. [Nonfinancial criteria shall consist of certain technical factors.]

(2) Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.

(3) The income eligibility standards shall be [are] derived from the Office of Management and Budget's (OMB) nonfarm income poverty guidelines.

Section 2. Countable Income. All income from any source shall be counted, except income specifically excluded in Section 3 of this regulation, including but not limited to:

(1) Wages earned by a household member, including all wages received by a striker in accordance with the provision at 904 KAR 3:035, Section 6(9) [the day prior to the strike or wages received during the month of application, whichever is higher, in accordance with 7 CFR 273.1(g)].

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

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

(4) Payments under 42 USC 1451 [Title I (Volunteers in Service to America, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973] shall be considered earned income unless specifically excluded in Section 3 of this regulation; [7 CFR 273.9(c)(10)(iii).]

(5) The earned or unearned income of an eligible [excluded] household member or nonhousehold member[s] as set forth in 904 KAR 3:035, Section 6(3) and 4 [5(3)];

(6) Assistance payments from federal or federally aided public assistance including: [such as]

(a) Supplemental security income (SSI); [or]

(b) Aid to families with dependent children (AFDC);

(c) General assistance (GA) programs; or

(d) Other assistance programs based on need;

(7) Annuities;

(8) Pensions;

(9) Retirement, veteran's or disability benefits;

(10) Worker's or unemployment compensation;

(11) Strike pay;

(12) Old-age survivors or Social Security benefits;

(13) Foster care payments for children or adults, except as excluded in Section 3(16) of this regulation;

(14) Gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least twenty (20) hours a week;

(15) [(8)] Wages earned by a household member which are garnished or diverted by an employer and paid to a third party for a household expense;

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

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

(18) [(11)] Payments from government sponsored programs, dividends, interest, royalties, and

all other direct money payments from any source which can be construed to be a gain or benefit;

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

(20) [(13)] That amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien as set forth in 904 KAR 3:035, Section 6(12) [in accordance with 7 CFR 273.11(h)];

(21) The portion of means tested [(14)] Assistance monies from a federal, state, or local welfare [another] program[, as specified in 7 CFR 273.11(j),] which are withheld for purposes of recouping an overpayment which resulted from the household's intentional failure to comply with that program's requirements[. These withheld monies shall be considered as income in accordance with 7 CFR 273.11(j)];

(22) [(15)] Earnings to an individual[s] who is [are] participating in on-the-job training programs under 29 USC 1501 unless the individual is [the Job Training Partnership Act. This provision does not apply to household members] under nineteen (19) years of age and [who are] under the parental control of another adult member;

(23) [(16)] Portions of Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401 [P.L. 98-64] in excess of \$2,000 per payment per individual, effective September 1, 1989; and

(24) [(17)] Payments from the Department of Housing and Urban Development [HUD or Section 8] which are paid directly to the household or utility provider as a utility subsidy.

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

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

(2) Child support income shall be considered as follows:

(a) Child support payments received by AFDC recipients which must be transferred to the Division of Child Support Enforcement [administering Title IV-D of the Social Security Act, as amended,] to maintain AFDC eligibility shall be excluded;

(b) [However,] Any portion of child support [such] monies returned to the AFDC household by the cabinet shall not be excluded;

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

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

(5) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but

not in excess of thirty (30) dollars in a quarter.

(6) [As defined in 7 CFR 273.9(c),] Educational loans on which payment is deferred, grants, scholarships, fellowships, and veteran educational benefits, [and the like] to the extent that they are made available for tuition and mandatory school fees at an institution of higher education or an institution of postsecondary education as defined by 904 KAR 3:010, Section 1(23). [, including correspondence schools at that level, or a school at any level for the physically or mentally handicapped. Origination fees and insurance premiums on student loans are excludable charges. For federal education assistance programs funded under Title IV of the Higher Education Act or effective December 1, 1988, Student Assistance Programs under the Bureau of Indian Affairs, additional income exclusions include costs of books, transportation, supplies, costs for rental or purchase of equipment or materials required for all students in the same course of study, and miscellaneous personal expenses. Portions of nonfederal (state, local, or private) deferred payment educational loans are excluded based on provisions contained in 7 CFR 273.9(c)(4).]

(a) Types of financial educational assistance include:

1. Federal educational assistance not funded under 20 USC 1070;

2. Federal educational assistance funded under 20 USC 1070;

3. State, local and private assistance.

(b) Income exclusions for each type of assistance are allowed as follows:

1. Federal educational assistance not funded under 20 USC 1070:

a. Tuition;

b. Mandatory school fees;

c. Origination fees and insurance premiums charged for obtaining the assistance.

2. Federal educational assistance funded under 20 USC 1070 or effective December 1, 1988, student assistance programs funded by the Bureau of Indian Affairs:

a. Tuition;

b. Mandatory school fees;

c. Origination fees and insurance premiums charged for obtaining the assistance;

d. The costs of books, school supplies, transportation, and miscellaneous personal expenses other than room and board.

3. State, local and private financial assistance:

a. Tuition;

b. Mandatory fees;

c. Origination fees and insurance premiums charged for obtaining the assistance;

d. The costs of books, school supplies, transportation, routine supplies and dependent care.

(c) Mandatory fees include, but are not limited to:

1. Uniforms;

2. Lab fees or equipment which is required:

a. Of all students; or

b. All students within a particular curriculum.

(d) Mandatory fees shall not include routine school supplies.

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

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

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

(10) The earned income of children who:

(a) Are members of the household;

(b) [who] Are students at least half time;

(c) [and who] Have not attained their 18th birthday; and

(d) Are under the parental control of another household member;

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

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

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

(14) [Any] Energy assistance payments made under federal laws or certified as excludable energy payments by FNS;

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

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

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

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

(19) Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261 and 25 USC 1401, [P.L. 98-64] as distribution from judgment awards and trust funds of \$2,000 or less per individual per payment, effective September 1, 1989.

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

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

(2) Households in which all members are recipients of AFDC or SSI shall be [are] categorically eligible and shall [as defined in CFR 273.2 do] not be required [have] to meet either the gross or net income eligibility standards.

(3) All other households shall have their gross income (total income after excluded income has been disregarded but before any deductions

have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.

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

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

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

(3) Payments for the actual cost for the care of a child or other dependent, not to exceed \$160 per month per dependent, when necessary for a household member to:

(a) Seek, accept or continue employment;

(b) [or] Attend training; or

(c) Pursue education preparatory to employment; [. This deduction shall not exceed the child care maximum established by FNS.]

(4) The monthly shelter cost deduction shall be determined as follows:

(a) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made.

(b) The shelter deduction shall not exceed the excess shelter maximum established by FNS, except that households containing an elderly or disabled member shall not be subject to the [said] maximum [with regard to the shelter deduction].

(c) The excess shelter maximum shall be adjusted periodically by FNS to reflect changes in the cost of living for a prior period of time.

(d) Allowable monthly shelter expenses shall include the following [be those] expenses: [outlined in 7 CFR 273.9(d)(5).]

1. Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments;

2. Property taxes, state and local assessments, and insurance on the structure itself, but no separate cost of insuring furniture or personal belongings;

3. The cost of:

a. Heating and cooking fuel;

b. Cooling;

c. Electricity;

d. Water and sewage;

e. Garbage and trash collection fees;

f. The telephone standard deduction; and

g. Fees charged by the utility provider for the initial installation of the utility;

4. The shelter costs for the home if temporarily not occupied by the household because of:

a. Employment or training away from home;

b. Illness; or

c. Abandonment caused by a natural disaster or casualty loss; and

d. If the household intends to return to the home;

e. The current occupants of the home are not claiming the shelter costs for food stamp purposes; and

f. The home is not leased or rented during the absence of the household; and

5. Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood, unless

such costs are reimbursed by:

a. Private or public relief agencies;

b. Insurance companies; or

c. From any other source.

(e) The cabinet shall develop a standard utility allowance for use in calculating shelter cost for those households which receive Low Income Home Energy Assistance Program (LIHEAP) benefits or which incur heating or [/] cooling (by air conditioning units only) costs separate and apart from their rent or mortgage payments [in accordance with 7 CFR 273.9(d)(6)].

(f) If the household is not entitled to the utility standard or does not choose to use the utility standard, it may claim actual utility expenses for any utility which it does pay separately.

(g) The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.

(5) Allowable medical expenses, excluding special diets, in excess of thirty-five (35) dollars per month incurred by any household member who meets the definition of elderly or disabled as specified by 904 KAR 3:010, Section 1(10), [set forth in 7 CFR 271.2, are those meeting the criteria set forth in 7 CFR 273.9(d)(3)] including, but not limited to:

(a) Medical and dental care;

(b) Hospitalization or outpatient treatment and nursing care;

(c) Medication and medical supplies;

(d) Health and hospitalization premiums; and

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

Section 6. Resources. (1) Uniform national resource standards of eligibility shall be utilized.

(2) Eligibility shall be denied or terminated if the total value of a household's liquid and nonliquid resources, not exempt under Section 7 of this regulation [and in accordance with 7 CFR 273.8,] exceed:

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

(b) [(2)] \$2000 for all other households.

(3) Households which are categorically eligible as specified in Section 4(2) of this regulation [defined in 7 CFR 273.2] shall be considered as having met the food stamp resource requirement.

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

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

(2) Household goods;

(3) Personal effects including one (1) burial plot per household member;

(4) The cash value of life insurance policies; and

(5) Pension funds (except that Keogh plans which involve no contractual relationship with individuals who are not household members and Individual Retirement Accounts shall not be exempt); [and]

(6) Prepaid burial plans if a contractual agreement for repayment must be signed in order to withdraw any funds;

(7) [(3)] Licensed or [/]unlicensed vehicles [as specified in 7 CFR 273.8];

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

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

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

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

(12) [(8)] Resources whose cash value is not accessible to the household;

(13) [(9)] Resources which have been prorated as income;

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

(15) [(11)] Resources which are excluded for food stamp purposes by express provision of federal statute;

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

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

(18) [(14)] Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401, [P.L. 98-64] as distribution from judgment awards and trust funds, of \$2,000 or less per individual per payment [effective September 1, 1989].

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

(20) The earned income tax credit (EITC) income of an individual and his spouse for the month of receipt and the following month.

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

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

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

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

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

to participate until such status has been verified;]

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

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

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

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

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

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

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: May 23, 1991

FILED WITH LRC: June 5, 1991 at 9 a.m.

STATEMENT OF EMERGENCY 904 KAR 3:025E

The emergency administrative regulation incorporates, without change, the technical eligibility requirements which are currently contained in 904 KAR 3:020. This is effective June 1, 1991. As 904 KAR 3:020 is being submitted concurrently to delete technical eligibility requirements, it is necessary to promulgate this regulation as an emergency to maintain a lawful basis for the operation of the Food Stamp Program. This emergency administrative regulation shall be replaced by a regular regulation. The ordinary administrative regulation was filed with the Regulations Compiler for the June 1991 filing.

WALLACE G. WILKINSON, Governor

HARRY J. COWHERD, M.D., Secretary

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

904 KAR 3:025E. Technical requirements.

RELATES TO: KRS 194.050, 7 CFR 273.4, 273.5, 273.7, 273.21

STATUTORY AUTHORITY: KRS 194.0507, 7 CFR 271.4
 EFFECTIVE: June 5, 1991

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Definitions. (1) "Certification period" means a definite period of time within which a household shall be eligible to receive food stamp benefits.

(2) "Quality control review" means a review of a statistically valid sample of active and denied or discontinued cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to ensure that inactive cases are not incorrectly denied or terminated.

(3) "Student status" means any person who is between the ages of eighteen (18) and sixty (60) inclusive, physically and mentally fit, and enrolled at least half-time in an institution of higher education.

Section 2. Technical Eligibility. In accordance with regulations promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, the cabinet utilizes national uniform standards of technical eligibility for the Food Stamp Program.

Section 3. Technical Eligibility Criteria. Technical eligibility standards shall apply equally to all households and consist of:

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

(2) Identity.

(a) The applicant's identity shall be verified; and

(b) If an authorized representative applies for the household, both the applicant's and the authorized representative's identities shall be verified;

(3) Citizenship and alien status.

(a) Program participation shall be limited to:

1. Citizens of the United States; or

2. Eligible aliens as defined by 904 KAR 3:010.

(b) Individuals whose status is questionable shall be ineligible to participate until such status has been verified;

(c) A single household member shall attest in writing to the citizenship or alien status of each household member;

(d) The departmental form required for the declaration of citizenship or alien status is incorporated into this regulation by reference.

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

(5) Students. Any person who meets the definition of a student as specified in Section 1 of this regulation shall be ineligible to

participate unless they meet at least one (1) of the following criteria:

(a) Shall be engaged in paid employment for a minimum of twenty (20) hours per week or, if self-employed, shall be employed for a minimum of twenty (20) hours per week and receive weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours; or

(b) Shall participate in a federally financed work study program (funded in full or in part under 20 USC 1070) during the regular school year; or

(c) Shall be responsible for the care of a dependent household member under the age of six (6); or

(d) Shall be responsible for the care of a dependent household member who has reached the age of six (6) but is under age twelve (12) where the cabinet has determined that adequate child care is not available; or

(e) Shall receive benefits from the Aid to Families with Dependent Children Program (AFDC); or

(f) Shall be assigned to or placed in an institution of higher learning through a program under the 25 USC 1501.

(6) Mandatory monthly reporting (MMR).

(a) Households of five (5) or more members in which one (1) or more members has gross earned income of \$200 or more shall be required to file monthly reports, unless otherwise exempt.

(b) The following households shall be exempt from MMR:

1. Households whose sole source of earnings is from self-employment or contract self-employment income which is annualized for a twelve (12) month period;

2. Migrant or seasonal farm worker households;

3. Households in which all members are homeless individuals; or

4. Households with no earned income in which all adult members are elderly or disabled with no earned income.

(c) Departmental MMR forms are incorporated by reference in this administrative regulation.

(7) Social Security number (SSN).

(a) Households applying for or participating in the Food Stamp Program shall comply with SSN requirements by providing the SSN of each household member or applying for one prior to certification.

(b) Failure to comply without good cause shall be determined for each household member and shall result in such individual's disqualification from participation in the Food Stamp Program until this requirement is met.

(8) Work registration.

(a) All household members, except those exempt in paragraph (b) of this subsection, shall be required to:

1. Register for work;

2. Accept suitable employment; and

3. Be subject to other work registration requirements.

(b) The following persons shall be exempt from work registration requirements:

1. A person younger than sixteen (16) years of age or a person sixty (60) years of age or older, except:

a. A child having its 16th birthday within a certification period shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the child qualifies for another exemption; or

b. A person age sixteen (16) or seventeen (17)

who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time basis is exempt;

2. A person physically or mentally unfit for employment;

3. A household member subject to and complying with any work requirement in the AFDC Program;

4. A parent or other household member who is responsible for the care of a dependent child under age six (6) or an incapacitated person;

5. A person who receives unemployment compensation or a person who has applied for, but has not yet begun to receive, unemployment compensation if that person was required to register for work with the Department for Employment Services as part of the unemployment compensation application process;

6. A regular participant in a drug addiction or alcoholic treatment and rehabilitation program;

7. A person who is employed or self-employed and:

a. Working a minimum of thirty (30) hours weekly; or

b. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;

8. A migrant or seasonal farm worker who meets the criteria in paragraph (g) of this subsection and is under contract or similar agreement with an employer or crew chief to begin employment within thirty (30) days; or

9. A student enrolled at least half time in any recognized school, training program, or institution of higher education; provided that those meeting student status have met the eligibility conditions in subsection (5) of this section.

(c) Strikers whose households are eligible in accordance with 904 KAR 3:035, Section 6(9),

shall be subject to the work registration requirements unless exempt for reasons other than employment at the time of application.

(d) Work registrants who reside in a county which offers a food stamp employment and training program shall be required to participate in the food stamp employment and training program. Participants shall:

1. Participate in education, job search, or skills training activities; and

2. Be reimbursed for transportation and dependent care expenses, if otherwise eligible.

(e) Work registrants who are required to participate in the food stamp employment and training program and who fail to do so shall be:

1. Given the opportunity to provide good cause for failure to comply; and

2. Ineligible to receive food stamp benefits for two (2) months if good cause does not exist.

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

Section 4. Material Incorporated by Reference.

(1) Forms FS-301 and FS-301A are necessary for MMR and are incorporated effective June 1, 1991.

(2) Form FS-106.1 is necessary for the declaration of citizenship or alien status in the Food Stamp Program and is incorporated effective June 1, 1991.

(3) 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: May 22, 1991

FILED WITH LRC: June 5, 1991 at 9 a.m.

REGULATIONS AS AMENDED BY THE PROMULGATING BODY AND THE REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: Unless otherwise noted, the following regulations were amended by the promulgating body and the Administrative Regulation Review Subcommittee at its June 3-4, 1991 meeting.

TOURISM CABINET**Department of Fish and Wildlife Resources
(As Amended)****301 KAR 2:170. Seasons for deer hunting.**

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.180, 150.305, 150.330, 150.340, 150.360, 150.370, 150.390, 150.395, 150.400, 150.411, 150.415, 150.416, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation pertains to deer seasons in specified counties and on wildlife management areas (WMA). This regulation is necessary to set deer hunting season dates, to specify the counties and management areas open to deer hunting, to prescribe the methods by which deer may be legally taken, and to prescribe procedures by which handicapped persons may apply for exemptions from conventional hunting methods requirements. The function of this regulation is to provide for the prudent taking of deer within reasonable limits, and to insure a permanent and continuing supply of deer for present and future residents of the state. This amendment is necessary to adjust for date, weapon and tag limit changes in the deer seasons.

Section 1. Firearm [Gun] (and any other legal method) Seasons, Zones, Dates, Tags, and Legal Deer. Deer hunting is permitted in the following zones on the dates listed, using any legal method, except as specified in subsection (7) of this section and Section 4 of this regulation.

(1) Zone No. 1: open for ten (10) consecutive days beginning the second Saturday in November. The white tag is valid for any deer. The yellow tag is valid only for antlerless deer. Counties in this zone are Caldwell, Crittenden, Hopkins, Jefferson, Livingston, Logan, Oldham, Todd, Union, Webster. [Crittenden, Livingston, Logan, and Webster.]

(2) Zone No. 2: open for ten (10) consecutive days beginning the second Saturday in November. The white tag is valid for any deer on the first five (5) days and for antlered deer only on the last five (5) days of the season. The yellow tag is valid only for antlerless deer on the first five (5) days and is not valid on the last five (5) days of the season. Counties in this zone are Ballard, Boone, Breckinridge, Bullitt, Calloway, Carlisle, Christian, Fulton, Gallatin, Graves, Grayson, Hancock, Henry, Hickman, Kenton, Lyon, McCracken, Marion, Meade, Muhlenberg, Nelson, Ohio, Shelby, Spencer, Trigg, and Trimble. [Boone, Breckinridge, Bullitt, Caldwell, Carroll, Christian, Gallatin, Hancock, Hopkins, Jefferson, Kenton, Lyon, Meade, Muhlenberg, Nelson, Oldham, Shelby, Spencer, Todd, Trimble, and Union.]

(3) Zone No. 3: open for ten (10) consecutive days beginning the second Saturday in November. The white tag is valid for any deer on the first two (2) days of the season and for antlered deer

only on the last eight (8) days [and for any deer on the first two (2) days of the season]. The yellow tag is valid only for antlerless deer on the first two (2) days and is not valid on the last eight (8) days of the season. Counties in this zone are Adair, Allen, Anderson, Boyle, Butler, Carroll, Casey, Daviess, Franklin, Grant, Hardin, Harrison, Henderson, Larue, McLean, Mercer, Owen, Pendleton, Scott, Taylor, Warren, Washington, and Woodford. [Allen, Anderson, Ballard, Boyle, Bracken, Butler, Calloway, Carlisle, Casey, Franklin, Fulton, Grant, Graves, Grayson, Green, Hardin, Harrison, Henderson, Henry, Hickman, Larue, McCracken, Marion, Mercer, Ohio, Owen, Pendleton, Robertson, Scott, Taylor, Trigg, Washington, and Woodford.]

(4) Zone No. 4: open for ten (10) consecutive days beginning the second Saturday in November. The white tag is valid for antlered deer only on the first nine (9) days and for any deer on the last day. The yellow tag is not valid for the first nine (9) days and is valid [only] for antlerless deer only on the last day of the season. Counties in this zone are Barren, Boyd, Bracken, Campbell, Carter, Cumberland, Edmonson, Elliott, Green, Lawrence, Marshall, Mason, Metcalfe, Monroe, Nicholas, Robertson, and Simpson. [Adair, Barren, Campbell, Cumberland, Daviess, Edmonson, McLean, Marshall, Mason, Metcalfe, Monroe, Nicholas, Simpson, and Warren.]

(5) Zone No. 5: open for ten (10) consecutive days beginning the second Saturday in November. The white tag is valid [only] for antlered deer only. The yellow tag is not valid. Counties in this zone are Bath, Clark, Clinton, Fleming, Greenup, Hart, Lincoln, McCreary, Madison, Menifee, Morgan, Pulaski, Rowan, Russell, Wayne, and Whitley. [Bath, Boyd, Carter, Clark, Clinton, Elliott, Fleming, Greenup, Hart, Lawrence, Lincoln, McCreary, Madison, Menifee, Morgan, Pulaski, Rowan, Russell, Wayne, and Whitley.]

(6) Zone No. 6: open for five (5) consecutive days beginning on the second Saturday in November. The white tag is valid for antlered deer only. The yellow tag is not valid. Counties in this zone are Bell, Bourbon, Breathitt, Clay, Fayette, Floyd east of Hwy. 23 from the Johnson County line to the Pike County Line, Garrard, Harlan, Jackson, Jessamine, Johnson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Lewis, Martin, Montgomery, Owsley, Perry, Pike, Powell, Rockcastle, and Wolfe. [Bell, Bourbon, Breathitt, Clay, Fayette, Floyd, Garrard, Harlan, Jackson, Jessamine, Johnson, Knott, Laurel, Lee, Leslie, Letcher, Lewis, Martin, Montgomery, Owsley, Perry, Pike, Powell, Rockcastle, and Wolfe.]

(7) Counties, wildlife management areas, and parks closed to all deer hunting.

(a) Counties: Estill, Floyd west of Hwy. 23 from the Johnson County line to the Pike County line, [Knox,] and Magoffin.

(b) Wildlife management areas: Daviess County Gun Club in Daviess County, Ballard WMA in Ballard County (except that portion south of Terrell Landing Road), Fishtrap WMA in Pike County, Robinson Forest WMA in Breathitt, Perry, and Knott Counties, and Swan Lake WMA in Ballard County.

(c) Deer hunting is prohibited within the

boundaries of all national parks.

(8) Exceptions to tag usage. Hunters using special purpose tags as antlerless deer permits issued to landowners, as specified in 301 KAR 2:210 may [shall] take only two (2) [one (1)] antlerless deer in addition to the statewide limit, using two (2) special purpose tags. Hunters required to possess a deer permit as specified in Section 6(1) of this regulation shall have this permit in possession when hunting with a special purpose tag.

Section 2. Archery and Crossbow Seasons, Zones, Dates, Tags, and Legal Deer. Except as specified in Sections 1 and 3 of this regulation, the white tag is valid for any deer and the yellow tag is valid for antlerless deer only in Zones 1, 2, 3, 4, and 5; in Zone 6 the white tag is valid for antlered deer only and the yellow tag is not valid. [Both the yellow and white tags are valid for any deer in Zones 1, 2, 3, 4, and 5; and both the yellow and white tags are valid for antlered deer only in Zone 6.]

(1) Archery season (longbows, recurve and compound bows): October 1 through January 15.

(2) Crossbow season: beginning the second Saturday in November and continuing for twenty (20) consecutive days and during the muzzle-loading seasons only.

(3) Archery and crossbow hunting during firearms seasons. Archery and crossbow equipment may be used during any gun and muzzle-loading seasons. Archery and crossbow hunters shall abide by the gun or muzzle-loading seasons regulations and tag restrictions in effect for the county or WMA in which they are hunting as specified in Sections 1, 3, 4, and 7 of this regulation. Hunters shall not possess both archery or crossbow equipment and firearms while deer hunting except during gun, WMA quota hunt and muzzle-loading seasons.

Section 3. Muzzle-loading Seasons, Zones, Dates, Tags, and Legal Deer. [Both] The white tag is valid for any deer and the yellow tag is valid for antlerless deer only [are valid for any deer] in Zones 1, 2, 3, and 4 [and 3] as specified in Section 1 of this regulation. The white tag is valid for antlered deer only in Zones 5 and 6. The yellow tag is not valid in Zones 5 and 6. [Both the white and the yellow tags are valid for antlered deer only in Zones 4 and 5. The white tag is valid for antlered deer only in Zone 6. The yellow tag is not valid in Zone 6.]

(1) Dates: two (2) consecutive days beginning the third Saturday in October and seven (7) consecutive days beginning the second Saturday in December, and during the gun season as specified in Section 1 of this regulation.

(2) [Permitted] Firearms: only those muzzle-loading firearms specified in Section 8(1) of this regulation are permitted. Hunters shall not possess breech-loading firearms while deer hunting during this period.

Section 4. Exceptions to Deer Hunting Regulations for [on] Wildlife Management Areas. All deer firearm [gun], archery and crossbow regulations apply unless otherwise specified below. When specific hunting dates are given, deer hunting shall be permitted only on those dates; otherwise, applicable dates and harvest restrictions for the zone in which the WMA occurs shall apply. Unless otherwise noted

below, the muzzle-loading season shall not be in effect on these areas.

(1) Limits. An individual shall take no more than one (1) deer from each of the areas listed below except that two (2) may be taken on West Kentucky and Higginson-Henry WMA's.

(2) Advance application for quota hunts. Advance application is required for all quota hunts. Applications for quota hunts shall be made only on forms provided by the department and shall include the Social Security number [hunting license number] of the applicant, [if that applicant is required to possess a license]. No more than four (4) hunters shall apply as a party. Hunters sixteen (16) years old and older may [shall] apply to only one (1) quota hunt, and qualified juveniles (those who on the day of the hunt are at least ten (10) years old and have not reached their 16th birthday) may [shall] apply to a maximum of one (1) quota hunt and one (1) youth hunt. Multiple applications to one (1) area or applications in excess of the limits stated in this subsection shall result in disqualification. Completed applications shall be stamped, self-addressed and postmarked no later than August 31. Hunters drawn for a quota hunt on Higginson-Henry, Dewey Lake, Taylorsville Lake and Yellowbank WMA's shall not apply for a quota hunt to that same area for the following three (3) seasons.

(3) Checking in and out.

(a) Hunters drawn for quota hunts shall hunt only on assigned dates and in assigned areas, and shall check in before, and out at the completion of, the hunt. All hunters shall present their quota hunt permit [application] and show proof of identity and Social Security number when checking in. No other person shall substitute for the person whose name appears on the quota hunt permit [application]. Hunters shall also produce the signature portion of a current deer permit and will be issued a special purpose tag to place on the deer. Hunters shall take only the kind of deer specified (antlered or antlerless) if so specified on the tag. Participants in youth hunts shall also show valid hunter safety certification and shall be accompanied by an adult as specified in Section 7(1) of this regulation.

(b) All deer hunters shall [both] check in and check out for all hunts on Clay, Dewey Lake, Grayson Lake, Higginson-Henry, Kleber, Paintsville Lake, Pennyryle Forest, Redbird, Tradewater, West Kentucky, Yatesville, [and] Yellowbank WMAs, and for the Barren River WMA Youth Hunt.

(4) Hunting on private inholdings within WMAs. Owners of private lands completely surrounded by regulated WMA boundaries, and [inholdings or] their guests may hunt on these lands [inholdings] during quota hunts without following [going through] the application procedure[, but shall obey all other quota hunt rules. Private inholdings are open only during the hunts and under the regulations for the WMA in which they lie].

(5) Only persons possessing a valid quota hunt permit shall be allowed to enter a WMA during a quota hunt, except to use established public thoroughfares or other roads or areas designated open by signs, or to the extent provided by subsection (4) of this section. Other areas may be closed to hunting as indicated by signs.

(6) [(5)] Equipment permitted. On quota hunts and gun hunts any legal method (firearms,

archery, or crossbow) may be used, and all hunters shall wear hunter orange as specified in Section 7(4) of this regulation. Archery hunts are limited to legal longbows, recurve bows and compound bows.

(7) Barren River WMA in Allen and Barren Counties.

(a) Quota youth hunt: any deer, first Saturday in November for two (2) consecutive days.

(b) Gun, archery and muzzle-loading hunting shall conform to statewide regulations.

(8) [(6)] Beaver Creek WMA in McCreary and Pulaski Counties, and Mill Creek WMA in Jackson County.

(a) Archery hunt: antlered deer only, October 15 through the Friday preceding the second Saturday in November.

(b) Quota hunt: antlered deer only, first Saturday [and Sunday] in December for two (2) consecutive days.

[(7) Birdsville Island WMA in Livingston County.]

[(a) Quota hunt: any deer, October 20 and 27.]

[(b) Drawing: a drawing shall be announced in the news media and held in Livingston County on October 6 to select participating hunters.]

(9) [(8)] Cane Creek WMA in Laurel County.

(a) Archery hunt: antlered deer only, October 1 through the Friday preceding the second Saturday in November and the Monday following the first Sunday in December through December 31.

(b) Gun hunt: antlered deer only, second Saturday in November.

[(10) [(9)] Central Kentucky WMA in Madison County.

(a) Archery hunt: any deer [antlered deer only], December 18 through January 15 [31].

(b) No firearm deer hunting allowed.

[(11) [(10)] Clay WMA in Nicholas County.

(a) Archery hunt: any deer, October 15 through the Friday preceding the second Saturday in November.

(b) Quota hunt: any deer, first Saturday [and Sunday] in December for two (2) consecutive days.

[(12) [(11)] Dewey Lake WMA in Floyd County.

(a) Archery hunt: antlered deer only, October 1 through the Friday preceding the second Saturday in November and the Monday following the quota hunt through December 31 except during the youth quota hunt.

(b) Quota hunt: antlered deer only, first Saturday [and Sunday] in December for two (2) consecutive days.

(c) Youth quota hunt: any deer, first Saturday [and Sunday] in November for two (2) consecutive days.

[(13) [(12)] Grayson Lake WMA in Carter and Elliott Counties.

(a) Youth quota hunt: any deer, first Saturday [and Sunday] in November for two (2) consecutive days. [.] Only on that portion west of Route 1496, and east of the line delineated by the following: Bruin Creek, the Bruin Creek fork of Grayson Lake, and Grayson Lake north of the Bruin Creek Fork. [north of Route 1496, east of the Little Sandy River and on the Bruin Creek portions of the area.] This is the only firearm deer hunting permitted on the area.

(b) Archery and crossbow hunt: any deer, except on the portion west of Route 1496, and east of the line delineated by the following: Bruin Creek, the Bruin Creek fork of Grayson Lake, and Grayson Lake north of the Bruin Creek Fork. [north of Route 1496, east of the Little Sandy River and on the Bruin Creek section,]

October 1 through December 31.

[(14) [(13)] Higginson-Henry WMA in Union County.

(a) Quota hunt for deer as specified on permit, first Saturday [and Sunday] in December for two (2) consecutive days [November].

(b) Archery hunt: from [during the period] October 1 through 15 hunters may only hunt with a special purpose tag valid only during these dates. Only one (1) antlerless deer may be taken during this period. Any [One (1)] deer [of either sex] may be taken with the white tag, or an antlerless deer may be taken with the yellow tag [or yellow deer tag] during the period October 16 through December 31, except during the quota hunt.

[(15) [(14)] Kleber WMA in Owen and Franklin Counties.

(a) Quota hunt: any deer, first Saturday [and Sunday] in December for two (2) consecutive days.

(b) Archery hunt: any deer, third Saturday in October through December 31, except during the quota hunt.

[(16) [(15)] Paintsville Lake WMA in Morgan and Johnson Counties.

(a) Quota hunt: antlered deer only, first Saturday [and Sunday] in December for two (2) consecutive days.

(b) Archery hunt: antlered deer only October 1 through the Friday preceding the second Saturday in November and the Monday following the quota hunt through December 31.

[(17) [(16)] Peabody and White City WMA's in Hopkins, Muhlenberg and Ohio Counties.

(a) Archery hunt: October 1 through December 31. Advance application required for all tracts except White City WMA.

(b) Quota hunt 1: the second Saturday in November through the following Wednesday.

(c) Quota hunt 2: the Thursday following the second Saturday in November through the following Monday.

(d) Muzzle-loader hunts: two (2) consecutive days beginning the third Saturday in October and seven (7) consecutive days beginning the second Saturday in December. Advance applications required for all tracts except White City.

(e) [(d)] Limits: one (1) deer. [The white tag is valid for any deer and the yellow tag is valid only for antlerless deer.]

(f) [(e)] All hunters, except White City archery and muzzle-loader hunters, shall apply in advance on the standard application form and have the validated portion of this form in their possession while hunting. Archery and muzzle-loader hunters on Peabody Tracts, [shall not be selected by a drawing and] may apply to hunt through December 1.

[(18) [(17)] Pennyryle WMA in Caldwell, Christian, and Hopkins Counties, and Tradewater WMA in Hopkins County. [All deer hunting shall conform to Zone 4 regulations.]

(a) Quota hunt: the first Saturday in December for two (2) consecutive days.

(b) Limits: one (1) antlered deer only.

[(19) [(18)] Pioneer Weapons WMA in Bath and Menifee Counties.

(a) Legal muzzle-loading firearms only; crossbows may be used during the entire archery season.

[(b) Checking in or out is not required. All deer taken shall be checked in accordance with Section 6(3) of this regulation.]

(b) [(c)] Hunting is permitted during the muzzle-loading season as specified in Section 3

of this regulation.

(20) [(19)] Redbird WMA in Clay and Leslie Counties.

(a) Archery hunt: antlered deer only, October 1 through the Friday preceding the second Saturday in November and the Monday following the first Sunday in December through December 31.

(b) Gun hunt: antlered deer only, second Saturday in November.

(21) [(20)] Taylorsville Lake WMA in Anderson and Spencer Counties.

(a) Archery hunt: any deer, October 1 through December 31, except during the quota hunt.

(b) Quota gun hunt: any deer, first Saturday [and Sunday] in November for two (2) consecutive days.

[(21) Tradewater WMA in Hopkins County: all deer hunting shall conform to Zone 4 regulations.]

(22) West Kentucky WMA in McCracken County.

(a) Archery hunts: any deer, October 1 through 31 [November 1], November 4 [5] through 14 [15], November 18 [19] through 22 [20], December 9 [10] through 12 and December 17 through January 15 [13] on all tracts except posted zones [and December 17 through December 31 on tracts 5 and 6 only].

(b) [Archery hunts on] Posted zones: designated posted zones shall be opened to archery hunts on December 16 through January 15 [November 19 and 20 and December 10 through 13].

(c) Quota hunt 1: any deer, third Saturday [and Sunday] in November for two (2) consecutive days.

(d) Quota hunt 2: any deer, second [third] Saturday [and Sunday] in December for two (2) consecutive days.

(e) Youth quota hunt: any deer, first Saturday [and Sunday] in November for two (2) consecutive days.

(f) All gun hunters are limited to muzzle- or breech-loading shotguns only.

(g) No firearms permitted on any posted zone at any time.

(h) Crossbow hunt: beginning October 26 and continuing for eight (8) consecutive days.

(i) Limits: two (2) deer, one (1) of which shall be antlerless and tagged with the yellow tag, the other deer may be antlered or antlerless and tagged with a special purpose tag issued on the area. Only one (1) special purpose tag shall be issued to an individual. A bow hunter who has taken a deer on this WMA with a special purpose tag shall not hunt in the quota hunt.

(23) Yellowbank WMA in Breckinridge County.

(a) Quota hunt: any deer, first Saturday [and Sunday] in November for two (2) consecutive days.

(b) Archery hunt: antlered deer only October 1 through 14 and any deer, October 15 through December 31, except during the quota hunt.

Section 5. Legal Deer, Taking of Other Species, Hunting Hours and Bag Limits. (1) An antlered deer is defined as having one (1) antler at least four (4) inches in length, measured from the skin to the tip of the antler.

(2) Hunting is permitted during daylight hours only.

(3) The limit is two (2) deer per hunter per year, except that deer may be taken in addition to the limit with the special purpose tag as provided by this and other regulations.

(4) The taking of coyotes and wild hogs from November 1 through the gun, archery and special

muzzle-loader season is permitted by deer hunters possessing a valid deer tag as specified in Sections 1, 2 and 3 of this regulation, and using legal weapons as specified in Sections 7 and 8 of this regulation. Any wild hog taken shall be reported to an official deer check station and the carcass presented for examination.

Section 6. Hunting License, Deer Permits, Deer Tags and Check Station Requirements. (1) Hunting license and deer permits. All deer hunters, except those exempted by KRS 150.170 shall possess a valid annual Kentucky hunting license and a valid deer permit. Hunters not eligible to purchase a junior hunting license shall purchase the two (2) tag permit. Hunters eligible to purchase a junior hunting license may purchase either the junior deer permit or the two (2) tag permit. The junior permit may be used in place of either the white or yellow tag.

(2) Leaving head attached. Any person possessing a deer shall leave the head attached to the body until the carcass is removed from the field and checked in.

(3) Mandatory deer check stations. Any person taking a deer during any deer hunting season shall present the entire or field dressed carcass to have it checked at the deer check station nearest to where the deer was taken, or by the nearest available conservation officer, no later than 9 a.m. on the day following the day taken. The person taking the deer shall check it in personally. The hunter shall fill out an official game check card and submit it to the check station operator or conservation officer. The hunter's portion of this card shall be retained in the hunter's possession until the deer is taken to the processor. Parts separated for taxidermy shall be accompanied by the taxidermy portion of the game check card as specified in subsection (4)(c) of this section.

(4) Tagging deer carcass and head.

(a) Immediately after taking a deer and before moving the carcass, the hunter shall attach his [or her] [a] valid, adhesive backed, paper tag portion of the deer permit or special purpose tag to the deer. This tag shall be attached so that it cannot be removed without destroying the tag or mutilating the carcass and shall remain attached until the carcass is processed and packaged. Before moving any harvested deer from their property or allowing it out of their possession, hunters who are not required to possess a deer permit under the provisions of subsection (1) of this section shall attach to the deer a card or tag containing the following information: name of owner, address, date killed and location killed.

(b) Deer taken in Kentucky shall not be transported outside state boundaries unless they have been checked in at an official check station. Proof of legal harvest shall accompany any deer or parts of deer transported into Kentucky. Any deer entered in the trophy deer list shall be taken legally and within the boundaries of the state.

(c) Heads or other parts from deer taken in Kentucky separated from the carcass for mounting by a taxidermist shall have the taxidermy portion of the official game check card properly filled out and attached to the separated part.

(d) Deer hides may be sold to licensed fur buyers and licensed fur processors.

(e) All individuals, lockers, and [processing]

plants that process deer shall keep accurate records of name of hunter, address, and date received for deer in their possession [facility]. Each deer shall have a tag stating the above information.

Section 7. Requirements for Deer Hunting.

(1) Persons under sixteen (16) years of age shall not hunt deer with a gun unless accompanied by an adult who shall be able to seize immediate control of the juvenile's hunting weapon.

(2) Deer shall not be taken with the aid of dogs or any domestic animal, or by the use of a boat or any type of vehicle.

(3) A deer shall not be taken while the deer is swimming.

(4) Hunter orange garments shall be worn by all deer hunters while hunting during any deer firearms season permitted by regulation. Garments shall be worn as outer coverings on at least the head, chest and back. They shall be of a solid, unbroken pattern. Any mesh weave opening shall not exceed one-fourth (1/4) inch by any measurement. Garments may display a small section of another color provided the section does not significantly obscure the hunter orange color of the garment. Camouflage pattern hunter orange garments do not meet these requirements.

[(4) All persons hunting deer during any season or hunt where firearms are permitted shall wear a hat or cap and vest of a solid, unbroken hunter orange color. Required garments shall not be camouflage orange or fishnet type material. A hunter orange coat or coveralls may be substituted for the vest. The hat or cap, and vest, coat, or coveralls shall be worn as outer garments on both the head and upper torso (chest and back). A small patch, logo, pocket, shell holder, hat rim, and/or pads (shoulder and/or elbow) shall be permitted on any of these garments so long as they do not significantly obscure the hunter orange color.]

(5) On department owned or operated wildlife management areas, Westvaco Public Hunting Area, the Daniel Boone National Forest, Reelfoot National Waterfowl Refuge and the Big South Fork National River and Recreation Area, the use of any nails, spikes, screw-in devices, wire or tree climbers is prohibited for attaching tree stands or for climbing trees. Only portable tree stands and climbing devices that do not injure trees may be used. Portable stands shall not be placed in trees more than two (2) weeks before opening day of each hunting period and shall be removed within one (1) week following the last day of each hunting period. All portable tree stands shall be marked with the owner's name and address. Existing permanent tree stands shall not be used.

(6) Rattling of antlers or sticks and the use of hand or mouth operated calls are permitted.

(7) No person shall possess a deer taken contrary to this or any other regulation or statute.

Section 8. Firearms and Ammunition Restrictions for Gun Deer Hunting. (1) Permitted: center-fire rifles; muzzle-loading rifles of .40 caliber or larger; and muzzle-loading or breech-loading shotguns of ten (10) gauge maximum and twenty (20) gauge minimum firing a single projectile; handguns with [barrel] lengths of 3.9 inches and] a minimum caliber of .30 [with a cartridge case length of

not less than one and one-fourth (1 1/4) inch]. Legal handgun cartridges may be used in rifles and legal rifle cartridges may be used in handguns. Muzzle-loading pistols shall be .44 caliber or larger.

(2) Prohibited: any caliber or cartridge that does not meet the requirements given in subsection (1) of this section; any fully automatic weapon or weapon capable of firing more than one (1) round with one (1) trigger pull; semiautomatic and pump rifles or shotguns a magazine capacity exceeding ten (10) rounds fully jacketed ammunition tracer bullet ammunition; buckshot or any type of shot shells.

Section 9. Equipment Restrictions for Archery Deer Hunting. (1) Longbows, recurve and compound bows shall not be fitted with any device capable of holding an arrow at full draw without aid from the hunter.

(2) Arrows shall be barbless without chemical treatment or chemical attachments, with broadhead points at least seven-eighths (7/8) inch wide.

(3) Crossbows shall have a minimum pull weight of 100 pounds and a working safety device. Minimum bolt weight is 380 grains with a barbless broadhead point at least seven-eighths (7/8) inch wide with no chemical treatments or chemical attachments.

Section 10. Hunting Methods Exemptions for Handicapped Hunters. Persons with physical handicaps that would make it impossible for them to hunt by conventional methods may apply by letter to the commissioner of the department for a hunting methods exemption. The commissioner may authorize any reasonable exception that would permit a handicapped person to hunt when he or she could not otherwise do so because of his or her handicap. Specific exemptions to be allowed shall be described in the letter of authorization, which shall be signed by the commissioner and a conservation officer who shall certify that the applicant for the exemption is, in his opinion, handicapped to such a degree that the requested exemption is necessary to permit the applicant to hunt. Hunting method exemptions will expire at the end of the license year.

DON R. McCORMICK, Commissioner

DAVID H. GODBY, Chairman

RONALD E. GENTRY, Secretary

APPROVED BY AGENCY: April 10, 1991

FILED WITH LRC: April 10, 1991 at 3 p.m.

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

401 KAR 4:220. Water supply plan requirements.

RELATES TO: KRS Chapter 151

STATUTORY AUTHORITY: KRS 151.110, 151.114, 151.116, 151.118, 151.125

NECESSITY AND FUNCTION: This regulation is required to implement the legislative mandate of KRS 151.110, 151.114, 151.116, and 151.118, directing the Natural Resources and Environmental Protection Cabinet to administer a program for developing a long range water supply

plan for each county in the Commonwealth. This regulation describes planning procedures, details to be included in a plan, funding criteria, and uniform data base development.

Section 1. Definitions. The following definitions describe terms used in this regulation. Terms not defined below shall have the meanings given to them in KRS 151.100, or if not so defined, the meanings attributed by common use.

(1) "Aquifer" means a saturated, permeable geological unit that is capable of yielding water to wells or springs [can transmit significant quantities of water].

(2) "Available water" means water that may be withdrawn by any one (1) user at a specific site, according to the water withdrawal permitting requirements of KRS 151.140 through KRS 151.170 and 401 KAR 4:010.

(3) "Base year" means the year that is the starting point for planning conducted pursuant to this regulation, usually the year in which planning begins, and from which existing water use information is drawn.

(4) "Contributing watershed" means a watershed delineated in such a way that noncontributing areas, such as areas draining to sinkholes that drain into another watershed, are excluded.

(5) "Discharge" means the volume of water that flows past a given point within a given period of time, usually expressed in cubic feet per second or gallons per minute.

(6) "Historical year" means a year four (4) to six (6) years prior to the base year.

(7) "Hydrologic unit" means watershed boundaries as shown on the U.S. Geological Survey's Hydrologic Unit Map of Kentucky.

(8) "Impoundment" means a water-retaining structure with the ability to retain at least twenty-five (25) acre-feet of water at normal pool.

(9) "Interconnection" means a linkage between two (2) or more water suppliers that can be used to transfer water from one (1) water supplier to the other.

(10) "Kentucky River Authority" means the authority established under KRS 151.700 and 151.710.

(11) [(10)] "Local planning fund contributors" means counties, cities, and water suppliers that pay any portion of the expenditures necessary to comply with this regulation.

(12) [(11)] "Monthly average flow" means the average flow for each month of the year based on the period of record. It is equal to the total volume of water used for the month divided by the number of days in the month.

(13) [(12)] "Nonpoint source pollution" means pollution caused by diffuse sources, including land runoff, precipitation, atmospheric deposition, or percolation.

(14) [(13)] "Phase one planning activities" include the activities required by this regulation that relate to data collection and assessment of water supply planning needs. Specifically, these activities include the requirements for initiating the planning process, including notifications and setting planning objectives, and Section 6(1) through (8) of this regulation.

(15) [(14)] "Phase two planning activities" include the activities required by this regulation that relate to inventorying water resources, protecting water supplier sources,

preparing emergency plans, evaluating water supply alternatives, and to all other planning activities not completed as phase one planning activities.

(16) [(15)] "Planning council" means a group formed for the express purpose of creating a water supply plan in compliance with this regulation.

(17) [(16)] "Planning grant" means funds awarded by the General Assembly and the cabinet to support water supply planning pursuant to this regulation.

(18) [(17)] "Planning representative" means a person who is designated by a planning council to perform tasks in compliance with this regulation.

(19) [(18)] "Planning unit" means a county or group of counties that have agreed to join with other counties to create a water supply plan that encompasses more than one (1) county.

(20) [(19)] "Recharge area" means that area that captures and supplies water to a spring or an aquifer.

(21) [(20)] "Regionalization" means the creation of a regional, administrative or infrastructural, water supplier unit by consolidation or expansion.

(22) [(21)] "Safe yield" means the amount of water a user can withdraw annually from a groundwater basin throughout the year without depleting the well or aquifer and without adversely affecting other users of the aquifer.

(23) [(22)] "Semipublic water supplier" means any water supply system that serves more than three (3) families, but is not a water supplier or distributor.

(24) [(23)] "Seven (7) day, ten (10) year low flow" means the lowest mean flow for seven (7) consecutive days having a recurrence interval of ten (10) years, or having a ten (10) percent chance of occurring in any year.

(25) [(24)] "Seven (7) day, twenty (20) year low flow" means lowest mean flow for seven (7) consecutive days having a recurrence interval of twenty (20) years, or having a five (5) percent chance of occurring in any year.

(26) [(25)] "Source classification" means the particular type of a water supply site, including surface water intake, well, or spring-fed intake.

(27) [(26)] "Specific capacity" means yield of a well per unit of drawdown.

(28) [(27)] "Unaccounted for water" means water that is withdrawn and not used for commercial, residential, industrial, or municipal purposes.

(29) [(28)] "Water conservation" means methods and technological applications of passive and active water savings and reuse devices, components and processes to reduce demand for water supply.

(30) [(29)] "Water supplier" means any system that provides water to the public for human consumption, 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 withdraws more than fifty (50) percent of the water it distributes.

(31) [(30)] "Water supply distributor" means any system that provides water to the public for human consumption, 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

depends on a water supplier to provide fifty (50) percent or more of the water it distributes.

(32) [(31)] "Water supply reservoir" means a water retaining structure with the ability to retain at least thirty (30) days of average water use at normal pool, used by a water supplier.

(33) [(32)] "Water supply source" means a particular site or classification of site where water is withdrawn.

(34) [(33)] "Water watch group" means a group registered with the cabinet as part of the water watch program.

(35) [(34)] "Zone of contribution" means the entire area recharging or contributing to a well or well field.

(36) [(35)] "Zone of influence" means the spatial area surrounding a well, in which drawdown effects occur from groundwater pumpage.

(37) [(36)] The following items used in this regulation are defined in KRS 151.100: cabinet; dam; domestic use; groundwater; reservoir; secretary; watershed; and withdrawal of water.

Section 2. Scope and Applicability. Each county, its municipalities and water suppliers, shall prepare a water supply plan. Representatives of each county, its municipalities and water suppliers shall decide whether to form a multicounty planning unit and shall form a planning council to oversee the planning process. Under the oversight of the planning council, a planning representative shall assess the need to provide increased or alternative water supplies for the water supplier systems within each county, formulate recommendations to protect water supplies, and prepare a water supply contamination response plan. If increased or alternative water supplies are needed, the planning representative shall develop water shortage response plans and evaluate water supply alternatives. The planning council shall select [a] water supply alternatives. Until July 15, 1996, the cabinet shall award grants, if budgeted by the General Assembly, for water supply planning.

Section 3. Content and Format of the Planning Documents. The planning representative shall prepare no less than two (2) documents which shall include the information as required by this regulation and additional information as considered necessary by the planning council. The cabinet may accept planning documents that were prepared prior to the existence of a planning council in place of specific sections of the planning documents required by this regulation.

(1) Plan formulation document. Documentation of the details of the planning process shall be placed in a publication subtitled "Plan Formulation Document." The plan formulation document shall have sections named and numbered as specified in this subsection.

(a) Phase one planning activities shall be documented in sections named and numbered as follows: I. Formation of the planning unit; II. Planning council and planning representative; III. Notifications; IV. Workplan and process for setting objectives; V. County base map; VI. Water use and water use forecast; VII. Water supplier source assessment; VIII. Supply adequacy assessment; Appendix PFD-A - Paying for the planning process; Appendix PFD-B - Council minutes.

(b) Phase two planning activities shall be documented in sections named and numbered as follows: IX. Supply protection; X. Water resources inventory; XI. Water supply alternatives; XII. Primary water supply alternative; XIII. Emergency plans; XIV. Implementation plan; Appendix PFD-A - Paying for the planning process; Appendix PFD-B - Council minutes. If the current supply source is adequate for forecasted demands, plan formulation document sections X, XI, XII, and XIV shall contain a brief statement of adequacy and the consequent lack of need to assemble information for each of those sections.

(2) Final plan document. Documentation of the water supply plan shall be placed in a publication subtitled "Final Plan Document." The final plan document shall have sections named and numbered as specified in this subsection.

(a) Phase one planning activities shall be documented in sections named and numbered as follows: I. Formation of the planning unit; II. Planning council and planning representative; III. Planning objectives and water supply planning conflicts; IV. County base map; V. Water use, forecast, and infrastructure assessment; VI. Water supplier source assessment; VII. Supply adequacy assessment; Appendix FPD-A - Obstacles to the planning process.

(b) Phase two planning activities shall be documented in sections named and numbered as follows: VIII. Supply protection; IX. Water resources inventory; X. Water supply alternatives; XI. Primary water supply alternative; XII. Emergency plans; XIII. Implementation plan; XIV. Plan approvals; Appendix FPD-A - Obstacles to the planning process. If the current supply source is adequate for forecasted water use, final plan document section X shall contain a brief statement of adequacy and the consequent lack of need to assemble information for that section.

Section 4. Plan Initiation and Cabinet Assistance. (1) Planning unit: geographic area of plan. A county may develop a water supply plan independently or it may enter into a written agreement to join with other counties to form a regional water supply planning unit. A multicounty plan may or may not entail regionalization or interconnection between water supplier systems.

(a) If a county has fewer than seven (7) cities, then the decision to join with other counties shall be supported by a two-thirds (2/3) majority of representatives of water suppliers in the county and each city in the county that is not a water supplier.

(b) If a county has at least seven (7) but no more than ten (10) cities, then the decision to join with other counties shall be supported by a two-thirds (2/3) majority of representatives of water suppliers in the county and representatives of the first, second, third, and fourth class cities in the county that are not water suppliers.

(c) If a county has more than ten (10) cities, then the decision to join with other counties must be supported by a two-thirds (2/3) majority of representatives of water suppliers in the county and representatives of the first, second, and third class cities in the county that are not water suppliers.

(2) Planning council. A planning council shall

be formed to oversee the planning process.

(a) Membership requirements. The planning council shall consist, at least, of representatives from the following categories in the planning unit:

1. Each county judge-executive or mayor of an urban-county government, or his or her authorized representative;

2. One (1) representative of each water supplier that provides water to persons in the planning unit;

3. One (1) representative of each water supply distributor serving persons in the planning unit, unless that water supply distributor chooses to be represented by another member of the planning council [enters a written agreement with a water supplier from which the water supply distributor purchases water to be represented by that water supplier];

4. One (1) representative of semipublic water suppliers, appointed by the county judge-executive or mayor of an urban-county government, or one (1) representative from a local health department in the planning unit; and

5. One (1) representative of each first, second, or third class city that is not a water supplier or distributor, chooses to be represented by another member of the planning council [unless that city enters a written agreement to be represented by another planning council member].

6. One (1) representative of the fourth class cities that are not water suppliers or water supply distributors, appointed by the county judge/executive.

7. One (1) representative of fifth and sixth class cities appointed by the county judge/executive.

[(b) Other city representation on the planning council.]

[1. If any county in the planning unit has fewer than ten (10) cities, the planning council shall include a representative from each fourth class city that is not a water supplier or water supply distributor, and the county judge-executive shall appoint one (1) representative of fifth and sixth class cities that are not water suppliers or water supply distributors.]

[2. If any county in the planning unit has ten (10) or more cities, the county judge-executive shall appoint one (1) representative of fourth class cities and one (1) representative of fifth and sixth class cities.]

(b) [(c)] Membership options. One (1) planning council member may represent more than one (1) entity. At any planning council meeting, a majority of the required members of the planning council, listed in paragraph (a) of this subsection, may also choose to appoint other planning council members. The cabinet may require additional planning council members so that the planning council fully represents the planning unit or if the planning unit has unique social or economic characteristics.

(c) First planning council meeting. The entities listed in paragraph (a) of this subsection shall be notified of the first meeting of the planning council at least two (2) weeks prior to the meeting.

(d) Planning council chair. The planning council chair shall be elected by a majority of the planning council members.

(e) Quorum. The planning council shall

determine what constitutes a quorum [at the first meeting of a majority of its members].

(3) Optional water supply advisory group. A planning council may create one (1) or more water supply advisory groups to assist in the planning process.

(4) Planning representative. The planning council shall select a planning representative who shall be responsible for conducting the water supply planning process and creating water supply plan documents.

(5) Cabinet assistance. At the request of one (1) or more counties on a planning council, the cabinet may award water supply planning grants to a county or planning representative. The cabinet shall provide access to records and data collected by the cabinet, in accordance with the Kentucky Open Records Act. The cabinet shall also make every reasonable effort, as resources allow, to provide special data reports and make staff available for consultation and technical support to planning councils and planning representatives.

(6) Documentation of plan initiation.

(a) Section I of the plan formulation document shall describe how the county (or counties), cities, and water suppliers reached agreement as to the composition of the planning unit [and shall include copies of any agreements written between water supply distributors and water suppliers]. Section II of the plan formulation document shall describe how a planning representative was selected.

(b) Section I of the final plan document shall include a description of the planning unit and a planning unit map that shows planning unit boundaries, county boundaries, hydrologic unit boundaries of watersheds, county seats, and first through fourth class cities. Section II of the final plan document shall include a list of planning council members with their affiliations and identify any designated planning council member who declines to serve on the planning council or any designated planning council member that has not responded to invitations to participate in the planning process. [and] Section II of the final plan document shall identify the planning representative and the individuals who will prepare the plan under the direction of the planning representative. If a county advisory group has been formed, section II of the final plan document shall also list the members of that group.

Section 5. Planning Council Duties and Procedures. After a planning representative has been designated, the planning council shall continue to oversee the planning process. This process shall use principles of hydrologic science, effective environmental protection, efficient water management and conservation, and democratic governance.

(1) Public notice and public participation. The planning council shall solicit public input for planning decisions.

(a) Council meetings. Each meeting of a planning council shall allow time to discuss progress of the planning process and obtain public input. The planning council shall notify local broadcast and print media of the meetings and request that the media make a public announcement of the time, place and purpose of the meeting. The planning council shall keep minutes of its meetings and a list of attendees

and other interested persons. These shall be available to the public on request and shall be included as Appendix PFD-B of the plan formulation document.

(b) Public notice shall include the following:

1. A public notice shall be placed in the newspaper of greatest circulation in the area. The public notice shall be at least three (3) column inches in size, and shall be large enough that all information contained therein is easily readable. A copy of each public notice shall be placed in section III of the plan formulation document.

2. A letter shall be mailed to each water watch group in the planning unit. A sample letter and a list of recipients shall be placed in section III of the plan formulation document.

3. Public notice for a public meeting shall include the date, time, and location of the meeting; the mailing address and deadline for providing written comment; the purpose of the meeting; a brief statement of the purpose of the plan and planning procedures; and any other information to ensure that the public is aware of the nature of the meeting and the planning process.

(2) Conflict resolution.

(a) Planning council members shall attempt to reach consensus on planning goals, objectives, and preferred supply, emergency, and implementation alternatives. The planning council may select mediation as a method to achieve an acceptable solution. The cabinet may provide mediation assistance if requested by planning council members.

(b) If planning council members are unable to reach consensus concerning any aspect of the planning process, a description of the conflict shall be included in section III of the final plan document. This section shall also describe conflicts or potential conflicts between the water supply plan and existing plans of local units of government, water suppliers, or water supply distributors and conflicts or potential conflicts between the water supply plan and existing or proposed plans of surrounding counties. Each description of a conflict shall identify the units of government or water suppliers or distributors involved in the conflict. Each description shall also identify the provisions or omissions causing the conflict and the nature of the conflict, including objections and the type of authority applicable.

(3) Notification. The planning council shall comply with the requirements in this subsection within fourteen (14) days of the first meeting of the planning council. If phase two planning activities for any county within the planning unit are begun two (2) years or more after the notifications required by this subsection, the planning council shall repeat the notifications required by this subsection before beginning phase two planning activities. If a water supply plan has been prepared for the county within five (5) years of the base year, the cabinet may allow variances in the notification process.

(a) Notification to adjacent counties. The planning council shall send written notification to mayors, county judge-executives, and water suppliers in counties adjacent to the planning unit of the intent to develop a water supply plan.

(b) Notification to the public. The planning council shall give public notice of the intent to develop a water supply plan. Public notice

shall describe the planning unit and planning council membership. Public notice shall state that a water supply plan is being developed, that public attendance at council meetings is welcomed, and that a meeting concerning planning goals and a meeting concerning plan alternatives will be publicly announced. Further, it shall announce the date, time, and location of the next council meeting or provide a telephone number at which such information shall be available.

(c) Notification to local governments and water suppliers. The planning council shall send written notification of the intent to develop a water supply plan to the following: all local units of government within the planning unit; water suppliers that provide water for use in the planning unit; and local units of government that use the same source of water as any water supplier in the planning unit. The letter of notification to local governments and water suppliers shall request the following information:

1. A copy of any existing water or related plans;

2. A statement of any current or potential conflicts, problems or opportunities that the local units or water systems want the planning process to examine or address, including water use rights, access and conservation; and

3. A description of expected changes in or around the planning unit that may alter current growth trends, including existing ordinances and planning goals.

(d) Notification to the cabinet. The planning council shall notify the cabinet of the intent to develop a water supply plan. Notification to the cabinet shall include a list of members of the planning council, their affiliations, and a list of counties included in the planning unit. The notification shall identify any designated planning council member who declines to serve on the planning council or any designated planning council member that has not responded to invitations to participate in the planning process. The notification shall state whether counties in the planning unit will apply for a planning grant from the cabinet. The cabinet shall notify the planning council of data that is readily available from the cabinet, state universities or other state or federal agencies.

(e) Notification to the Kentucky River Authority. If any portion of any county in a planning unit is located within the watershed of the Kentucky River, the planning council shall notify the Kentucky River Authority of the intent to develop a water supply plan. The letter of notification shall ask the authority to provide information concerning any planning objectives or activities that might impact the water supply planning process of the planning unit.

(f) [(e)] Documentation of notifications. Section III of the plan formulation document shall include a copy of each public notice and notification sent to adjacent counties and to local units of government and water suppliers, a list of persons to whom these documents were sent, and a description of information received in response to notification sent to local governments and water suppliers. If any portion of any county in a planning unit is located within the watershed of the Kentucky River, section III of the plan formulation document shall include a copy of the notification sent to

the Kentucky River Authority and a description of the response from the authority.

(4) Planning goals and objectives.

(a) The planning council shall consider the following objectives for the planning process:

1. Use of conservation to the maximum extent practical;

2. Choice of supply dependability. In addition to the level of water supply that meets minimum standards described in Section 6(8) of this regulation, a planning council may plan to provide a continuous level of supply under all conditions or plan to rely on consumer cooperation to maintain a supply buffer, allowing a supplier to provide less than a continuous level of supply;

3. Compatibility with existing plans, or to offer recommendations to alter those plans;

4. Preservation and use of natural water storage and retention systems, whenever cost and data constraints permit;

5. Protection and enhancement of the overall quality of the environment;

6. Cost effectiveness; and

7. Social and political acceptability, and community cohesion.

(b) The planning council shall assess existing plans and public input regarding planning objectives and existing and forthcoming issues to be addressed in the planning process. The planning council shall identify any planning objectives specific to the planning unit. The planning council shall conduct at least one (1) public meeting to obtain public input concerning objectives and issues affecting the planning process. The planning council shall conduct the public meeting concerning objectives and issues early in the planning process, prior to determining the objectives of the planning process.

(c) Documentation. Section III of the final plan document shall describe the planning objectives and summarize the process used to determine these objectives. Section IV of the plan formulation document shall fully describe the objective-setting process.

(5) Water supply alternatives and emergency response plans. The planning council shall conduct at least one (1) public meeting to obtain public input concerning supply protection recommendations and emergency plans. If the existing sources of supply are not adequate to meet forecasted needs for twenty (20) years after the base year, the public meeting shall be conducted as part of the process for selecting a water supply alternative, to obtain public input concerning plan alternatives, implementation strategies, and any reevaluation of goals and objectives. The planning council shall review water supply plan alternatives and implementation strategies; [The planning council shall] consider public input, reevaluate goals and objectives; [,] and select alternatives to be included in the final plan document. [The planning council shall conduct at least one (1) public meeting as part of the process for selecting a water supply alternative, to obtain public input concerning plan alternatives, implementation strategies, and any reevaluation of goals and objectives.]

(6) Water supply plan document approval. Section XIV of the final plan document shall include the signature of each member of the planning council who has participated in the planning process, signifying that the document

accurately reflects the planning effort. If any member disagrees with the chosen plan alternative, it is the responsibility of that member to identify objections in a minority report in Section III of the final plan document, as described in subsection (2) of this section. The cabinet may approve a final plan document that is not signed by each planning council member if the planning council justifies the absence of each missing signature.

(7) Plan implementation.

(a) Upon completion and acceptance of the plan by the cabinet, the planning council shall act as an oversight or advisory group to plan implementation. The planning council shall reconvene at least annually and update the plan at least every five (5) years. A tentative date and location for reconvening the planning council shall be placed in section XIII of the final plan document.

(b) If any portion of any county in a planning unit is located within the watershed of the Kentucky River, the planning council shall address the consistency of the plan with regulations promulgated by the Kentucky River Authority and with the Kentucky River Authority's water resource plan at the annual meeting.

Section 6. Responsibilities of the Planning Representative. (1) Workplan. The planning representative shall develop a workplan for council approval and submission to the cabinet. Workplans may be separately developed for phase one and phase two planning activities. The workplan shall define objectives and deadlines for the planning process in accordance with the objectives established by the planning council, KRS 151.110 through KRS 151.116, and this regulation. The rate of plan development for specific counties within multicounty units may vary. A copy of the workplan shall be placed in section IV of the plan formulation document. The workplan shall identify the following:

(a) The planning representative;

(b) Overall goals, proposed procedures, and quarterly objectives;

(c) A planning budget;

(d) Sources of funds for the planning effort, including in-kind services, if any; and

(e) Any proposed deviations from the standard procedures required in this section and Sections 3 and 5 of this regulation. Deviations from the standard procedures in this regulation are allowed only with prior approval from the cabinet.

(2) Information review. The planning representative shall assemble and review information collected through the notification process described in subsections (3)(c) and (4) of this section. The planning representative shall review any plans and studies prepared within five (5) years previous to the base year by city, county, regional, state, and federal agencies that are related to water, sewer, waste management, or commercial and industrial growth. Existing water or water-related plans shall be described in section III of the final plan document.

(3) Obstacles to the planning process. The planning representative shall describe obstacles to the planning process that affect the potential accuracy, effectiveness, or implementation of the planning effort. These obstacles may include lack of equipment;

insufficient legal, fiscal or other resources necessary to implement data collection; inadequate authority or responsibility at any governmental or organizational level; or lack of available information. Appendix FPD-A of the final plan document shall identify and describe obstacles to the planning process, state the relevance of the incomplete or unavailable information to the planning process, and make recommendations to remove the obstacle for future planning efforts.

(4) County base map.

(a) The following information shall be located and identified on a map of each county in the planning unit: two (2) tick marks on both the right and left margins and two (2) along both the bottom and the top, each showing latitude and longitude; county boundary; state, federal, and significant county roads; hydrologic unit boundaries of watersheds; rivers, creeks, and other tributaries within the county or shared with contiguous counties; county seat; names and jurisdictional boundaries of first through fourth class cities; significant springs; water supply reservoirs; and dams. Maps of counties that have less than ten (10) fifth class cities shall show the name and location of these cities.

(b) County base maps shall be used as a base for each map required in this regulation, with the exception of the planning unit map and maps generated by state or federal agencies, or as specifically approved by the cabinet. The scale of county base maps and maps created using the county base map shall be between 1:24,000 and 1:90,000. The map document from which county base maps are compiled shall originally be a map at a scale of 1:90,000 or larger. Scales for county base maps in a planning unit shall be identical. Maps required in this regulation may be created as overlays to county base maps. The plan formulation document and the final plan document may include reduced copies of maps in addition to the maps created at the scale required in this paragraph.

(c) The county base map shall be placed in section V of the plan formulation document and section IV of the final plan document.

(5) Water use assessment. The planning representative shall assess water use for the base year. The planning representative shall use sources of data specified in this subsection unless the planning representative establishes that other information is more accurate or that the required information is not available. If a comprehensive water supply study has been completed within five (5) years of the base year by the U.S. Army Corps of Engineers for any area of the planning unit, the planning representative shall use the information developed in those studies, with corrections if data varies significantly from the latest U.S. census. Information developed in other water supply studies that have been completed within five (5) years of the base year may also be used, with corrections based on the latest U.S. census data, with the approval of the cabinet.

(a) Water suppliers and distributors.

1. Amounts of water used by water suppliers and distributors shall be determined for the base year. Usage shall be entered into a computerized database, using software described in subsection (7)(a) of this section. Water supplier and distributor usage shall also be determined for a historical year, four (4) to six (6) years prior to the base year. This

information shall be used to calibrate the forecasting software output. Usage data shall be disaggregated by usage sector.

2. Amounts of water used by water suppliers shall be determined from reports of metered water withdrawals, unless the planning representative justifies to the cabinet the use of other figures.

3. Amounts of water used by water supply distributors shall be determined from meter readings.

4. Water losses shall be calculated from the difference between metered readings of water purchased or withdrawn and water sold or otherwise accounted for.

5. Population figures used shall be based on the latest U.S. census and projections made by the Urban Research Institute [Studies Center] at the University of Louisville. These figures may be adjusted for the planning unit, with cabinet approval, if the planning representative justifies the need to do so.

(b) Water use for withdrawal permittees other than water suppliers or distributors shall be determined from water withdrawal permit records available from the cabinet. Water withdrawals in violation of the water withdrawal permitting program shall also be determined.

(c) Agricultural water use from each water source shall be estimated.

(d) Other permit-exempt water withdrawals, including water used for fire protection at rates less than 10,000 gallons per day and for domestic uses, shall be estimated. Permit-exempt water withdrawals shall be described by source classification and usage.

(e) Documentation of water use assessment. Written records shall be kept regarding the sources of any water use data. The sources of data and water use information compiled pursuant to this subsection shall be fully described in section VI of the plan formulation document and summarized in section V of the final plan document, unless otherwise specified.

1. The planning representative shall create a water use map of each county in the planning unit. The water use map shall identify water supplier intakes, water supplier wells, and permitted water withdrawal intakes or wells that do not serve water suppliers. The map shall identify the source type and use category of each permitted site. The map shall also show water withdrawal sites for entities that withdraw more than 10,000 gallons of water per day and are exempt from or in violation of the water withdrawal permitting requirements of KRS 151.140 through 151.170 and 401 KAR 4:010, and identify the source classification and use category of each permit-exempt user.

2. The planning representative shall create one (1) or more diagrams showing disaggregated use of water that was withdrawn by each water supplier, including the categories of domestic, industrial, commercial, municipal, and lost or unaccounted for water use during the base year. Disaggregated demand figures shall be listed with respect to the source of supply, unless these sources are interconnected.

3. The planning representative shall describe water use conflicts or potential conflicts, including those caused by groundwater pumping that affects other wells or surface water or by other existing or potential competing users.

(6) Water supplier source assessment.

(a) Data collection constraints. The planning

representative shall forecast the amount of available water, under normal and drought conditions, from each source being used by water suppliers in the planning unit during the base year. Methods for measuring water supply yield shall be preapproved or specified by the cabinet. The cabinet may approve deviations from the requirements in this subsection, if the planning representative demonstrates significant fiscal or other constraints. If a measure of available water is not accessible to each water supplier on a monthly basis, the planning representative shall estimate the cost of attaining those measurements. Data collection constraints shall be described in Appendix FPD-A of the final plan document.

(b) The planning representative shall summarize the soils and geologic characteristics of the planning unit. The planning representative shall obtain one (1) or more maps showing general characteristics of soils in the planning unit. These shall be included, as attachments if necessary, in section X of the plan formulation document.

(c) The planning representative shall calculate the amount of available water at the site of any water supplier intake on a stream. To determine water availability under normal conditions, the planning representative shall apply water withdrawal permitting program criteria to calculated average flow during the month of lowest flow and the seven (7) day, ten (10) year low flow. To simulate drought conditions, the planning representative shall calculate the seven (7) day, twenty (20) year low flow during the month of lowest flow. Data from the U.S. Geological Survey shall be used to make flow calculations unless the planning representative shows the cabinet that other data will provide more accurate information. If the watershed of the intake site extends beyond contiguous counties, the planning representative shall delineate an area as a recommended area appropriate for watershed protection.

(d) The planning representative shall calculate the available amount of water at the site of any water supplier intake in a water supply reservoir during normal and drought conditions. The planning representative shall also calculate streamflow into each water supply reservoir that stores runoff from a contributing watershed that drains more than thirty (30) square miles. Streamflow calculations shall be made as described in paragraph (c) of this subsection. If the watershed of the intake site extends beyond contiguous counties, the planning representative shall delineate an area as a recommended area appropriate for watershed protection.

(e) The planning representative shall calculate safe yield, specific capacity, zone of contribution and zone of influence for each water supplier well. The planning representative shall delineate an area as a recommended area appropriate for wellhead protection.

(f) The planning representative shall calculate available amount of water at the site of any water supplier intake at or below a spring. Flow calculations shall be made as described in paragraph (c) of this subsection. The planning representative shall delineate a recharge protection area that includes the recharge area of the spring.

(g) Documentation of source assessment. The planning representative shall prepare a water

supplier source map of each county in the planning unit. The source map shall show contributing watersheds and known recharge areas for each water supplier's source of water, such as known zone of influence for a well and recharge area for a spring. The water supplier source map shall also show recommended protection areas. Section VII of the plan formulation document shall show all calculations made pursuant to this subsection. Section VI of the final plan document shall include a chart showing the available yield of streams, reservoirs, springs, and water wells used by water suppliers. If the planning representative identifies constraints on water use related to quality or quantity, these shall be discussed in section VI of the final plan document.

(7) Water use forecast and assessment of treatment and total distribution capacity. Water supply demands shall be forecast for dates five (5), ten (10), fifteen (15) and twenty (20) years after the base year. The planning representative may develop as many as three (3) water use forecasts, each one related to variations in usage rates created by regulatory and nonregulatory measures to reduce the amount of water created by specific water uses. If a comprehensive water supply study has been completed by the U.S. Army Corps of Engineers within five (5) years of the base year for any area of the planning unit, the planning representative shall use the information developed in those studies, with corrections if data vary significantly from the latest U.S. census. Information developed in other water supply studies that have been completed within five (5) years of the base year may also be used, with corrections based on the latest U.S. census data, with the approval of the cabinet.

(a) Water suppliers.

1. Demand for water from water suppliers shall be forecast using computerized software that enable water use projections that are disaggregated according to type of usage, including type of residential unit. Planning representatives may use IWR-MAIN Water Use Forecasting System computer software produced by the U.S. Army Corps of Engineers Institute for Water Resources or similar software. Section VI of the plan formulation document shall include a listing of assumptions, data sources, and extrapolations used in forecasting water demand.

2. The planning representative shall identify and contact any single user that purchases twenty (20) percent or more of the water produced by any water supplier and review all available plans such users have that would affect future water use. These users, their plans and the impact of these plans on forecasted water use shall be summarized in section V of the final plan document.

(b) The planning representative shall forecast average daily water use for each type of water use described in subsection (5) of this section. Diagrams showing disaggregated, forecasted use of water shall be placed in section V of the final plan document.

(c) Assessment of treatment and total distribution capacity. Information related to assessment of treatment and total distribution capacity shall be placed in section V of the final plan document.

1. The planning representative shall determine existing treatment and total distribution capacity of the water supplier. The planning

representative shall create one (1) or more graphs comparing treatment and total distribution capacity, any planned expansion of treatment or total distribution capacity, and forecasted water use.

2. The planning representative shall determine if vertical elevation of an intake or capacity of a pump limits access to available water and describe access limitations.

3. For water suppliers whose water losses are greater than fifteen (15) percent, the planning representative shall estimate the cost of finding and repairing leaks. If water use is not metered, the planning representative shall estimate the cost of meter installation.

4. The planning representative shall prepare a service area map of each county in the planning unit showing the existing jurisdictional and service area boundaries of water suppliers and distributors.

5. The planning representative shall create a service area expansion map for each county in the planning unit showing existing expansion plans of water suppliers and distributors, including the proposed access sites of new sources of water. The service area expansion map shall be accompanied by an explanation that identifies projected dates of the expansions.

(8) Supply adequacy assessment. In order to determine water supply adequacy, the planning representative shall compare water source availability and water demands for the base year and forecasted demand for dates five (5), ten (10), fifteen (15), and twenty (20) years afterward, for each water supplier or source. By applying adequacy standards described in this subsection to each five (5) year increment, the planning representative shall identify the apparent date at which the current supply will no longer be adequate. Criteria described in this subsection shall be adjusted if a water supplier withdraws water from more than one (1) source of water. The cabinet may approve equivalent adequacy standards if the planning representative demonstrates the necessity to do so. Calculations for determining supply adequacy and a description of supply adequacy shall be documented in section VIII of the plan formulation document and summarized in section VII of the final plan document. If the existing source of supply is not adequate to meet forecasted needs for twenty (20) years after the base year, the planning representative shall inventory the water resources of the planning unit according to subsection (10) of this section. If the existing source of supply is adequate to meet forecasted needs for twenty (20) years from the base year, the planning representative shall evaluate and describe the security of access to supply for that period in section IX of the final plan document. Whether existing supply is adequate for twenty (20) years from the base year or not, the planning representative shall identify potential sources of water to use in case of contamination or similar emergency as described in subsection (13)(b) of this section.

(a) A stream shall be considered an inadequate source of water supply if the seven (7) day, ten (10) year low flow equals zero or if average rate of water use is more than eighty-five (85) percent of the available water under normal conditions.

(b) A water supply reservoir that stores runoff from a contributing watershed area of ten

(10) square miles or less shall be considered an inadequate source of supply if the available volume at normal pool provides less than 200 days of supply at the average rate of water use.

(c) A water supply reservoir that stores runoff from a contributing watershed that drains between ten (10) and thirty (30) square miles shall be considered inadequate if the available volume at normal pool provides less than 100 days of supply at the average rate of water use.

(d) The following chart shall be used to determine the adequacy of a water supply reservoir that stores runoff from a contributing watershed that drains more than thirty (30) square miles.

Days ²	Percent of Water Used ¹		
	0 - 70	71 - 85	86 - 100
<45	inadequate	inadequate	inadequate
45 - 60		inadequate	inadequate
61 - 100			inadequate

¹"Percent of water used" means average rate of water use divided by the amount of available water in the inflowing stream under normal conditions, times 100.

²"Days" means days of supply at the average rate of water use, stored in the water supply reservoir.

(e) A water supply well or well field shall be considered inadequate if the average rate of water use requires water withdrawal at a rate greater than the safe yield of the aquifer.

(f) A water supply spring shall be considered inadequate if the average rate of water use is more than eighty-five (85) percent of the available water under normal conditions.

(g) In addition to the minimum standards in this subsection, the assessment of supply adequacy shall consider the following:

1. Instream uses such as recreation and maintenance of both game and nongame aquatic life;

2. Water conservation and demand management practices for resolving any adequacy deficits;

3. The quantity impacts of significant water withdrawals in the watershed or recharge area of the water supplier source;

4. The downstream or down-gradient impacts of water supplier withdrawals on other users; and

5. Competing uses of the surface waters or aquifers from which each water supplier's water is being taken.

(9) Supply protection. The planning representative shall identify and evaluate the risk of water supply degradation, contamination, or depletion resulting from activities in the watershed or recharge area in the planning unit. The risk of water supply degradation, contamination, or depletion shall be documented in section IX of the plan formulation document and summarized in section VIII of the final plan document.

(a) The planning representative shall identify any potential source of contamination within the watershed of a surface water supplier source or within the recharge area of a water supplier spring, or the wellhead protection area of a water supplier well or well field. The planning representative shall develop a tabular display of the degree of hazard posed by potential contaminants of a water supplier source. The planning representative shall create a map of potential sources of contamination. The map and

the tabular display shall be placed in section VIII of the final plan document. Sources of potential contamination shall include, at a minimum:

1. Areas possessing known or potential sources of nonpoint source pollution;
2. Discharges permitted or tank batteries registered under 401 KAR 5:050 through 401 KAR 5:090 [080, the Kentucky Pollutant Discharge Elimination System];
3. Landfills, hazardous waste sites, and large, unpermitted or abandoned garbage dumps;
4. Active or inactive underground storage tank facilities that are registered with the Division of Waste Management;
5. Wells used for underground injection;
6. Facilities that store, utilize, or produce hazardous materials; and
7. Lagoon or surface impoundments or stock piles used to store or produce materials which could potentially contaminate water.

(b) The planning representative shall relate soils and geologic characteristics of the planning unit to the risks of water supply contamination, degradation, or depletion in section VIII of the final plan document.

(c) The planning representative shall describe local, existing regulatory and nonregulatory measures that protect the quality and quantity of the water supplier's sources in the planning unit in section VIII of the final plan document. Copies of local, existing regulatory measures shall be included in section IX of the plan formulation document.

(d) The planning representative shall formulate recommendations for local regulatory and nonregulatory measures to protect the quality and quantity of the water supplier's sources through watershed, recharge area, or wellhead protection programs. Local regulations and recommendations shall be described in section VIII of the final plan document.

(10) Water resources inventory. If the existing source of supply is not adequate to meet forecasted needs for twenty (20) years after the base year, the planning representative shall inventory the water resources of the planning unit. If inadequate, existing sources affect less than forty (40) percent of the counties in the planning unit, the cabinet may require an inventory or specific counties only.

(a) The planning representative shall prepare one (1) or more water resources maps of each county in the planning unit. Water resources maps shall be placed in section IX of the final plan document. Maps produced by federal or state agencies may be substituted for one (1) or more features and appended to section IX of the final plan document. Water resources maps shall show the following features:

1. The location of federally authorized or other significant rain and streamflow gauges;
2. Wetlands delineated by the U.S. Fish and Wildlife Service, under the National Wetlands Inventory program, and hydric soils delineated by the U.S. Soil Conservation Service;
3. Outstanding resource waters and coldwater aquatic habitat, as designated under 401 KAR 5:026 through 401 KAR 5:031, Kentucky water quality standards;
4. Generalized land use;
5. Active and abandoned mine works in which water is stored or from which water is discharged, if map information is available;
6. Geologic conditions, such as karst areas,

that may cause unique water quantity or quality problems, if this information is available;

7. Areas of cultural and/or archeological significance that may affect water resources of the planning unit;
8. Aquifers and groundwater recharge and discharge areas, if maps are available; and
9. Significant water-oriented recreational resources.

(b) The following information, if available, shall be compiled in paragraph or chart form, and placed in section X of the plan formulation document:

1. Historical streamflow data;
2. Average monthly precipitation from historical data;
3. State and federal requirements and policies affecting water availability;
4. Construction data, usage data and average monthly static water levels, where readily available, of wells used at average rates of more than 10,000 gallons per day;
5. Generalized quality of water;
6. Description of groundwater aquifers, including confining layers, flow characteristics, and predicted maximum yield; and
7. Ownership of dams or water body access rights to any reservoirs or impoundments.

(c) The planning representative shall acquire current U.S. Geological Survey topographic maps of the planning unit, scale 1:24,000, and append these to section IX of the final plan document.

(d) The planning representative shall assemble or identify all readily available printed information related to water resources in the planning unit and describe this information in section X of the plan formulation document.

(e) The planning representative shall place a summary of the available information that relates to the quality of water in the county in section IX of the final plan document.

(11) Water supply alternatives. If the existing sources of supply are not adequate to meet forecasted needs for twenty (20) years after the base year, the planning representative shall evaluate water supply alternatives related to each water supplier that does not have adequate supply. These evaluations shall be fully documented in section XI of the plan formulation document, summarized in section X of the final plan document, and presented to the planning council. Maps shall be used if their existence will clarify alternatives.

(a) The planning representative shall examine each alternative that could potentially provide adequate water for normal supply provisions. The planning representative shall clarify these alternatives for the planning council and the public, shall fully explain each alternative in the plan formulation document, and shall summarize each alternative in the final plan document. The planning representative shall clarify why other alternatives were deemed inadequate. Documentation and presentations to the planning council and the public shall clarify at least the factors listed below:

1. The degree to which the alternative contributes to the planning objectives;
2. Use of conservation and demand options, including legal, motivational, and technological water use efficiency measures;
3. The level of supply dependability;
4. Consistency with existing plans;
5. Environmental impacts;
6. The feasibility of providing adequate

pumpage and pressure to supply water from the alternative sources;

7. Costs associated with developing the alternative source;

8. Social, political, and economic impacts;

9. Potential sources of contamination of new sources of water;

10. Variations of water quality treatment capabilities or techniques required due to the characteristics of new sources of water;

11. The impacts and potential for conflicts with water uses that are not dependent on water suppliers, including private drinking water wells;

12. Supply protection; and

13. Changes in wastewater treatment and disposal systems required as a result of water supplier system expansion.

(b) If regionalization is considered a feasible alternative, the planning representative shall identify and evaluate the factors related to supply dependability, contamination and other risks, a recommended management structure for the regional unit, and economic cost to individuals, water suppliers, and governments.

(c) If interconnection between existing water suppliers is a specified alternative, the plan shall provide reasonable assurance that the resulting demand for water is included in any water use forecast performed in conjunction with water supply planning for the proposed interconnected water supply system.

(d) If capital improvement projects are proposed to implement the plan, the projects shall be described in the plan, including: design components; storage capacity; location alternatives; proposed construction schedule; expected federal, state and local costs; types of financing; and sources of local financing (subcounty, countywide, or multicounty).

(e) If any portion of any county in a planning unit is located within the watershed of the Kentucky River, the planning representative shall identify regulations promulgated by the Kentucky River Authority and portions of the Kentucky River Authority's water resource plan that are relevant to the planning unit.

(12) Primary alternatives. If any existing source of supply is not adequate to meet forecasted needs for twenty (20) years after the base year, the planning representative shall further evaluate one (1) or more specific alternative [shall be further evaluated] if the planning grant or other funds allow. Section XI of the final plan document shall include a detailed description of the selected alternative. A map shall be created if it will clarify the primary alternative or alternatives.

(13) Emergency plans. The planning representative shall prepare water shortage response and supply contamination plans, which [created pursuant to this subsection] shall be documented in section XIII of the plan formulation document and summarized in section XII of the final plan document.

(a) Water shortage response plans. If the water supply availability inventory indicates that water availability for any supplier will be less than adequate during drought conditions, the planning representative shall outline contingency plans for managing water demands and accessing alternate sources of water.

1. Water shortage response plans shall be based on the water shortage response plan

available from the cabinet, and shall include: identification of various levels of response; triggers that shall initiate these responses; actions and responses applicable to local government and the public for each response level; and penalties as necessary to ensure that the required actions are implemented.

2. Water shortage response plans shall describe the methods to be used by any affected water supplier to notify the public of the emergency and to provide the public with the information needed to understand the seriousness of the situation and to know what shall be done to properly respond to the situation.

3. Water shortage response plans shall identify sources of water for use during water supply emergencies and shall describe plans for receiving prior approvals, achieving access to the water, and adequately treating and distributing the water.

4. Water shortage response plans shall include a description of provisions made for activities to be performed by the Department for Military Affairs or the cabinet, if the emergency plan calls for any actions on the part of either agency. The discussion of such provisions shall include the types of activities to be performed by the Department of Military Affairs or the cabinet, at what level of water shortage these actions are to take place, approximately what it will cost the local community to reimburse the Department of Military Affairs' or the cabinet's expense, and documentation of agreement and approval from the appropriate agency.

5. Water shortage response plans shall describe any legal arrangements that are recommended or would be required to implement or enforce the emergency plans, including at least Public Service Commission approval when applicable.

6. Water shortage response plans shall identify who within the local government shall enforce the emergency provisions in the plan. The plan shall demonstrate that the local government has the authority to enforce these provisions.

(b) Supply contamination response plans. The planning representative shall develop contingency plans to be implemented if a water supply is contaminated or is threatened by contamination.

1. Supply contamination response plans shall describe methods of notifying state and federal agencies of the emergency.

2. Supply contamination response plans shall describe methods to be used by any affected water supplier to notify the public of the emergency and to provide the public with the information needed to understand the seriousness of the situation and to know what shall be done to properly respond to the situation.

3. Supply contamination response plans shall recommend sources of water for use during both short-term and long-term emergencies due to supply contamination and describe plans for receiving prior approvals, achieving access to the water, and adequately treating and distributing the water. Alternate sources of water for short-term use shall not be required to meet the adequacy standards described in subsection (8) of this section.

4. The planning representative shall assess water supplier distribution system capability to cope with contamination.

5. For water supply wells, the planning

representative shall evaluate the effectiveness of existing monitoring wells.

(14) Implementation plan. The planning representative shall determine the steps necessary to implement the water supply plan and describe these in section XIII of the final plan document.

(a) Plans for implementation shall include methods for updating and amending the plan document and addressing current or future potential conflicts.

(b) Implementation plans shall contain a timetable for initiation and completion of tasks and shall identify parties responsible for completing tasks.

(c) The planning representative shall create a chart showing the anticipated costs of implementation and describe proposed methods of financing, including reasonable estimates of the interest rates on loans and the per capita cost to water users.

(d) The planning representative shall recommend procedures to coordinate actions of local government, and other agencies that impact development decisions within the planning unit, with the water supply plan.

(e) The implementation plan shall describe existing authority to implement the plan and identify any legal changes or agreements that are necessary to implement the plan. If the planning council makes any written agreement towards the implementation of the plan or a portion of the plan, section XIII of the final plan document shall describe the nature of the agreement, the parties involved, and when the implementation will happen. Copies of any written agreement or resolution, including agreements to expand treatment facilities or use new water sources, shall be included in section XIV of the plan formulation document.

Section 7. Grant Provisions and Plan Approval. Water supply planning grants provided by the cabinet shall be used only to create water supply plans, and shall not be used for implementing water supply plans or to construct water supply facilities or distribution systems. Planning grants may be provided separately or jointly for phase one and phase two planning activities.

(1) Funding application.

(a) A county or planning representative may apply for a planning grant by submitting a form entitled "Water Supply Planning Financial Assistance Application," dated March, 1991 and hereby incorporated by reference. Copies of this form may be reviewed or obtained from cabinet offices at 18 Reilly Road, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m. from Monday through Friday, except holidays.

(b) The application period for requesting a planning grant for state fiscal year 1991 and 1992 funds shall be from the effective date of this regulation until ninety (90) days thereafter. The application deadline for subsequent state fiscal years shall be May 1.

(c) The cabinet shall review the application and may require the workplan to be revised if the cost of the water supply plan is unreasonable.

(2) Funding priorities. Water supply planning grants from available funds shall be distributed annually, as available. Unfunded applications from one (1) fiscal year may be carried over to the next fiscal year in their priority order.

The cabinet shall prioritize grant applications according to water supply needs and budget constraints, within the following categories of priority:

(a) First priority shall be given to grant applicants from either counties within which lie one (1) or more [a] water suppliers that have [serves thirty-five (35) percent of the county population and has] demonstrated drought vulnerability or significant conflicts related to shared sources of water supply or source degradation and which serve thirty-five (35) percent of the county population, or counties in which thirty-five (35) percent of the county population is solely dependent on groundwater and are not located adjacent to a stream with average flow of at least 15,000 cubic feet per second or an impoundment of at least 300,000 acre-feet. The cabinet may provide from eighty (80) to 100 percent of planning costs for these counties [planning units] if they are within multicounty units, and eighty (80) to eighty-five (85) percent if they are single-county units.

(b) Second priority shall be given for phase one planning activities only, and shall be given to grant applicants from multicounty planning units that include a water supplier with demonstrated drought vulnerability or significant conflicts related to water supply planning. The cabinet may provide these grant applicants eighty (80) to 100 percent of phase one planning costs.

(c) Third priority shall be given for phase one planning activities only, and shall be given to grant applications from counties [within multicounty planning units] without demonstrated drought vulnerability or water supply conflicts. The cabinet may provide from [these grant applicants] eighty (80) to 100 percent of planning costs for counties from multicounty planning units and eighty (80) to eighty-five (85) percent if they are single county units.

[(d) Fourth priority shall be given for phase one planning activities only, and shall be given to grant applicants from single-county planning units without demonstrated drought vulnerability or water supply conflicts. The cabinet may provide these grant applicants eighty (80) percent of planning costs.]

[(d) Fourth [(e) Fifth] priority shall be given to grant applicants from [multicounty] planning units without demonstrated drought vulnerability or water supply conflicts. The cabinet may provide from [these grant applicants] eighty (80) to 100 percent of planning costs for these counties if they are from multicounty planning units, and eighty (80) to eighty-five (85) percent if they are single-county planning units.

[(f) Sixth priority shall be given to grant applicants from single-county planning units without demonstrated drought vulnerability or water supply conflicts. The cabinet may provide these grant applicants eighty (80) percent of planning costs.]

(3) Local funding contributions.

(a) In-kind services. Local planning fund contributions may include up to fifty (50) percent of costs incurred during planning activities. Written records of these services shall be submitted to the cabinet for approval before matching funds will be released and documented in Appendix PFD-A of the plan formulation document.

1. Activities that shall not be considered as

in-kind services include those associated with advertising for, selecting, or administering contractual agreements and those associated with expenses incurred prior to notification to the cabinet.

2. Records shall be maintained to document expenditures of any in-kind services where cost-share financial assistance has been requested for plan development. These records shall be included in Appendix PFD-A of the plan formulation document and available for review when any financial assistance request is made for a partial reimbursement prior to final plan approval.

(b) Expenses incurred prior to grant approval. The cabinet may approve planning expenditures that have been incurred after notification to the cabinet of the intent to develop a water supply plan and prior to grant approval. If approved, these expenses shall be reimbursed at a rate of forty-five (45) percent. No more than seventy (70) percent of total reimbursed expenses shall have been performed prior to grant approval.

(4) Plan approval. The planning council shall submit one (1) copy of the plan formulation document and three (3) copies of the final plan document to the cabinet.

(a) No plan shall be approved by the cabinet unless it meets all the provisions of this regulation and is consistent with state laws and regulations.

(b) The cabinet shall examine the plan for consistency with other water supply plans that have been approved by the cabinet pursuant to this regulation. The cabinet shall notify planning councils of inconsistencies between water supply plans. If any portion of any county in a planning unit is located within the watershed of the Kentucky River, the cabinet shall examine the plan for consistency with regulations promulgated by the Kentucky River Authority and with the Kentucky River Authority's water resource plan and notify the planning council and the Kentucky River Authority of inconsistencies.

(c) The cabinet shall notify the planning council within ninety (90) days if any portion of the plan document is not consistent with statutes or regulations and shall identify any portion of the plan document requiring revision. The planning council shall subsequently submit a revision within 120 days after receiving notice of disapproval. The cabinet may extend the time period allowed to revise a plan document if a planning council submits written justification to postpone the deadline.

(d) Payments. No payments shall be made to a grant recipient for work that does not conform to the approved plan. As part of the grant contractual agreement, the cabinet may specify a schedule for payment based on submittal and approval of work elements. No more than eighty (80) percent of any total grant allotment shall be paid until grant conditions have been met and work completed under the planning grant has been approved by the cabinet.

CARL H. BRADLEY, Secretary

FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: May 7, 1991

FILED WITH LRC: May 7, 1991 at noon

COMPILER'S NOTE: The following regulation, 401 KAR 6:310, was amended by the promulgating agency and the Interim Joint Committee on Agriculture and Natural Resources, and became effective on May 22, 1991.

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

401 KAR 6:310. Water well construction practices and standards.

RELATES TO: KRS 223.400 through 223.460, 223.991

STATUTORY AUTHORITY: KRS 223.420, 223.435, 224.020

NECESSITY AND FUNCTION: This regulation provides standards and requirements for the commercial practice of water well drilling. These requirements are necessary to ensure that the completed [complete] well provides an appropriate quality of product to the consumer while protecting the ground water resources of the Commonwealth. This regulation [furthermore] fulfills the mandate of KRS 223.435 to promulgate regulations establishing standards of practice for water well construction and of KRS 224.020 to protect water quality. [a requirement of law.]

Section 1. Definitions. The terms used in 401 KAR 6:320 and this regulation shall have the meanings given in KRS 223.400, 224.005, or in this section:

(1) "Abandoned" means a well unsuitable for its intended use that has been sealed or plugged to prevent entry of surface water and to prevent mixing of water from different aquifers.

(2) "Annular space" means the opening between a well-bore or excavation and the well casing or between a casing pipe and a liner pipe.

(3) [(2)] "Aquifer" means a water-bearing formation that transmits water in sufficient quantity to supply a well.

(4) "Bedrock" means any solid rock exposed at the surface of the earth or overlain by unconsolidated materials or soils.

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

(5) [(4)] "Consolidated formation" means a geological formation which is [firm, such as] bedrock.

(6) [(5)] "Construction" means all acts necessary for obtaining ground water by wells, including drilling or excavation of the well and installation or modification of casing, but excluding the installation of permanent pumps and pumping equipment.

(7) [(6)] "Driller" means water well driller as defined in KRS 223.400.

(8) [(7)] "Established ground surface" means the elevation of the ground surface at the site of the well.

(9) [(8)] "Finished ground surface" means the final or permanent elevation of the ground surface at the site of the well.

(10) "Impervious [material]" means any material which will not permit the passage of water at a rate greater than 1 x 10⁻⁷ centimeters per second (cm/sec) (e.g., clay).

(11) [(9)] "Modification" means any change, replacement, or other alteration of the water

well. This includes, but is not limited to deepening of a well, replacing or repairing a casing, replacing [repair] or repairing a [replacement of] well screen, installing [installation of] a pitless adapter and any other changes of a well structure. Bailing and pump replacement are not modifications.

(12) "Monitoring well" means a well constructed when the actual or intended use in whole or part is the removal of water for the purpose of sampling, measuring or test-pumping for scientific, engineering or regulatory purposes.

(13) [(12)] "Pitless well adapter" means a device designed for attachment to one (1) or more openings through a well casing. It shall be constructed so as to prevent the entrance of contaminants into the well through the opening, protect the water supply lines and plumbing from freezing and provide access to water system parts within the well.

(14) [(13)] "Pitless well unit" means an assembly which extends the upper end of the well casing to above the finished ground surface. It shall be constructed so as to prevent the entrance of contaminants into the well, conduct water from the well, protect the water lines from freezing, and shall provide full access to the well and to water system parts within the well.

(15) [(14)] [(10)] "Pumping water level" means the elevation of the water surface in a well when water is discharged during pumping.

(16) [(15)] "Rig operator" means any individual under supervision of a driller for whom an application has been submitted and who has been given a rig operator card from the cabinet and who may from time to time be in charge of well construction in the driller's absence.

(17) [(16)] "Rig operator card" means an identification card provided to a rig operator by the cabinet after a certified driller has submitted an application requesting a card for the rig operator.

(18) [(17)] [(11)] "Static water level" means the level at [of] which water stands in a well when no water is being taken from the aquifer either by pumping or by free flow.

(19) [(18)] [(12)] "Unconsolidated formation" means a geological formation [above bedrock,] such as sand or gravel, which has a tendency to cave in under natural conditions.

(20) [(19)] "Well unsuitable for its intended use" means a well:

- (a) The use of which has been permanently discontinued;
- (b) Which is in such a state of disrepair that it cannot be used to supply groundwater;
- (c) Which presents a health hazard;
- (d) From which groundwater for useful purposes is not obtainable; or
- (e) Bore-holes which:
 - 1. Are dry;
 - 2. Have caved in; or
 - 3. Are unsuitable for further development and well construction.

Section 2. Scope. This regulation provides minimum standards for location, construction and modification of water wells [as defined in Kentucky Revised Statutes, Chapter 223]. [After the effective date of this regulation,] No water well [or monitoring well] [as defined above] shall be constructed or modified contrary to the

provisions contained in this regulation. Sections 3 through 12 of this regulation apply to water wells except monitoring wells. Section 13 of this regulation applies to monitoring wells. Wells used solely for the purpose of recovery of pollutants shall not be included in this regulation. [herein.]

Section 3. General Requirements. (1) Certified driller required. All water wells subject to this regulation shall be constructed only by persons having a valid certificate issued in accordance with KRS [under Kentucky Revised Statutes, Chapter 223, Sections] 223.400 through 223.460 and 401 KAR 6:320, or by persons under [in] the supervision [employ] of [such] certificate holders and having a rig operator card.

(2) Reports. Within thirty (30) days after a water well has been constructed or modified, the driller shall submit a report of construction to the cabinet [on such forms as are prescribed and furnished by the cabinet]. The report shall be submitted on the form entitled Kentucky Water Well Record (DEP-4045).

(3) Variance.

(a) If conditions are believed to exist at [of] a proposed installation site which preclude compliance with the requirements of this regulation, the driller may request a variance by submitting to the cabinet a Kentucky Water Well Variance Request Form (DEP-6036) [written request] outlining a specific proposal to be used in lieu of compliance with this regulation. The request shall include a thorough description of the site (lot size, the location of sewers, septic tanks, buildings, seepage fields, and other sources of contamination on the property and adjacent property with distances shown to the proposed well), the section number and brief summary of the provisions for which a variance is requested, and a complete justification as to why [the cabinet should approve] the variance is needed and how the alternate standard ensures the protection of the quality of the groundwater and the protection of public health and safety. The driller shall give special emphasis [should be given] to ensuring the protection of the public's health and safety. The driller shall provide a description of site-specific geologic [geological] and soil conditions [shall also be included]. The cabinet shall [will] notify the applicant in writing within thirty (30) days of its decision either to grant or deny the variance based upon a determination by the cabinet that the proposed variance shall ensure the protection of the quality of the groundwater and protection of the public health and safety. The driller shall request a variance and shall obtain approval [shall be requested and approved] before well construction begins. In case of an emergency, where the delay incurred due to the above-described variance procedure would cause undue hardship or loss of life to the intended user, the driller may obtain an oral variance, provided the above-listed information is provided to the cabinet within fifteen (15) days of the date such oral variance is issued.

(b) After any variance is issued regarding the location of a well with respect to various contamination sources in Section 6 of this regulation, the driller for which a variance has been issued[, the driller] shall take two (2) water samples from the well and have them

analyzed for fecal coliform at a cabinet-approved laboratory. [(A listing of these laboratories is available on request. Other laboratories may be approved by the cabinet on a case-by-case basis.)] The cabinet may require analysis for other water quality parameters which may [might reasonably be expected to] exist in conjunction with the source of potential pollution as [if] necessary to protect the health or safety of potential users. At the time the variance is approved, the cabinet shall [will] notify the driller as to what these parameters will be. One (1) sample shall be taken within thirty (30) days and the second sample shall be taken within sixty (60) days, but not less than thirty (30) days, after completion of the well.

(c) Examples of location problems which could preclude compliance with this regulation would be where the proposed location of a well is too close to septic tanks, buildings, sewer lines, or barnyards as indicated in Table A.

(d) Examples of public health and engineering principles that may [will] be considered in issuing a variance are ground surface conditions, depth of the water table, the location of sources of pollutants [contamination], the vulnerability [ability] of the aquifer [existing soil] to [remove] bacteria and other pollutants, and the geologic conditions at the site.

(4) Water sampling. All water samples [pursuant to KRS 223.400 et seq. or this regulation] shall be delivered to the laboratory within six (6) hours of the time they are taken and shall be kept at four (4) degrees centigrade (or forty (40) degrees Fahrenheit) during that time, but shall not be frozen. Containers for the water samples shall be sterile glass or plastic. However, drillers may obtain approval from the cabinet to perform fecal coliform analyses (except those required for variance approval) if [provided] they can demonstrate to the cabinet that they are capable of providing an accurate analysis. [The cabinet will approve the variance if the proposal is in accord with accepted public health and sanitary engineering principles and practices, and if the resulting water well pump installation can be expected to provide a continuously safe and sanitary water supply.]

(5) Display of certificate number. Drillers shall have their certificate numbers permanently affixed and prominently displayed on all drilling equipment used at construction sites. The certificate number shall be inscribed in the following manner: KY.CERT. XXXX-XXXX (insert certificate number in place of the X's). Numbers shall be at least three (3) inches in height and of a color that is easily distinguishable from that of the equipment. This number shall be removed if equipment is scrapped, sold, or otherwise changes ownership or if the driller's certificate becomes invalid.

(6) The documents listed in paragraphs (a) and (b) of this subsection are adopted and filed herein by reference. Copies of these documents may be obtained from the Natural Resources and Environmental Protection Cabinet, Division of Water, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410. The material is available for public inspection and copying during business hours of 8 a.m. to 4:30 p.m. at the Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601, (502)

564-3410.

(a) Kentucky Water Well Record (DEP-4045) (September 15, 1987); and

(b) Kentucky Water Well Variance Request Form (DEP-6036) (January 1, 1991).

Section 4. Design Factors. The driller shall design [of] each well to [shall] include the following:

(1) Natural protection. Location of the well shall include use of every natural protection available to promote sanitary conditions.

(2) Geological formations. The well construction shall be adapted to the local or site-specific geologic formations and ground water conditions [at the site].

(3) Undesirable geological formations. Water bearing formations shall be prevented from contributing to a well [excluded] by installing casing or a liner and properly sealing when such formations contain undesirable water or when the primary purpose for the well is to withdraw water from a deeper formation.

(4) Capacity. The well shall be constructed with the capacity [Capability of the well] to produce as much quantity of the desired water [quantity] as the aquifer or aquifers can safely furnish.

(5) Durability. Construction methods and materials shall provide a durable well capable of maintaining safe water and protecting the aquifer over its useful lifetime and until the well is properly [sealed and] abandoned.

(6) Pitless well adapters. No well casing shall be cut off or cut into below ground surface except by a driller to install a pitless well adapter or pitless well unit. The well casing shall extend at least four (4) inches above established ground surface. If practicable, the well casing shall extend above any known conditions of flooding or run-off from the surrounding land after installation of a pitless well adapter or pitless well unit. Construction or installation of [.] pitless well adapters or pitless well units shall be done in such a manner to provide a leak-proof seal [shall comply with the requirements of the National Sanitation Foundation (NSF) Standard Number C-8, entitled Pitless Well Adapters, May 1970 edition and shall bear the NSF seal].

Section 5. Location. (1) General. In establishing the location of a well, the driller shall consider [give the consideration to] sources of pollutants [contamination] which exist on or adjacent to the premises where the well is to be located. As far as possible, the well shall be located on ground which is higher than sources of pollutants [contamination] and shall have ready access for repairs, maintenance, treatment and inspection.

(2) Relation to sources of pollutants [contamination]. In establishing [Determination of] minimum lateral distances to locate a well from potential sources of pollutants, the driller shall consider [contamination involves evaluation of] the character and location of the sources of pollutants [contamination], types of geologic formations present, depth to the aquifer, direction of ground water flow, effect on the ground water movement by well pumping and possibilities of flooding of the site by surface waters. Sources of pollutants [contamination] such as streams, refuse disposal sites, excavations, waste treatment facilities, buried

oil and gasoline storage tanks, improperly constructed wells and cisterns shall be evaluated and a distance determined based on the pertinent facts.

(a) The minimum lateral distances shown in Table A shall apply for the sources of pollutants [contamination] listed [therein].

(b) When the upper formations are composed of materials with a permeability of 1×10^3 centimeters per second or greater, [more pervious than clay or loam,] the lateral distances in Table A shall be doubled [increased (i.e. double the distance for highly pervious gravel formation)].

(3) Flood water. The construction of wells in locations subject to flooding shall [should] be avoided. If no reasonable alternate site exists, wells may be constructed in flood zones only if water-tight construction is provided. If practicable, [provided special protective construction is included.] the casing of the well shall [should] terminate not less than two (2) feet above the maximum known flood elevation. [In all instances, the casing shall terminate sufficiently above grade or above any known conditions of flooding by drainage or run-off from surrounding land.]

(4) Relation to building. With respect to buildings, pits, and basements, the location of a well shall be as follows:

(a) Adjacent to building. When a well must be located adjacent to a building, it shall be so located that the center line of the well extended vertically will clear any projection from the building by not less than five (5) [two (2)] feet.

(b) Pits and basements. New wells shall not be constructed in pits or basements.

Section 6. Drilled Wells in Unconsolidated Formations. (1) General. [Unconsolidated formations such as sand and gravel may extend to or near the ground surface. Generally, however, they lie below the ground surface at varying depths and are covered by an overburden of earth. The kind, nature and depth of the overburden are factors in determining how a well shall be constructed.]

[(2) Unconsolidated formations with nonstable overburden.] In wells constructed in unconsolidated formations which extend the full depth of the well, including the screened area, the driller shall install [have] a permanent casing, [installed] governed by the pumping level in the finished well. For pumping levels greater than twenty (20) feet below the ground surface, the driller shall install casing that [shall] extends five (5) feet below the pumping level. For pumping levels twenty (20) feet or less below the ground surface, the driller shall install casing that [shall] extends ten (10) feet below the pumping level. Under no conditions shall a driller install [there be] less than twenty (20) feet of permanent casing, excluding the screened interval. The driller shall fill the annular space between the casing and the drill hole. This may be accomplished by constructing an upper drill hole having a diameter four (4) inches greater than the inner diameter of the casing to be installed and extending to a depth of at least twenty (20) feet. The driller shall seal the upper drill hole with impervious drill cuttings, native clay, bentonite, or a neat cement-bentonite slurry after the casing is in place. Cable-tool

drilling may accomplish proper seal through dry bentonite application while driving casing. [installed. (See Illustration A.)]

[(3) Unconsolidated formations with stable overburden. Wells constructed in geological formations such as sand and gravel which lie below clay, glacial till or other relatively stable soil shall have a casing installed governed by the pumping level. For pumping levels greater than twenty (20) feet, the casing shall extend five (5) feet below the pumping level. For pumping levels twenty (20) feet or less, the casing shall extend ten (10) feet below the pumping level. Under no conditions shall there be less than twenty (20) feet of permanent casing installed. Since the stable overburden cannot be expected to form a continuous contact seal with the casing, sealing of the annular opening between the casing and the drill hole must be effected. This can be accomplished by constructing an upper drill hole having a diameter four (4) inches greater than the inner diameter of the casing to be installed and extending to a depth of at least twenty (20) feet. The upper drill hole shall be sealed with drill cuttings, clay slurry or cement grout after the casing is in place. (See Illustration B.)]

[(2) [(4)] Gravel pack construction. When an oversized drill hole (i.e., more than four (4) inches greater than the inside diameter of the casing [nominal diameter]) is constructed to permit the placement of a gravel pack around the well screen, the driller shall seal the annular space [opening] between the casing and drill hole [shall be sealed] in the top twenty (20) feet or twenty (20) feet below the point of pitless adapter attachment with impervious drill cuttings, native clay, a [concrete or] neat cement-bentonite slurry [grout] or bentonite. If a permanent outer casing is installed, the driller shall extend the outer casing [it shall extend] to a depth of at least twenty (20) feet and, depending on the formations present, seal the annular space [opening] between the drill hole and the outer casing [shall be sealed] with impervious drill cuttings, native clay [slurry], bentonite, or a neat cement-bentonite slurry [grout]. The driller shall seal the annular space [opening] between inner and outer casings [shall be sealed] to prevent the entrance of pollutants [contamination] from the surface. [(See Illustration C.)]

(a) All gravel placed in the well shall be clean, washed and disinfected prior to placement or provisions made for disinfection in place.

(b) Gravel refill pipes may be installed if they terminate above established ground surface and are provided with watertight caps.

(c) In wells designed for placement of an artificial gravel pack, the driller shall [be] provide[d with] an adequate screen having openings sized on the basis of the grain size of the gravel. The driller shall develop the well [shall be developed] to ensure free entry of water without sediment.

(d) Under no circumstances shall the gravel pack extend to any closer than twenty (20) feet of the established ground surface.

Section 7. Drilled Well Construction in Consolidated Formations. (1) Where the soil overburden is [less than] thirty (30) feet or less in thickness, the driller [well casing] shall drive or otherwise provide a watertight

seal [extend] to a depth of at least twenty (20) feet below ground level and at least ten (10) feet into [firm] bedrock. The diameter of the drill hole shall be a minimum of one and three-quarter (1 3/4) [two (2)] inches greater than the inner diameter of the casing. The driller shall fill the annular space [shall be sealed] with a neat cement-bentonite slurry [grout], bentonite, native clay, impervious drill cuttings, or a mechanical packer in combination with one (1) or more of the above materials. The driller shall install plastic casing as required in subsection (7) of this section.

(2) Where the soil overburden is greater than thirty (30) feet in thickness, [and] the driller shall install the casing to a watertight seal, a minimum of two (2) feet into stable rock. When the casing is driven, the driller shall fit the casing with a drive shoe and drive the casing to a watertight seal. The driller shall seal the [shall be fitted with a drive shoe, when driven, and shall be driven to a firm seat in the limestone or dolomite and the] annular space around the casing [through the soil overburden sealed] with impervious drill cuttings, native clay [slurry], bentonite, a neat [or] cement-bentonite slurry or a mechanical packer in combination with one (1) or more of the above materials. The driller shall install [grout. (See Illustration E.)] plastic casing [shall be installed] as required in subsection (7) [(5)] of this section.

(3) Where the well is drilled to obtain water from the bedrock, beneath a thick (greater than thirty (30) feet) overburden of soil or unconsolidated formations which are unstable and will settle back around the casing, the driller shall drive the well casing to a watertight seal. In instances where a temporary surface casing must be installed to stabilize the bore-hole and in order to facilitate drilling and permanent casing installation, the driller shall fill the annular space around the well casing with impervious drill cuttings, bentonite, a neat cement-bentonite slurry or native clay to a depth of at least twenty (20) feet. The driller shall not install plastic casing under these conditions.

(4) [(3)] Where the well is drilled to obtain water from a lower formation the driller shall extend the casing [shall extend] at least two (2) feet below [through] any creviced formation or fractured formation encountered and drive or install the casing watertight into stable [be seated in form] bedrock. The diameter of the drill hole through the creviced formation shall be a minimum of one and three-quarter (1 3/4) [two (2)] inches greater than the inner diameter of the casing. The driller shall seal the annular space [shall be sealed] with a neat cement-bentonite slurry [grout], bentonite, native clay, impervious drill cuttings, or a mechanical packer in combination with one (1) or more of the above materials. Where an outer casing is left in place, the driller shall seal the annular space between the casings [shall be cement grouted or the annular opening around the outer casing shall be sealed] with impervious drill cuttings, native clay [slurry], bentonite, a neat cement-bentonite slurry [grout], or a mechanical packer in combination with one (1) or more of the above materials. In instances where voids are encountered, the driller shall extend the casing a minimum of two (2) feet into stable

rock [at depth, an effective seal must be installed] below the lowermost void and shall seal the annular space with impervious drill cuttings, bentonite, a neat cement-bentonite slurry, clay or a mechanical packer in combination with one (1) or more of the above materials. [(See Illustration D.)]

(5) [(4)] Flowing artesian well. All flowing artesian wells shall be shut in. The driller shall install casing [shall be installed] to eliminate flow in the annular space and shall seal the annular space [opening] between drill hole and casing [sealed] with a neat cement-bentonite slurry [grout], bentonite, native clay, impervious drill cuttings, or a mechanical packer in combination with one (1) or more of the above materials.

(6) In all wells where the casing is driven, the driller shall not use plastic casing.

(7) [(5)] Plastic casing installations. When plastic well casing is installed, the drill hole shall be a minimum of two (2) inches greater than the inner diameter of the casing. The driller shall clean the pipe spigot and socket [shall be cleaned] and treat[ed] it with a cleaner-primer. The driller shall solvent cement the joints [shall be solvent cemented] with a quick-setting cement, or thread[ed] and couple[d] the joints. Other types of joints may be evaluated and approved by the cabinet. The driller shall cement a coupling [shall be cemented] on the bottom of the casing to stabilize it in the hole or use centralizers [used]. The driller may use a steel nipple five (5) to ten (10) feet long [may be used] on the bottom of the casing in lieu of the coupling when the well will be continued by drilling out through the bottom of the casing. In [rock] wells completed in consolidated formations, the driller shall set the casing [shall be set] into [the] bedrock a minimum of ten (10) feet where the overburden is [less than] thirty (30) feet or less in thickness and a minimum of two (2) feet where the overburden is greater than thirty (30) feet in thickness to prevent leaking around the end of the casing. In wells in bedrock where the well will be drilled to total depth before casing is installed, the driller shall install [In areas where the water is obtained at the rock surface, the casing shall be set at or just above the rock.] a watertight mechanical [formation] packer at [shall be installed just above] the bottom of the lowermost string of casing. The driller shall seal the annular space [opening] between the casing and wall of the drill hole [shall be sealed] with at least five (5) feet of bentonite immediately above the packer. The driller shall fill the annular space above the bentonite seal with impervious drill cuttings, native clay, bentonite, or a neat cement-bentonite slurry. [slurry or neat cement grout.]

(8) In areas where the overburden is at least fifteen (15) feet thick and water can only be obtained at or just above the rock surface, the driller shall set the casing at or just above the rock. Under these conditions, the driller shall seal the lowermost part of the annular space between the casing and wall of the drill hole with a minimum of two (2) feet of bentonite. The driller shall fill the remaining annular space above the bottom seal to a surface with a neat cement-bentonite slurry, bentonite or impervious clay. There shall be no less than twelve (12) feet of overburden from

the ground surface to the bottom of the seal. If the casing is to be slotted or a screen installed, the driller shall not extend the slotted section above the bottom of the bentonite or cement seal. If water is encountered in drilling into the rock to develop a reservoir, the driller shall choose which water source is to be used and seal off all others.

Section 8. Special Type Wells. (1) General. Wells in this classification are dug, bored, driven, and radial collector. The choice of any one (1) of these as opposed to a drilled well is largely dictated by the characteristics of the water-bearing formations or aquifers in the local areas.

(2) Bored or dug well - well not finished with buried slab. Bored or dug wells that are not finished as buried slab wells shall comply with the following [(see Illustration F)]:

(a) Annular space [opening]. The driller shall grout the open space between the excavation and the installed casing [shall be grouted] with concrete. The driller shall pour the concrete [shall be] a minimum of six (6) inches thick and [be poured] without construction joints from the ground surface to a minimum of ten (10) feet below ground level. The driller [contractor] shall be responsible for the installation of the concrete grout. The driller shall insure that the diameter of the well bore below the grouting is [shall be] a minimum of four (4) inches greater than the outside diameter of the well casing and is [shall be] filled with a [pea] gravel pack from [to] the well bottom to the water-producing formation and with impervious material from the top of the gravel pack to the bottom of the concrete grout. The driller shall not extend the gravel pack any closer than ten (10) feet of the ground surface.

(b) Upper terminal. The driller shall extend the casing [shall extend] at least eight (8) inches above finished ground surface. The [A] driller shall provide a cover slab at least four (4) inches thick, adequately reinforced and having a diameter sufficient to extend to the outer edge of the casing [shall be provided]. The slab shall be constructed without joints. The driller shall slope the top of the slab [shall be sloped] to drain to all sides and shall provide a watertight joint [made] where the slab rests on the well casing. If a manhole is [, if] installed, the driller shall insure that the manhole [shall] consists of a curb cast in the slab [and] extending four (4) inches above the slab. The driller shall provide [manhole shall have] a watertight cover having sides which overhang the curb at least two (2) inches for any manhole.

1. If installing a vent [is installed], the driller shall provide a vent that [it shall] consists of pipe extending above the slab with the open end turned down and not less than six (6) inches above the slab. The driller shall cover the open end [shall be covered] with twenty-four (24) mesh or finer screen of durable material. [Venting is recommended.]

2. The driller shall cast in place adequate sized pipe sleeve or sleeves [shall be cast in place] in the slab to accommodate the type of pump or pump piping proposed for the well.

(3) Bored or dug well - buried slab construction. The driller shall terminate the well casing [shall be terminated] at a depth of

ten (10) feet or more below the ground surface. The driller shall use well casing meeting [shall meet] the requirements in Section 9 of this regulation. The driller shall firmly imbed or connect the casing [This casing shall be firmly imbedded in or connected] to a pipe cast in a reinforced buried concrete slab. The casing shall be a minimum of four (4) inches in diameter and extend from the concrete slab to at least eight (8) inches above finished ground surface. The driller shall fill the annular space [opening] between the casing pipe and the well bore [shall be filled] with clean impervious material [earth] thoroughly tamped to minimize settling. The driller shall make the diameter of the well bore below the buried slab [shall be] a minimum of four (4) inches greater than the outer diameter of the well casing. The driller shall fill the well bore [and shall be filled] with a [pea] gravel pack from [to] the well bottom to the water table and with impervious material from the top of the gravel pack to the bottom of the concrete slab. The driller shall not extend the gravel pack any closer than ten (10) feet of the ground surface. [(See Illustration G.)]

(4) Driven well. The well point, drive pipe and joints shall be structurally suitable to prevent rupture or distortion during the driving of the well. The driller shall construct the top ten (10) feet of the hole to a diameter of at least two (2) inches greater than the inner diameter of the drive pipe. The driller shall fill the annular space around the drive pipe with impervious material. [If aids to driving are used, such as an augered starting hole or water jetting, the annular space around the drive pipe shall be sealed with cement grout or puddled clay.] The type of pump proposed for the well will determine how the top ten (10) feet or more of the well shall be completed. If the working barrel of a hand pump is to be located below ground surface, the driller shall enclose the upper portion of the well [shall be enclosed] in steel or iron casing pipe to a point below the barrel. So called "frost pits" curbed with stone, brick, tile, or other materials [etc.,] shall not be installed [are prohibited].

(5) Radial collector well. Approval [Approved] of plans for the well shall be obtained from the cabinet before construction. Factors that shall [will] be considered for approval of a radial collector well [will] include depth of well, types of soil formations, location of well and sources of potential contamination in the surrounding area.

Section 9. Construction Materials and Other Requirements. (1) Casing and liner pipe. In selection of casing and liner pipe, the driller shall consider [consideration shall be given to] the stress to which the pipe will be subjected during construction and the corrosiveness of the water with which it comes in contact. The driller shall install steel or plastic casing, except for bored or dug wells, which the driller shall construct in accordance with Section 8 of this regulation and except for monitoring wells, which the driller shall construct in accordance with Section 13 of this regulation. The driller shall install all pipe and casing in accordance with manufacturer's specifications. The driller shall not install used or rejected casing or pipe shall not be used.

(a) The driller shall install steel well casing that [shall meet one (1) of the following standards: American Society For Testing Materials (ASTM) A-53-81A, A-120-82, A-589-81A, or American Petroleum Institute 5L, March, 1982 Edition] [and] conforms to the minimum standards given in Table B; or [.]

(b) The driller shall install plastic well casing and liners that [shall] meet the requirements given in Table C [of ASTM Standard F-480-81 and the National Sanitation Foundation Standard Number (NSF) 14-1980, Plastic Piping System Components and Related Materials]. Evidence of compliance shall be [inclusion in the current NSF listing and] display of the National Sanitation Foundation [NSF] seal on each section of casing[, and marking the casing in accordance with the requirements of ASTM Standard F-480-81].

(c) The driller shall install plastic well casing and liners that are [must be] Standard Dimension Ratio (SDR) rated, have a minimum impact classification of IC-1 [in accordance with ASTM Standard F-480-81 as a minimum], and conform to the minimum requirements given in Table C.

(2) Outer casing. The driller shall install casing, intended for construction purposes only, that is [shall be] of weight and design as necessary to be watertight and permit installation without distortion or rupture to the specified depth. The driller shall remove the outer casing [, and shall be removed] upon completion of the well.

(3) Joints. The driller shall insure that all casing and liner pipe joints are [shall be] watertight.

(4) Screens or perforated or slotted casing. The driller shall install screen or perforated or slotted casing openings that [shall] provide the maximum amount of open area consistent with strength of screen or casing and the grading of the water-bearing formation or gravel pack. The driller shall install materials with openings that [shall] permit maximum transmitting ability without clogging or jamming and are sized to provide sediment-free water to the well. Screens shall be made of noncorrosive material.

(5) Drive shoe. The driller shall equip the pipe that is to be driven [shall be equipped] with a drive shoe. The driller may use a collar or coupling for light driving. No driller shall drive plastic casing.

(6) Grouting guides. The driller shall provide a centering shoe for protective casing that is to be grouted in the drill hole or annular space. The driller [opening shall be provided with a centering shoe and] shall provide [have] sufficient guides or centralizers to permit the unobstructed flow and deposition of the thickness of grout specified.

(7) Cement grout. The driller shall use the procedures and materials for preparing and placing cement grout that [shall be as] follow:

(a) Concrete grout. The driller shall mix [mixture shall consist of] cement, sand, and water in the proportion of one (1) bag of cement (ninety-four (94) pounds) and an equal volume of dry sand to not more than six (6) gallons of clean water.

(b) Neat cement grout. The driller shall mix [mixture shall consist of] one (1) bag of cement (ninety-four (94) pounds) to not more than six (6) gallons of clean water. [Additives such as bentonite or aquajel or similar materials may be

added up to six (6) percent by weight to increase fluidity and to control shrinkage.]

(c) Neat cement-bentonite slurry. The driller shall mix one (1) bag of cement, (ninety-four (94) pounds) to seven and one-half (7 1/2) gallons of clean water and two (2) to six (6) percent bentonite (by weight two (2) to six (6) pounds) to increase fluidity and to control shrinkage.

(d) [(c)] Application. The driller shall perform all cement grouting [shall be performed] by adding the mixture from the bottom of the annular space [opening] upward in one (1) continuous operation until the annular space [opening] is filled or to the point of pitless adapter attachment. The driller may add bentonite, aquajel, or similar materials [may be added] to the annular space [opening] in the manner indicated for grouting, prior to the cement grouting, to seal any small crevices or fissures and assure that the annular space is open.

(e) [(d)] Setting time. The driller shall not resume drilling operations [shall not be resumed] until the cement grout has set and hardened for at least forty-eight (48) hours when high-early-strength cement is used and at least seventy-two (72) hours when regular cement is used. The driller may reduce setting time [may be reduced] from forty-eight (48) hours with high-early-strength cement and seventy-two (72) hours with regular cement by addition of manufacturers' approved chemicals and following manufacturers' recommendations for setting time.

(8) Plumbness and alignment. The driller shall ensure that the bore of the hole is [shall be] sufficiently plumb and straight to receive the casing without binding. The driller shall ensure that the casing is [shall be] sufficiently plumb and straight that it will not interfere with installation and operation of the pump.

(9) Construction water. The driller shall obtain water used in the drilling process [shall be obtained] from a source which will not result in the introduction of pollutants into [contamination of] the well.

(10) For air rotary drilling, the driller shall inject water [shall be injected] into the air stream at the rate of approximately three (3) gallons per minute.

(11) Drill cuttings. The driller shall use drill cuttings that are impervious to fill the annular space of a well [that are impervious material] to prevent surface water from percolating down the drill hole.

(12) The driller shall not use any material containing lead in constructing a water well.

Section 10. Finishing and Testing. (1) Upper terminal. The driller shall terminate the casing or riser pipe [shall be terminated] at a height above established ground surface consistent with proposed plans for a pump house and pump installation, but not less than four (4) inches above finished ground surface. If practicable, the driller shall not install casing less than two (2) feet [or] above any known conditions of flooding by drainage or run-off from the surrounding land. The driller shall fit the well with a well cap or sanitary seal upon completion of the well and prior to departure from the well site. The driller shall compact and grade the ground surface surrounding the well to drain water away from the well. [shall be capped watertight until pump installation is made.]

(2) Disinfection. For all wells except monitoring wells, the well driller shall disinfect all wells [be responsible for properly disinfecting the well] upon completion of the driller's work. The driller shall introduce sufficient chlorine [shall be introduced] to give a concentration [dosage] of at least 100 parts per million to the water in the well. (CAUTION: When working with chlorine, persons should be in [well] ventilated place. The powder or strong liquid should not come in contact with skin or clothing. Solutions are best handled in wood, plastic or crockery containers because metals are corroded by strong chlorine solutions.)

(a) Drilled wells. The driller shall disinfect the well [disinfection of drilled wells shall be accomplished] in accordance with the following:

1. Determine the amount of water in the well by multiplying the gallons per foot (from Table D) by the number of feet of water in the well.

2. For each 100 gallons of water in the well, use the amount of chlorine liquid or compound given in Table D. Mix this total amount in about ten (10) gallons of water. If dry granules or tablets are used, they may be added directly to drilled wells.

3. The total amount of this solution shall be poured into the top of the well before the seal is installed and splashed around the lining, or wall, of the well. Ensure that the solution has contacted all parts of the well.

4. Where the driller installs a pump, the driller shall connect one (1) or more hoses from faucets on the discharge side of the pressure tank to the top of the well casing and start the pump, recirculating the water back into the well for at least fifteen (15) minutes. Then open each faucet in the system until a chlorine smell is evident [appears]. Close all faucets. Seal the top of the well.

5. Let stand for several hours, preferably overnight.

6. After standing, operate the pump, discharging water from all outlets until all chlorine odor disappears. Faucets on fixtures discharging to septic tank systems shall [should] be throttled to a low flow to avoid overloading the disposal system.

7. Where no pump is installed, the well shall be bailed until all chlorine odor disappears before sampling.

(b) Dug wells. The driller shall disinfect the well [disinfection of dug wells shall be accomplished] in accordance with the following:

Diameter of well (in feet)	3	4	5	6	7	8	10
Amount of 5.25% laundry bleach to use per foot of water (in cups)	1.5	3	4.5	6	9	12	18
Amount of 70% Hypochlorite granules to use per foot of water (in ounces)	1	2	3	4	6	8	12

1. The amount of disinfectant required is determined primarily by the amount of water in the well. Using Table E, calculate [The table above shows] the amount of chlorine that must be added [to use] for each foot of water in the well, according to its diameter.

2. To determine the exact amount of bleach to use, multiply the amount of disinfectant indicated as determined by the well's diameter times the number of feet of water.

3. This total amount of bleach shall be added to approximately ten (10) gallons of water, and splashed around the lining, or wall of the well. Be certain that the solution has contacted all parts of the well, using the entire amount of disinfectant. Seal the top of the well.

4. When this is done, pump enough water so the strong chlorine odor is evident. When the odor is detected, stop the pumping and allow the solution to remain in the well overnight.

5. After standing, operate the pump, discharging water from all outlets until a colormetric test indicates the absence of chlorine [all chlorine odor disappears]. Faucets on fixtures discharging to septic tank systems shall be throttled to a low flow to avoid overloading the disposal system.

(c) Water samples. Upon completion and disinfection of a new well or modification of an existing well, the driller shall be responsible for having the well tested for fecal coliform if the well is for potable use. The driller shall also give the owner information prepared by the cabinet explaining the importance of water well sampling, procedures for sampling, and how the water can be tested to assure a safe supply of water. The water sample shall not be taken until all chlorine has been removed from the well.

Section 11. Modification of Wells. (1) General. Wells constructed prior to the effective date [adoption] of this regulation need not meet its provisions [the criteria established]. However, when a well is modified, reconstructed, or repaired, the work shall include those changes necessary to make the well conform to this regulation [section].

(2) Well pits.

(a) No new well pits shall be allowed. [Existing well pits shall not be altered or changed.]

[(b) Existing pits will be accepted if the following conditions exist:]

[1. The pit shall be structurally sound and watertight. The casing shall extend at least twelve (12) inches above the pit or basement floor and have a well seal to prevent contaminants from entering the well.]

[2. A watertight manhole and cover must be provided for the pit.]

(b) [(c)] No person shall modify existing well pits. Any person modifying a well shall eliminate existing well pits. The driller shall extend the casing a minimum of four (4) inches above the finished ground surface. Any flooring and the walls [shall be modified to comply with subsection (2)(b) of this section. Existing pits which are not in compliance with subsection (2)(b) of this section shall be eliminated and the floor or one (1) wall] of the pit shall be broken and [or] removed and the pit shall be filled with compacted earth.

(3) Notification. Within thirty (30) days after modification of a well, the driller shall provide written notification of the modification to [on forms provided by] the cabinet. The notification shall be submitted on the form entitled Kentucky Water Well Record (DEP-4045), incorporated in Section 3(6) of this regulation.

Section 12. Abandoned [Abandonment of] Wells.
 (1) General. If [In cases where] a constructed water well is not suitable for its intended purpose and is to be abandoned, or if a well is drilled too [where a landowner employs a driller to] close to a previously constructed well [the driller shall completely fill the well in such a manner that the vertical movement of water within the annular space, is effectively and permanently prevented.] the owner shall ensure that the abandonment procedures are implemented as soon as possible, but no later than thirty (30) calendar days after completion of the well or after the owner has made the decision that the uncompleted well or previously constructed well is not to be used. The driller shall ensure that the well is completely filled in such a manner that the vertical movement of water within the annular space is effectively and permanently prevented. [Abandoned wells. In cases where a constructed water well is not suitable for its intended purpose and is to be abandoned, or where a land owner employs a driller to close a previously constructed and abandoned well, these abandoned water wells shall be completely filled with disinfected, dimensionally stable materials, compacted mechanically, if necessary, to avoid later settlement. Cement grouts and concrete do not require disinfection. Disinfection of fill materials shall be accomplished by using chlorine compounds such as sodium hypochlorite or calcium hypochlorite. Fill materials shall be clean (relatively free of clays and organic materials) before placement in the well. Disinfection shall be accomplished by dissolving sufficient chlorine compound to produce a calculated concentration of at least 100 parts per million (100 ppm) available chlorine in double the volume of water in the well. The fill material shall be placed in the well after the water in the well has been so treated.]

(a) Preparation for wells to be abandoned. Before a well which is to be abandoned is sealed, the driller shall measure the depth and check to ensure that there are no obstructions within the well which may interfere with plugging operations. The driller shall pull or drill out screens, casings and liner pipes whenever possible to assure placement of an effective seal. The driller shall remove at least the upper five (5) feet of casing, liner pipe, brick, stone, metal, or other materials [etc.,] in all wells to prevent the passage of water along the casing and entering the water-bearing strata. The driller shall pull rather than cut the top joint of all plastic or steel casing.

(b) Disinfection. The driller shall disinfect the well and fill materials by using sodium hypochlorite or calcium hypochlorite. The driller shall dissolve sufficient chlorine compound to produce a calculated concentration of at least 100 parts per million (100 ppm) available chlorine in double the volume of water in the well. The driller shall place the fill material in the well after the water in the well has been so treated. Cement grouts do not require disinfection.

(c) Fill materials. The driller shall fill the aquifer or water-bearing zones in the wells with clean (relatively free of organic matter), disinfected, and dimensionally stable materials. The driller shall mechanically pack the fill materials to avoid later settlement. Neat cement

shall [does] not require disinfection. Except as specified in paragraph (e) of this subsection and subsections (2) through (5) of this section, the driller shall use only neat cement grout, a neat cement-bentonite slurry, or bentonite in plugging water wells. In all cases, clay may be used to fill the uppermost five (5) feet of the bore-hole.

[(2) Permanent bridges. Permanent bridges (Illustration H) may be used to avoid having to fill very deep holes below the deepest point at which a permanent seal is required. Permanent bridges shall be composed only of cement or cement-bearing minerals. The cement shall be allowed to harden for at least twenty-four (24) hours, if Type I cement is used, or for at least twelve (12) hours if Type III (high early strength) cement is used, before backfilling is continued. Temporary bridges used to provide a base for the permanent bridge shall consist only of inorganic materials - except that patented devices containing expandable neoprene, plastic, and other elastomers, and specifically designed for use in well construction are acceptable.]

(d) [(3)] Placement of grout. The driller shall introduce neat cement [Concrete] or neat cement-bentonite grout used as a sealing material in abandonment operations [shall be introduced] at the bottom of the well or interval to be sealed (or filled) and shall place it [placed] progressively upward to the top of the well. For all such sealing materials the driller shall [be placed by the] use [of] grout pipe, tremie, cement bucket or dump bailer, in such a way as to avoid segregation or dilution of the sealing materials. Dumping grout material from the top shall not be permitted. [Seals intended to prevent vertical movement of water in the well or bore hole shall be composed of cement grout or concrete, except that where such seals must be placed within casing or liners, only neat cement grout may be used. Cement grout seals shall be placed by means of pumping through drop pipe or by use of a dump bailer, with placement beginning at the bottom and continuing upward. The minimum cement seal length, wherever dimensions permit, shall be ten (10) feet.]

(e) Permanent bridges. Permanent bridges may be used only where voids are encountered which are too large to be filled. Under these circumstances, the driller shall completely fill the well to the bottom of the void with impermeable material. The driller shall construct a permanent bridge immediately above the void. The permanent bridge shall be at least ten (10) feet thick. Permanent bridges shall be composed only of neat cement. The driller shall allow the cement to harden for at least twenty-four (24) hours, if Type I cement is used, or for at least twelve (12) hours if Type III (high early strength) cement is used, before backfilling is continued. Temporary bridges used to provide a base for the permanent bridge shall consist only of inorganic materials - except that patented devices containing expandable neoprene, plastic, and other elastomers, and specifically designed for use in well construction are acceptable. Notification shall be given to the cabinet at least twenty-four (24) hours before a permanent bridge is to be installed.

[(4) Intermediate seals. Intermediate seals (Illustration I) of cement grout or concrete shall be placed in impermeable strata between

aquifers which are identifiable as, or are suspected of being, hydraulically separated under natural, undisturbed conditions. Once the required cement seal has been installed, the remainder of the impermeable zone or nonproducing zone between aquifers shall be filled with sand, sand and gravel, or cement-bearing mineral material.]

[(5) Seal at uppermost aquifer. A cement grout or concrete seal shall be installed in the least permeable zone immediately above the uppermost water-producing zone. Such seals shall be placed only in quiescent (nonflowing) water. Prior to sealing for closure of flowing wells, the driller shall provide the cabinet a closure plan and shall obtain cabinet approval for that plan. The cabinet may provide assistance, if necessary, in developing this plan. (See Illustration J.)]

[(6) Nonproducing zones. Nonproducing zones above the aquifer shall be filled with stable materials such as sand, sand and gravel, cement grout, or concrete. Nonproducing zones above the uppermost aquifer seal shall be filled with materials less permeable than the surrounding undisturbed formations. The uppermost five (5) feet of the bore hole (at established ground surface) shall be filled with a material appropriate to the intended use of the land.]

[(f) [(7)] Preexisting contamination. A [An abandoned] well unsuitable for its intended use which has been affected by salt water intrusion or any other pollutant [contaminants] shall be considered a special case. [, and] The method of filling and sealing such wells shall be submitted to the cabinet by the drillers and shall be subject to individual review and written approval by the cabinet prior to sealing. In the sealing of a double or multiple cased well, the driller shall submit a drawing of the well [thereof] with a description of the proposed procedure and materials to be used, for prior approval by the cabinet.

[(g) [(8)] Well abandonment records. Before equipment is removed from the site, the exact location of the [abandoned] well or drill hole to be sealed and abandoned shall be determined and recorded, tying in the location with permanent reference points. The driller shall record all information relative to the abandonment procedures and the location of the abandoned well [shall be recorded] on forms [drillers log sheets] provided by the cabinet with copies supplied to the cabinet and the owner of the land within thirty (30) days. The information shall be submitted on the form entitled Kentucky Water Well Record (DEP-4045) incorporated by reference in Section 6(3) of this regulation.

[(2) Abandonment of wells in unconsolidated formations. Drillers shall completely fill a well unsuitable for its intended use that is constructed only in unconsolidated formations and contains water under water table or atmospheric conditions. Clean, disinfected sand or gravel may be used as a fill material from the well bottom to the water table level. If the water-bearing formation consists of coarse sand or gravel and producing wells are located nearby, only sealing materials which do not adversely affect the producing wells shall be used. A driller shall not extend the sand or gravel fill any closer than ten (10) feet of the ground surface. The driller shall place a minimum of five (5) feet of neat cement grout,

neat cement-bentonite slurry or bentonite above the sand or gravel fill. The driller shall fill the uppermost portion of the well above the cement or bentonite plug with clay or an impermeable material appropriate to the intended use of the land. Neat cement, a neat cement bentonite slurry, or bentonite may be used to fill the well to the ground surface.

[(3) Abandonment of wells in consolidated formations. The driller shall completely fill a well unsuitable for its intended use that is constructed in consolidated formations or bedrock with neat cement, a neat cement-bentonite slurry, or bentonite, if there is no artesian flow of water in the well. The driller shall not use sand or gravel except for those wells for which a well record is on file with the cabinet. Use of sand or gravel shall be considered a special case and the method of filling and sealing such wells shall be subject to written approval by the cabinet prior to sealing. Under these conditions, the cabinet may allow the use of sand and gravel to fill through the water-producing horizon, if there is limited vertical movement of water in the formation and such movement will not adversely affect the quality or quantity of water in producing wells. The driller shall place neat cement or neat cement-bentonite grout or bentonite immediately above the sand and gravel fill, extending up to within five (5) feet of the ground surface. The driller shall fill the uppermost five (5) feet of the bore-hole with clay or an impermeable material appropriate to the intended use of the land. In the event the casing cannot be pulled or drilled out, the driller shall use bentonite slurry to fill the length of the casing.

[(4) Abandonment of flowing artesian wells. The sealing of abandoned flowing artesian wells or wells which are unsuitable for their intended use and in which there is vertical movement of water between aquifers requires special attention. The driller shall notify the cabinet at least twenty-four (24) hours before such a well is to be sealed. The driller shall pressure cement such wells with neat cement mixed with the minimum quantity of water that will [well] permit handling. In order to place the cement, the driller shall restrict flow. Gravel or stone aggregate not more than one-third (1/3) of the diameter of the hole may be placed through the water-bearing horizon, if its extent is known. The driller shall place a well packer, cast-iron plug, or temporary bridge at the bottom of the confining formation immediately overlying the artesian water-bearing horizon to seal off the flow. Temporary bridges shall consist only of inorganic materials - except that patented devices containing expandable neoprene, plastic, and other elastomers, and specifically designed for use in well construction shall be [are] acceptable. The driller shall place the neat cement grout in one (1) continuous operation from the top of the packer, plug or bridge to five (5) feet of the surface or to the bottom of an overlying water-bearing formation. In the latter situation it may be necessary to repeat the process described in this subsection. The driller shall fill the uppermost five (5) feet of the bore-hole with clay or an impermeable material appropriate to the intended use of the land.

Section 13. Monitoring Well Construction. (1)
[A monitoring well means a water well]

constructed when the actual or intended use in whole or part is the removal of water for the purpose of sampling, measuring or test-pumping for scientific, engineering, or regulatory purposes. All] After July 1, 1991, no person shall construct or modify a monitoring well without [wells subject to this regulation shall be constructed only by persons] having a valid certificate issued in accordance with KRS 223.400 through 223.460.

(2) Drillers shall [design and] construct monitoring wells [in such a manner as] to maintain existing natural protection against the introduction of pollutants into aquifers, prevent the entry of pollutants through the bore-hole, and prevent the intermingling of groundwater from different aquifers through the bore-hole. Compliance with this section shall not relieve the driller from specific requirements under other federal or state regulatory programs.

(3) The driller shall use materials in the construction of a monitoring well appropriate to the purpose of that well. The driller shall seal the annular space above the sampling depth with suitable material, such as cement grout or bentonite, in order to prevent the introduction of pollutants into the samples or the groundwater. The driller shall complete the well at least four (4) inches above ground level or shall install a waterproof flush mount device capable of preventing surface water run-off, pollutants and contaminants from entering the well. The driller shall label the well with a Kentucky well tag. Within thirty (30) days after a monitoring well has been constructed or modified, the driller shall provide the well with a locking well cap.

(4) The driller shall provide the cabinet with a record of the well as specified in KRS 223.440.

(5) The record [report] shall be submitted on the form entitled Kentucky Monitoring Well Record (DEP-8043). The following document is adopted and filed herein by reference: Kentucky Monitoring Well Record (DEP-8043) (January 1, 1991). Copies of this document may be obtained from the Natural Resources and Environmental Protection Cabinet, Division of Water, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410. The material is available for public inspection and copying during business hours of 8 a.m. to 4:30 p.m. at the Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

(6) The owner shall ensure that monitoring wells are properly abandoned within thirty (30) days of the last sampling date or the determination is made that the monitoring well is unsuitable for use as a monitoring well.

(7) [(6)] This section shall become effective on July 1, 1991.

TABLE A

Required Minimum Distances From Lateral Sources of Pollutants

Lateral Sources of Contamination	Minimum Distances for Clay and Loam Soils
Cess Pools	150 feet
Leaching Pit	100 feet
Pit Privy	75 feet

Subsurface Seepage Tile	75 feet
Lateral Fields	70 feet
Manure Piles	75 feet
Septic Tank	50 feet
Barnyard	50 feet
Sewers (noncast iron) (nonperforated)	50 feet
Sewers (cast-iron with watertight leaded or mechanical joints)	15 feet
Sewers (Schedule 40 or heavier plastic pipe with solvent cemented or elastomeric seal joints.) Pipe is solid pipe not perforated.	15 feet
Footing Drains (no connection to a sewer or a sump handling sewage)	10 feet
Pump House Floor Drain	2 feet
Cemeteries	75 feet
Property Lines	20 feet

TABLE B

Casing and Liner Pipe Weights and Dimensions

Size (inches)	External Diameter (inches)	Thickness (inches)	Weight (pounds per foot)
1	1.315	0.120	-
1 1/4	1.660	0.120	-
1 1/2	1.900	0.120	-
2	2.375	0.120	2.89
2 1/2	2.875	0.120	3.53
3	3.500	0.120	4.33
3 1/2	4.000	0.120	4.97
4	4.500	0.188	8.66
5	5.563	0.188	10.79
6	6.625	0.188	12.92
8	8.625	0.277	24.70
10	10.750	0.307	34.24
12	12.750	0.330	43.77
14	14.000	0.375	54.57
16	16.000	0.375	62.58
18	18.000	0.375	70.59
20	20.000	0.375	78.60

Pipe sizes not listed that are less than eight (8) inches in diameter shall match listed values as closely as possible.

Pipe sizes not listed that are eight (8) inches in diameter or greater shall be Schedule 30 pipe as a minimum.

TABLE C

Plastic Casing and Liner Pipe Specifications

Size (inches)	SDR	External Diameter (inches)	Minimum Wall (inches)
4	26	4.500	0.173
5	26	5.563	0.214
6	26	6.625	0.255
8	26	8.625	0.332
10	26	10.750	0.413
12	26	12.750	0.490
14	26	14.000	0.539
16	26	16.000	0.616

TABLE D

Required Amounts of Disinfectant

Diameter of Well in Inches	Volume of Water in Gallons Per Foot of Depth	Disinfectant Required for Each 100 Gallons of Water
3	0.37	Laundry Bleach (5.25% chlorine) = 3 cups
4	0.65	
5	1.0	Hypochlorite Granules (70% chlorine) = 2 ounces
6	1.5	
8	2.6	
10	4.1	
12	6.0	

1 cup = 8 ounces measuring cup
(2 cups = 1 pint; 4 cups = 1 quart)

1 ounce = 1 heaping tablespoon granules
(16 ounces = 1 pound)

TABLE E

Required Amounts of Disinfectant

	<u>Diameter of well (in feet)</u>						
	3	4	5	6	7	8	10
<u>Amount of 5.25% laundry bleach to use per foot of water (in cups)</u>	1.5	3	4.5	6	9	12	18
<u>Amount of 70% hypochlorite granules to use per foot of water (in ounces)</u>	1	2	3	4	6	8	12

[COMPILER'S NOTE: The illustrations shown in Volume 2 of the Kentucky Administrative Regulations Service on pages 395 through 401 are being deleted from this regulation.]

CARL H. BRADLEY, Secretary

FRANK L. DICKERSON, Commissioner

APPROVED BY AGENCY: April 12, 1991

FILED WITH LRC: April 12, 1991 at 11 a.m.

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

704 KAR 3:035. Annual professional development plan.

RELATES TO: KRS 156.095, 156.0951, 158.070
STATUTORY AUTHORITY: KRS 156.070, 156.095, 158.070

NECESSITY AND FUNCTION: KRS 156.095 and 156.0951 authorize the State Board for

Elementary and Secondary [Department of] Education to establish, direct, and maintain a statewide program of professional development training, with the relevant purpose of such a program being the improvement of instruction in the public schools, and mandate local school district consortia for professional development purposes; 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 activities for the professional staff. This regulation implements these duties and powers by interpreting of what [that] professional development consists [of] and by requiring each local district or consortium of districts to have approved annually a master professional development plan by which it is to be guided in providing suitable professional development training programs and in requiring all instructional leaders to participate in the statewide training program implemented under KRS 156.101.

Section 1. Professional development shall mean any training of certified [school] personnel to assist them in acquiring the knowledge and skills needed for instructional improvement. The data, skills, and concepts comprising the substance of the training programs shall be determined by identified needs [deficiencies] in the instructional, administrative and support services of the school system.

Section 2. Each local district board of education shall have on file with [, by July 30, 1990, submit to] the State Department of Education an approved [for approval a] master professional development plan. The plan shall include the following components:

- (1) Name of local school district;
- (2) Name of professional development coordinator;
- (3) Names of local school district's professional development 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 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 the [such] instructional leaders. The [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;
- (6) Statement of district's professional development 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 a justification of the [such] activities with respect to the local professional development plan and KRS 156.095; and

(8) Description of evaluation, including:

(a) A summary of how professional development programs implemented and operated by individual local school districts shall be evaluated; and

(b) A summary of how the implementation of the master professional development plan shall be evaluated.

Section 3. (1) During the 1991-92 [1990-91] school year, the preliminary [master] professional development 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 activities shall be related to teachers' instructional assignments and administrators' professional responsibilities. Activities shall support the local school district's instructional improvement goals and objectives identified in the master professional development plan.

(3) Activities for professional development credit of classroom teachers shall not supplant any of the six (6) hour instructional day.

(4) Professional development activities shall not occur on snow days. Districts may, however, report flexible professional development activities on snow days. This situation involves a calendar change only; it does not result in activities on snow days.

(5) Professional development 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 plan.

(6) Professional development credit shall not be awarded for those activities that provide remuneration beyond travel, food and lodging [for time served].

(7) Districts implementing a flexible professional development schedule shall award professional development credit for any given academic school year within the date limitations of the master professional development plan.

(8) [During school years 1990-91 and 1991-92,] Approvable professional development 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 credit include, but are not limited to, the following: organizational business meetings, compiling class rosters, scheduling, textbook adoption committee meetings, writing lesson plans, housekeeping duties, faculty meetings, extracurricular activities; PTA/PTO meetings, sporting events, field trips, parent-teacher conferences, CPR training, and Kentucky Teacher Internship Program update training.

Section 4. (1) Each superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator.

(2) The minimum qualifications for the appointment shall be a valid Kentucky certificate as a principal or supervisor.

(3) The duties of the professional development coordinator as follows:

(a) Facilitates [Conducts] needs assessments for professional development and [assists in] the development [establishment] of goals and objectives for training programs and projects. Beginning in July, 1991, needs assessments and development [establishment] of goals and objectives shall be carried out in conjunction with the school council of each school participating in school-based decision making within local district policy.

(b) Completes, in conjunction with the consortium, master professional development plan for inclusion in the [Master] Educational Improvement Plan.

(c) Serves as chairperson of district's [Master] Professional Development Committee.

(d) Plans, organizes, [and] implements, and evaluates professional development in conjunction with the consortium [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 training.

(g) Maintains all professional development records, documentations, and other pertinent records.

[(h) Conducts evaluation of all professional development training programs in the district in a manner which determines their effectiveness in improving teaching and management.]

(h) [(i)] Interprets the professional development programs' objectives, results, and needs to district staff, the board, civic and parent groups, teacher training institutions and others as appropriate.

(i) [(j)] Keeps updated on current professional development trends.

(j) [(k)] Maintains continuous liaison with Kentucky Department of Education, the consortium to which the district belongs and other agencies involved with the district in the provision of professional development activities.

Section 5. [By the effective date of this regulation.] [July 30, 1991,] Each local school district or consortium shall submit to the Department of Education a preliminary professional development [long-range] plan [for professional development]. This plan shall describe [tentative] training activities which the district or consortium wishes to provide for its certified staff using the services of the Department of Education during the 1991-92 school year. It shall also describe [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. No more than twenty-five (25) percent of each local district's professional development funds shall be used by the consortium for administrative purposes.

Section 8. [7.] When implementing professional development programs under KRS 158.070, each local school district or consortium of districts shall adhere to its approved master professional development plan as developed with technical assistance provided from the Department of Education.

Section 9. [8.] Any local district not complying with Sections 1 through 8 [7] of this regulation shall be required to personally appear through appropriate representatives before the State Board for Elementary and Secondary Education in order to offer explanation for any noncompliance.

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).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: March 22, 1991
FILED WITH LRC: March 27, 1991 at 10 a.m.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(As Amended)

780 KAR 2:130. Minimum standards of admission for [long-term] adult students in vocational programs.

RELATES TO: KRS 151B.025, 151B.110, 151B.150 [151B.145]

STATUTORY AUTHORITY: KRS 151B.110, 151B.150 [151B.145]

NECESSITY AND FUNCTION: KRS 151B.150 [151B.145] vests the State Board for Adult and Technical Education with authority to carry out the purposes of the state's vocational education program and adopted federal acts relative thereto and KRS 151B.110 grants authority for management of the state operated vocational schools. The purpose of this regulation is to establish minimum entrance requirements for students entering vocational programs, to establish a base for determining if students may receive advanced placement, to assist in developing remedial plans for students who need help in meeting minimum admission requirements, and to determine if a student needs additional assessment.

Section 1. Students admitted to the school shall [must] meet program admission standards prior to admission to the occupational program. All occupational programs are classified as either Category I, II, or III for the purpose of identifying required scale scores. Course classifications and any other specific program admission requirements are

available from the Kentucky Tech Office in the Department for Adult and Technical Education and from all state vocational/technical schools. Program categories are based on the level of difficulty of required texts and the technical nature of the curriculum.

(1) Scale scores from the Comprehensive Test of Basic Skills (CTBS), or Test of Adult Basic Education (TABE) will be used for program placement and for a remedial plan to help students meet minimum program requirements.

(2) Students who have the following scale scores shall [must] be enrolled in math and reading programs to improve their skills. Enrollment may be concurrent with or prior to program enrollment in Category III programs. Students pursuing a diploma shall [must] continue improvement of reading and math scores until scores in subsection (3) of this section are met.

	CTBS		TABE
	Form 4	Form U	Form 5-6A/D
	[U]	[4]	
Reading	742-774	749-785	739-769
Math	764-788	781	764-785 [784]

(3) Students enrolling in Category II programs shall [must] have the following scale scores prior to program entry:

	CTBS		TABE
	Form 4	Form U	Form 5-6A/D
	[U]	[4]	
Reading	775	786	770
Math	789	797	786

(4) Students enrolling in Category I programs shall [must] have the following scale scores to be admitted to the program:

	CTBS		TABE
	Form 4	Form U	Form 5-6A/D
	[U]	[4]	
Reading	782	798	776
Math	797 [915]	797	790

Applicants for Category I programs who meet subsection (3) of this section scores but do not meet scores identified in subsection (4) of this section may be enrolled in Category I programs if they successfully complete required technical core classes for that program.

(5) Where applicable, all programs shall operate according to guidelines developed by state and/or national licensure, certification, and registration agencies with jurisdiction over graduates seeking employment in occupations governed by such agencies. In addition, any program operated under contract for a specific business or industry shall [must] conform to the requirements of the industry for admission of students.

Section 2. [1.] The following minimum admission requirements shall apply to adult students [those schools offering training to students who have graduated or left high school and are enrolled] in an occupational preparation program of 500 hours or more [in length that does not lead to an associate degree]:

(1) [Students enrolling in a vocational school postsecondary program] Must be sixteen (16) years of age or older. Licensure for some

programs may require a higher minimum age. [;]

(2) Completion of [Students enrolling must have successfully completed requirements for] a high school diploma or its equivalent. For Category III programs, students may be admitted without [Students who do not possess] a high school diploma or its equivalent as a [may be admitted] with special status student provided the student agrees to pursue the high school equivalency certificate and complete the GED prior to graduation. [;]

(3) Submit [Students enrolling must complete an application form and provide] a transcript of secondary and postsecondary [previous school] work [completed], GED test scores if applicable, and [including scale] scores on the Comprehensive Test of Basic Skills (CTBS) or the Test of Adult Basic Education (TABE) if taken in the last three (3) years. Students who cannot provide current test scores which meet minimum reading and math scores shall [must] take the Test of Adult Basic Education. Handicapped students may be provided modified assessments. [or the Kentucky Essential Skills Test (KEST);]

[(4) Students enrolling who do not have a transcript and/or CTBS scale scores or KEST scale scores must take the Test of Adult Basic Education (TABE). Students not having acceptable CTBS or KEST scale scores for program admission may take the TABE;]

Section 3. [(5) Students may be admitted to the school upon completion of application, required records, and testing as outlined in Section 2 of this regulation [results] and may pursue instruction in a basic academic skills program, career exploration, core elective courses, and modified/special programs for handicapped. [; and]

Section 4. [(6) The Kentucky Department for Adult and Technical Education does not discriminate on the basis of race, color, national origin, marital status, age, sex, or handicap.

[Section 2. Students who have been admitted to the school must meet admission standards for the occupational program. The following minimum requirements shall apply to all students:]

[(1) Scale scores from Comprehensive Test of Basic Skills (CTBS), Form U, Kentucky Essential Skills Test (KEST) or Test of Adult Basic Education (TABE), Level D, will be used in program placement and in developing a plan for students who need help in remedial work to meet minimum program admission requirements.]

[(2) Students must have the following scale scores for admission to a vocational program not otherwise mentioned:]

	[KEST/ CTBS	TABE (Forms 3 & 4)	TABE (Forms 5 & 6)
Reading	725	489	739
Math	717	524	764]

[Students who score below said minimum will be referred to a remediation program prior to admission to the occupational program. Students achieving the minimum basic skills in the remediation program will be admitted to the occupational program when a work station is available. Students pursuing the diploma will be required to continue to improve their reading and math scores indicated in subsection (3) of

this section are met.]

[(3) Students who have the following scale scores must be enrolled in math and reading programs to improve their skills. Enrollment may be concurrent with or prior to enrollment in the program.]

	[KEST/ CTBS	TABE (Forms 3 & 4)	TABE (Forms 5 & 6)
Reading	725 to 770	489 to 574	739 to 770
Math	717 to 732	524 to 582	764 to 785]

[(4) Students enrolling in Air Craft Mechanics, Biomedical Technician, Electronics, Instrumentation, Medical Laboratory Technician, Practical Nursing, Radiologic Technology, Respiratory Therapy, Surgical Technology, Civil Highway Technology, Advanced Technology Center Program and Drafting must have the following scale scores to be admitted to the program:]

	[KEST/ CTBS	TABE (Forms 3 & 4)	TABE (Forms 5 & 6)
Reading	770	574	770
Math	732	582	785]

[(5) Students enrolling in Biomedical Equipment Technician, Medical Assistant, Mine Maintenance, Practical Nurse, Radiologic Technology, Respiratory Therapy, and Surgical Technology must be seventeen (17) years of age or older.]

[(6) Students enrolling in Heavy Equipment Operator, Heavy Equipment Maintenance, and Mine Equipment Operator must be eighteen (18) years of age or older.]

[(7) Students enrolling in Mine Equipment Operator must complete forty-eight (48) hour Mine Safety Training Program before entering the simulated mine.]

[(8) Students enrolling in Heavy Equipment Operator and Heavy Equipment Maintenance must have a valid driver's license.]

Section 5. [3.] The following minimum requirements shall apply to advanced standing for [those students requesting to] transfer students from other accredited institutions: [credit and be admitted with advanced standing from other vocational schools or other institutions accredited by an educational agency recognized by the Department for Adult and Technical Education:]

(1) The student shall [must] supply the name and address of all previous institutions that provided [vocational] training;

(2) The student shall [must] provide a record of competencies achieved, length of training, date of enrollment, and date of withdrawal [termination] from each institution attended. The receiving school may validate competencies through testing and interviewing and/or school admission requirements; and

(3) The student shall [must] provide all records and reports which are required by the state boards and/or licensing agencies for [in] a given vocational program.

Section 6. [4.] This regulation shall be implemented in all state vocational-technical schools and health facilities, but shall not apply to [except] correctional institutions. Postsecondary students enrolling in area vocational education centers shall [must] meet the admission requirements as specified in

this regulation. [This regulation shall become effective first quarter, 1991.] Any person on a preregistration waiting list who does not meet new requirements shall be permitted to retest.

GEORGE R. SIEMENS, JR., Chairman
APPROVED BY AGENCY: March 27, 1991
FILED WITH LRC: April 15, 1991 at 11 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(As Amended)

805 KAR 4:085. Dealer registration; record requirements.

RELATES TO: KRS 351.350, 26 CFR 55.121-55.129, [351.990]

STATUTORY AUTHORITY: KRS Chapter 13A, 351.335
NECESSITY AND FUNCTION: KRS 351.335 requires the Department of Mines and Minerals to promulgate rules and regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives, and the maintenance of such explosives which has a direct bearing on safety to life and property. This regulation effects the provisions of that law.

Section 1. Dealer Registration. Each person intending to engage in business as an importer or a manufacturer of, or a dealer in, explosive materials shall, before commencing such business, be required annually to register with the Department of Mines and Minerals. Each person shall annually fill out the registration form (EC-12), revised December 1979, incorporated herein by reference. This form may be obtained from the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky 40511 during normal business hours from 8 a.m. to 4:30 p.m. [(E&B 36)] [provided by the department.]

Section 2. Record Requirements. (1) Each person, corporation or entity engaged in the manufacture, purchase, distribution or selling, of explosives[, including importers, manufacturer, manufacturer limited, or dealer] shall maintain, in a permanent form, such records of importation, production, shipment, receipt, sale or other disposition.

(2) All records shall be retained for a period of not less than five (5) years from the date the transaction occurs or until discontinuance of business or operations. All records shall be subject to inspection and examination by the Department of Mines and Minerals.

(3) The records required to be maintained pursuant to [prescribed by] Title 26, part 55.121-55.129 [181.121-181.129] of the Code of Federal Regulations of the Bureau [Division] of Alcohol, Tobacco, and Firearms shall satisfy the requirements of this section.

Section 3. Magazine Identification. (1) All permanent, fixed, or stationary magazines shall be registered annually with the Department of Mines and Minerals. Registration forms EC-11, revised December, 1990, is incorporated herein by reference. This form may be obtained from the Department of Mines and Minerals, 3572 Ironworks

Pike, Lexington, Kentucky 40511 during normal business hours from 8 a.m. to 4:30 p.m. [shall [(E&B 35) will] be furnished by the department.]

(2) All portable magazines shall have identification tags. Semitrailers containing blasting agents are excluded from this requirement provided they have a current license plate attached.

(3) The identification tags shall be approximately three (3) inches long by two (2) inches wide and shall be lettered or painted directly onto the magazine or attached such that normal use and weather will not render the tag illegible.

(4) The tags shall provide the following information:

- (a) Name of owner;
- (b) Address;
- (c) Person responsible for security of the magazine; and
- (d) Telephone number.

THEODORE T. COLLEY, Secretary
CARL ANKROM, Acting Commissioner
LARRY C. SCHNEIDER, Director
APPROVED BY AGENCY: April 8, 1991
FILED WITH LRC: April 10, 1991 at 9 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(As Amended)

805 KAR 4:100. Surface transportation of explosives.

RELATES TO: KRS 351.350, 14 CFR Part 103, 46 CFR Parts 146-149, 49 CFR Parts 171-179, 49 CFR Parts 390-397 [, 351.990]

STATUTORY AUTHORITY: KRS Chapter 13A, 351.335
NECESSITY AND FUNCTION: KRS 351.335 requires the Department of Mines and Minerals to promulgate rules and regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives, and the maintenance of such explosives which has a direct bearing on safety to life and property. This regulation effects the provisions of that law.

Section 1. [Surface Transportation of Explosives.] (1) Transportation of explosives, blasting agents, and blasting supplies, shall be in accordance with [meet] the provisions of Department of Transportation regulations contained in 14 CFR Part 103, Air Transportation; 46 CFR Parts 146-149, Water Carriers; 49 CFR Parts 171-179, Highways and Railways; and 49 CFR Parts 390-397, Motor Carriers[; all as amended].

(2) Motor vehicles or conveyances transporting explosives shall only be driven by, and be in the charge of, a licensed driver who is physically fit. He shall be familiar with the local, state and federal regulations governing the transportation of explosives.

(3) No person shall smoke, or carry matches or any other flame-producing device, nor shall firearms or loaded cartridges be carried while in or near a motor vehicle or conveyance transporting explosives, blasting agents, and blasting supplies.

(4) Explosives or blasting agents shall not be

transported with other materials or cargoes in the same compartment. In no case shall flammable material be carried on the same vehicle as explosives.

(5) Explosives or blasting agents shall be transported in separate vehicles from detonators unless:

(a) The detonators are placed in a type 2 or type 3 magazine secured within the body of the truck; or

(b) The detonators and explosives are separated by four (4) inches of hardwood, and the detonators are totally enclosed or confined by the hardwood construction; or

(c) The detonators are placed in suitable containers or compartments constructed in accordance with the Institute of Makers of Explosives Safety Library Publication No. 22, entitled "IME Standard for the Safe Transportation of Electric Blasting Caps in the Same Vehicle with Other Explosives", revised January 1, 1985, and incorporated herein by reference. This document may be reviewed or copied at the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky 40511 during normal business hours from 8 a.m. to 4:30 p.m. [or revisions thereof].

(6) Vehicles used for transporting explosives shall be strong enough to carry the load without difficulty, and shall be in good mechanical condition.

(7) When Class A, B, or C explosives are transported by a vehicle with an open body, a Class II magazine or original manufacturer's container shall be securely mounted within the bed to contain the cargo. No explosives shall be stacked higher than the sides or the tailgate of the vehicle. Blasting agents shall be loaded in a stable manner so that they cannot fall from the vehicle.

(8) All vehicles used for the transportation of explosives shall have tight floors and any exposed spark-producing metal on the inside of the body shall be covered with wood, or other nonsparking material, to prevent contact with containers of explosives.

(9) Every motor vehicle or conveyance used for transporting Class A or B explosives shall be marked or placarded on both sides, [the] front and rear, with either the word "explosives" in red letters not less than four (4) inches in height, on white background, or the Transportation Cabinet-approved orange and black, square on point, explosives placards.

(10) Every vehicle or conveyance transporting blasting agents shall be placarded on front, back and both sides with the words "Blasting Agent".

(11) [(10)] Each vehicle used for transportation of explosives shall be equipped with a fully charged fire extinguisher, in good condition. An Underwriters Laboratory-approved extinguisher of not less than ten (10) ABC rating will meet the minimum requirement. The driver shall be trained in the use of the extinguisher on his vehicle.

(12) [(11)] Motor vehicles or conveyances carrying explosives, blasting agents, or blasting supplies, shall not be taken inside a garage or shop for repairs or servicing.

(13) [(12)] No motor vehicle transporting explosives shall be left unattended.

THEODORE T. COLLEY, Secretary
CARL ANKROM, Acting Commissioner

LARRY C. SCHNEIDER, Director

APPROVED BY AGENCY: April 8, 1991

FILED WITH LRC: April 10, 1991 at 9 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(As Amended)

805 KAR 4:110. Initiation of explosive charges; electric blasting.

RELATES TO: KRS 351.350[, 351.990]

STATUTORY AUTHORITY: KRS Chapter 13A, 351.335

NECESSITY AND FUNCTION: KRS 351.335 requires the Department of Mines and Minerals to promulgate rules and regulations concerning the manufacture, transportation, sale, storage, or use of explosives and assembled components of explosives, and the maintenance of such explosives which has a direct bearing on safety to life and property. This regulation effects the provisions of that law.

Section 1. [Initiation of Explosive Charges; Electric Blasting.] (1) Electric blasting caps shall not be used where sources of extraneous electricity make the use of electric blasting caps dangerous. Blasting cap leg wires shall be kept short-circuited (shunted) until they are connected into the circuit for firing.

(2) Before adopting any system of electrical firing, the blaster shall conduct a thorough survey for extraneous currents, and all dangerous currents shall be eliminated before any holes are loaded.

(3) In any single blast using electric blasting caps, all caps shall be of the same style or function, and of the same manufacture.

(4) Electric blasting shall be carried out by using blasting circuits or power circuits in accordance with the electric blasting cap manufacturer's recommendations, or those of an approved contractor or his designated representative.

(5) When firing a circuit of electric blasting caps, care shall [must] be exercised to insure that an adequate quantity of delivered current is available, in accordance with the manufacturer's recommendations.

(6) Connecting wires and lead wires shall be insulated single solid wires of sufficient current-carrying capacity. In addition, the lead wire shall be of sufficient length to allow the blast to be detonated from a safe distance and location.

(7) Bus wires shall be solid single wires of sufficient current-carrying capacity.

(8) When firing electrically, the insulation on all firing lines shall be adequate and in good condition.

(9) A power circuit used for firing electric blasting caps shall not be grounded.

(10) In underground operations, when firing from a power circuit, a safety switch shall be placed in the permanent firing line at intervals. This switch shall be made so it can be locked only in the "off" position and shall be provided with a short-circuiting arrangement of the firing lines to the cap circuit.

(11) In underground operations there shall be a "lightning" gap of at least five (5) feet in the firing system ahead of the main firing switch; that is, between this switch and the

source of power. This gap shall be bridged by a flexible jumper cord immediately [just] before firing the blast.

(12) When firing from a power circuit, the firing switch shall be locked in the open or "off" position at all times, except when firing. It shall be so designed that the firing lines to the cap circuit are automatically short-circuited when the switch is in the "off" position. Keys to this switch shall be entrusted only to the blaster.

(13) Blasting machines shall be in good condition and the efficiency of the machine shall be tested periodically to make certain that it can deliver power at its rated capacity.

(14) When firing with blasting machines, the connections shall be made as recommended by the manufacturer of the electric blasting caps used.

(15) The number of electric blasting caps connected to a blasting machine shall not be in excess of its rated capacity. Furthermore, [in primary blasting,] a series circuit shall contain no more caps than the limits recommended by the manufacturer of the electric blasting caps in use.

(16) The blaster shall be in charge of the blasting machines and no other person shall connect the leading wires to the machine except under the direction of the blaster.

(17) Blasters shall test all electric blasting caps and electric blasting cap circuits by using only a blasting galvanometer, blasting ohmmeter, or blasting multimeter, designed specifically for the purpose of testing individual electric blasting caps and circuits containing electric blasting caps. Such instruments shall [must] be clearly marked as being designed for such purposes, and shall be used in accordance with the manufacturer's recommendations.

(18) Whenever the possibility exists that a leading line or blasting wire might be thrown over a live powerline by the force of an explosion, care shall be taken to see that the total length of wires are kept too short to hit the lines, or that the wires are securely anchored to the ground. If neither of these requirements can be satisfied, a nonelectric system shall be used.

(19) Leading wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.

(20) After firing an electric blast from a blasting machine, the leading wires shall be immediately disconnected from the machine and short-circuited.

(21) All blasting machines, other than rack-bar and twist type generators, shall have a normally open firing switch equipped with a spring device or other self-returning mechanism that automatically returns it to the nonfiring position after the shot has been detonated.

(22) Due precautions shall be taken to prevent accidental discharge of electric blasting caps or explosives from current induced by radar, radio transmitters, lightning, adjacent powder lines, dust storms, or other sources of extraneous electricity. These precautions shall include:

(a) The shunting or short-circuiting of detonators in holes which have been primed until wired into the blasting circuit.

(b) The suspension of all blasting operations and removal of persons from the blasting area during the approach and progress of an electric

storm.

(c) The prominent display of adequate signs, warning against the use of mobile radio transmitters, on all roads within 1,000 feet of blasting operations. Whenever adherence to the 1,000-foot distance would create an operational handicap, this distance may be modified so long as the modification is adequately designed in compliance with paragraph (e) of this subsection to prevent any premature firing of electric blasting caps. Specimens of signs which satisfy these requirements are as follows:

Blasting Zone
1,000-ft.
about 48" X 48"

Turn Off
2-Way Radio
about 42" X 36"

This paragraph shall not apply to surface mining operations.

(d) Mobile radio transmitters which are less than 100 feet away from electric blasting caps in other than original containers may be left "on" for receiving purposes, but may only be used to transmit if in compliance with paragraph (e) of this subsection.

(e) Compliance with the recommendations of the Institute of Makers of Explosives with regard to blasting in the vicinity of radio transmitters as stipulated in "Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Commercial Electric Detonators," IME Publication No. 20, December 1988, incorporated herein by reference. This document may be reviewed or copied at the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky 40511 during normal business hours from 8 a.m. to 4:30 p.m. for revisions thereof.]

(23) All electric blasts shall be fired with an electric blasting machine or power source designed specifically for detonating electric blasting caps.

(24) In parallel blasting circuits, the circuit shall be wired so that the resistances in all series are balanced.

(25) When blasting electrically, a blasting galvanometer, blasting ohmmeter, or blasting multimeter shall be used to test:

(a) Resistance of individual caps, series of caps, or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line;

(b) Continuity of blasting lines prior to the connection of electric blasting cap series; and

(c) Total blasting circuit resistance prior to connection in the power source.

(26) Immediately after the blast has been fired, the firing line shall be disconnected from the blasting machine, or where power switches are used, they shall be locked open or in the "off" position.

THEODORE T. COLLEY, Secretary
CARL ANKROM, Acting Commissioner
LARRY C. SCHNEIDER, Director

APPROVED BY AGENCY: April 8, 1991

FILED WITH LRC: April 10, 1991 at 9 a.m.

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

902 KAR 10:030. Sanitarians.

RELATES TO: KRS 223.010 to 223.080, 223.990

STATUTORY AUTHORITY: KRS 194.050, 211.090, HB 799, Part I, G., 56., d. (1990 Acts, Chapter 514, pp. 1734-1735, 1736) "Budget Modification Report, Human Resources"; Final Budget Memorandum, Volume II, Page 288 (April 13, 1990)

NECESSITY AND FUNCTION: KRS 223.010 to 223.080, and 223.990 [and HB 799] authorize the Cabinet for Human Resources to establish minimum standards and qualifications for registered sanitarians. This regulation provides uniform standards for registered sanitarians and procedures for processing applications and to establish fees for examination and registration.

Section 1. Definitions. As used in this regulation: "Contact hour" means a unit of measure for approved instruction by Registered Sanitarian Examining Committee. This unit is determined to equal actual classroom hours. Units of measure may be in half hour increments.

[(1) "Committee" means the Sanitarian Examining Committee consisting of five (5) members who are appointed in accordance with KRS 223.020.]

[(2) "Cabinet" means the Cabinet for Human Resources.]

[(3) "Registered sanitarian" means a person trained in the field of public health sanitation who has qualified for registration in accordance with the provisions of KRS 223.010 to 223.080 and 223.990, and the regulations promulgated thereunder.]

Section 2. Minimum Standards and Qualifications. In addition to the specific requirements provided by KRS 223.030, an applicant for registration as a sanitarian shall[:]

[(1)] have graduated from an accredited college or university with a baccalaureate or higher degree, which shall include satisfactory completion of at least twenty-seven (27) quarter hours, or eighteen (18) semester hours, of academic training in the basic physical, chemical, biological, or sanitary sciences. [; and]

[(2) Be of good moral character.]

Section 3. Applications for Registration. Applications for registration as a registered sanitarian shall be submitted to the committee on the application forms for registration as a registered sanitarian as provided by KRS Chapter 223 revised 7/90. This form is incorporated by reference and may be viewed or obtained at the Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. [forms prepared and issued by them]. Each application fee shall be remitted by a Post Office or express money order, bank draft, or check payable to the order of the Kentucky State Treasury [cabinet]. The committee may correspond with any references given on the applicant's application and may also contact any former employer of the applicant concerning his prior service in the field of public health sanitation.

Section 4. Examinations. The committee shall conduct examinations at least once a year at such time and place as it may deem expedient. The examination may be either oral, written, or both. A fee of thirty (30) dollars shall accompany the application for examination. All registration certificates issued under the provisions of this regulation shall expire June 30 following date of issue, unless renewed by the payment of a twelve (12) dollar registration fee.

Section 5. Certificates of Registration. After the committee has approved an application and all the requirements provided by law are fulfilled, the committee shall certify such fact to the secretary, who in turn shall issue a small card to the approved applicant certifying that he holds a certificate of registration. The committee shall assign serial numbers to each certificate of registration.

Section 6. Renewals. It shall be the duty of the secretary-treasurer of the committee to notify all registered sanitarians at least thirty (30) days prior to the expiration date of their certificate that they renew their certificate of registration as provided by law. Effective July 1, 1992 before renewal of registration can be issued the registrant must submit evidence of having completed ten (10) contact hours approved by the committee. [The committee shall establish guidelines for retaining registration by inactive registrants.]

Section 7. Revocation of Certificates of Registration. In any action involving the revocation of a certificate of registration, the committee shall refer the matter to the secretary. The committee is authorized to set the time and place of a hearing and the respondent shall be given at least thirty (30) days prior notice. At the conclusion of the hearing, the committee shall make a recommendation to the secretary in writing. The secretary is authorized to affirm, reverse, cancel, or modify the recommendation of the committee.

Section 8. Expenditure of Funds. Expenditures for examinations, clerical expenses, training and reference materials, including approved home study courses, and for affiliation with any national sanitarian registration organization, may be made out of the trust and agency fund created by KRS 223.050.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: March 5, 1991
FILED WITH LRC: March 14, 1991 at 11 a.m.

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

905 KAR 5:060. Compensation for guardianship program services.

RELATES TO: KRS 210.290, 386.180, 387.760(2)
STATUTORY AUTHORITY: KRS 194.050, 210.290, 386.180

NECESSITY AND FUNCTION: Pursuant to KRS

210.290 and 387.760(2) the Cabinet for Human Resources is [shall be] entitled to receive reasonable compensation for services rendered and for reasonable and necessary expenses incurred in the exercise of its assigned guardianship or conservatorship duties and powers. This regulation sets forth the policies which shall be employed by the Cabinet for Human Resources when charging for services administered by the guardianship program.

Section 1. Definitions. (1) "Cash resources" means accumulated funds in the guardianship account in excess of the cost of living [which includes charges for care, maintenance, and personal needs].

(2) "Cost of living" means charges or costs for a ward for:

- (a) Clothing;
- (b) Food;
- (c) Maintenance;
- (d) Medical care;
- (e) Personal needs;
- (f) Shelter; and
- (g) Other necessities of life.

Section 2. [1.] Compensation. (1) Except as provided by subsection (3) of this section, the Cabinet for Human Resources shall collect compensation for services rendered and expenses incurred by the guardianship program, that exceed the costs of living for a ward pursuant to KRS 210.290(5) and 386.180.

(2) For those wards whose income and resources are limited to the extent that they are eligible for benefits under the Medical Assistance Program, the annual compensation charged shall not exceed:

(a) \$120 for those wards whose cash resources are between \$1,000 and the maximum level to remain eligible for benefits under the medical assistance program [or more].

(b) Sixty (60) dollars for those wards whose cash resources are between \$500 and \$999 [less than \$1,000].

(c) For those wards whose case resources are less than \$500, no compensation shall be charged.

(3)(a) If a charge for compensation would deprive a ward of funds required for his cost of living, it may be waived.

(b) A charge for compensation may be waived by the cabinet:

- 1. On its initiative; or
- 2. Upon request by the ward, or his representative. [Notwithstanding a provision of this regulation, the Cabinet for Human Resources may waive its charge for compensation for a ward or the ward or the ward's representative may request a waiver of the charge for compensation for the ward if it can be shown that the charge [if the charge] would deprive the ward of the necessities of life including, but not limited to, necessary food, clothing, shelter, or medical care.]

(4) If a dispute over the waiver of charges for compensation cannot be resolved between the Cabinet for Human Resources and the ward, the matter may, by request of either party be referred to the district court having appropriate venue for resolution.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: April 29, 1991
FILED WITH LRC: May 2, 1991 at 3 p.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING

DEPARTMENT FOR MILITARY AFFAIRS
Division of Disaster and Emergency Services
(Amended After Hearing)

106 KAR 1:080. Kentucky emergency response
commission fee system requirements.

RELATES TO: KRS 39.800 to 39.990, 42 USC 11001 to 11050

STATUTORY AUTHORITY: KRS 39.817, 39.845, 39.850, 39.890, 42 USC 11002(c), 11003(c)(d)

NECESSITY AND FUNCTION: This regulation sets forth the requirements to be followed by facilities subject to paying a fee.

Section 1. Definitions. (1) "Category One Facility" means any facility owned or operated by local, state or federal government which is exempted from paying any fee in accordance with KRS 39.817. This exemption applies solely to fees and does not exempt any Category One Facility from reporting requirements pursuant to KRS 39.800 to 39.905.

(2) "Category Two Facility" means any facility that has not less than 10,000 pounds and not more than 499,999 pounds of each of ten (10) or fewer hazardous substances. The combined total of all hazardous substances shall not exceed 499,999 pounds.

(3) "Category Three Facility" means any facility that has 10,000 pounds or more of each of eleven (11) or more hazardous substances. The combined total of all hazardous substances shall not exceed 499,999 pounds.

(4) "Category Four Facility" means any facility that has a total inventory of over 499,999 pounds of hazardous substances.

(5) "Category Five Facility" means any facility that has an extremely hazardous substance as set out in Section 6 of this regulation in excess of the threshold planning quantity.

(6) "DES/SARA-312" means the state annual chemical inventory reporting form due March 1 each year, covering the preceding calendar year.

(7) "DES/SARA-312-C" means the confidential state annual chemical inventory reporting form due March 1 each year, covering the preceding calendar year which may be used if a facility elects to withhold location information on a specific chemical from disclosure to the public pursuant to 42 USC 11044(a).

(8) "Hazardous chemical" means any substance for which a facility is required to prepare or have available a material safety data sheet under the Occupational Safety and Health Act of 1970 and federal regulations promulgated under that Act.

(9) "Hazardous substance" means any substance defined in KRS 39.805(5) and for annual inventory reporting purposes shall include hazardous chemicals.

(10) "KyERC" means the Kentucky Emergency Response Commission.

Section 2. Facility Requirements. (1) In accordance with the planning requirements of KRS 39.845 and 39.850, 42 USC 11002(c) and 11003(c)(d), no later than sixty (60) days after a facility notifies the Kentucky Emergency Response Commission that it is subject to the requirements of this section, the facility shall

provide emergency response planning information to the local emergency planning committee and shall assist the local emergency planning committee develop a [March 1 a Category One Facility and Five Facility shall submit a completed] Tab Q-7 as set out in Section 6 of this regulation for all extremely hazardous substances set out in Section 6 of this regulation in excess of the threshold planning quantity for submission in accordance with the requirements of 106 KAR 1:090 [to the local emergency planning committee].

(2) After initial submission and approval of the Tab Q-7 in accordance with subsection (1) of this section, each March 1 any facility that has an extremely hazardous substance as set out in Section 6 of this regulation in excess of the threshold planning quantity [a Category One and Five Facility] shall review the Tab Q-7 and send certification to the local emergency planning committee stating that there were no changes and therefore the plan is correct as is; or the plan has been revised and the revisions are included with the certification.

[(3) A Category One Facility which is exempted from paying any fee shall file the annual chemical inventory reporting requirement due on DES/SARA-312.]

(3) [(4)] A Category Five Facility which is not subject to the annual chemical inventory reporting requirement due on DES/SARA-312 and, if applicable DES/SARA-312-C shall comply with Section 2(1) and (2) of this regulation and shall file the fee [only] in accordance with Section 4 of this regulation.

(4) Any facility subject to the annual chemical inventory reporting requirements contained in KRS Chapter 39.890, and 42 USC 11022 shall submit Form DES/SARA-312 and, if applicable DES/SARA-312-C as set out in Section 6 of this regulation no later than March 1 each year in accordance with the filing instructions in Section 4 of this regulation.

Section 3. Fees shall be payable in accordance with the schedule listed below except the same owner or owners of two (2) or more facilities in a single county subject to paying a fee shall pay a fee not to exceed \$250 for all those facilities in that county.

- (1) Category One Facility fee is \$0.
- (2) Category Two Facility fee is \$40.
- (3) Category Three Facility fee is \$250.
- (4) Category Four Facility fee is \$250.
- (5) Category Five Facility fee is \$250.

Section 4. Filing Requirements for Fees and Forms DES/SARA-312 and DES/SARA-312-C. A computer-generated form containing all the information in DES/SARA-312 and DES/SARA-312-C may be accepted. All fees and forms DES/SARA-312 and, if applicable DES/SARA-312-C, shall be filed simultaneously, no later than March 1 each year. Checks shall be made payable to "Kentucky State Treasurer" and shall be marked "For KyERC Fee Account". Fees and forms shall be mailed to: Chairman, Kentucky Emergency Response Commission, EOC Building-Boone National Guard Center, Frankfort, Kentucky 40601-6168.

Section 5. Penalties. Failure to comply with provisions of this regulation shall result in penalties as provided in KRS 39.990(3).

Section 6. The forms referred to in Sections 1(6), (7) [(2), (3)], 2(1), (2), (3), (4) and 4 are set out in this section. The list of extremely hazardous substances referred to in Section 2(1), (2) [Sections 1 and 2(1)] are set out in this section. (See forms following Regulatory Impact Analysis)

This is to certify that the Kentucky Emergency Response Commission has recommended that this administrative regulation be adopted.

JAMES H. MOLLOY, Chairman
Kentucky Emergency Response Commission

MICHAEL W. DAVIDSON, Brigadier General
APPROVED BY AGENCY: April 10, 1991
FILED WITH LRC: May 28, 1991 at 11 a.m.

The List of Extremely Hazardous Substances and their Threshold Planning Quantities
(Alphabetical Order)

CAS No.	Chemical Name	Threshold planning quantity (pounds)	Notes
75865	ACETONE CYANOHYDRIN	1000	
1752303	ACETONE THIOSEMICARBAZIDE	1000/10000	e
107028	ACROLEIN	500	
79061	ACRYLAMIDE	1000/10000	d, l
107131	ACRYLONITRILE	10000	d, l
814686	ACRYLYL CHLORIDE	100	e, h
111693	ADIPONITRILE	1000	e, l
116063	ALDICARB	100/10000	c
309002	ALDRIN	500/10000	d
107186	ALLYL ALCOHOL	1000	
107119	ALLYLAMINE	500	e
20859738	ALUMINUM PHOSPHIDE	500	b
54626	AMINOPTERIN	500/10000	e
78535	AMITON	500	e
3734972	AMITON OXALATE	100/1000	e
7664417	AMMONIA	500	l
300629	AMPHETAMINE	1000	e
62533	ANILINE	1000	d, l
88051	ANILINE, 2, 4, 6-TRIMETHYL-	500	e
7783702	ANTIMONY PENTAFLUORIDE	500	e
1397940	ANTIMYCINA	1000/10000	c, e
86884	ANTU	500/10000	
1303282	ARSENIC PENTOXIDE	100/10000	d
1327533	ARSENOUS OXIDE	100/10000	d, h
7784341	ARSENOUS TRICHLORIDE	500	d
7784421	ARSINE	100	e
2642719	AZINPHOS-ETHYL	100/10000	e
86500	AZINPHOSMETHYL	10/10000	
98873	BENZAL CHLORIDE	500	d
98168	BENZENAMINE, 3(TRIFLUOROMETHYL)-	500	e
100141	BENZENE, I(CHLOROMETHYL)-4-NITRO-	500/10000	e
98055	BENZENEARSONIC ACID	10/10000	e
3615212	BENZIMIDAZOLE, 4, 5-DICHLORO-2-(TRIFLUOROMETHYL)-	500/10000	e, g
98077	BENZOTRICHLORIDE	100	d
100447	BENZYL CHLORIDE	500	d
140294	BENZYL CYANIDE	500	e, h
15271417	BICYCLO(2.2.1)HEPTANE-2-CARBONITRILE, 5-CHLORO-6(((METHYLAMINO)CARBONYL)OXY)IMINO-, (1 S-(2-ALPHA, 2-BETA, 4-ALPHA, 5-ALPHA, 6E))-	500/10000	e
534076	BIS(CHLOROMETHYL)KETONE	10/10000	e
4044659	BITOSCANATE	500/10000	e
10294345	BORON TRICHLORIDE	500	e
7637072	BORON TRIFLUORIDE	500	e
353424	BORON TRIFLUORIDE COMPOUND WITH METHYL ETHER(1:1)	1000	e
28772567	BROMADIOLONE	100/10000	e
7726956	BROMINE	500	e, l
1306190	CADMIUM OXIDE	100/10000	e
2223930	CADMIUM STEARATE	1000/10000	c, e
7778441	CALCIUM ARSENATE	500/10000	d
8001352	CAMPHECHLOR	500/10000	d
56257	CANTHARIDIN	100/10000	e
51832	CARBACHOL CHLORIDE	500/10000	e

ADMINISTRATIVE REGISTER - 56

26419738	CARBAMIC ACID, METHYL-,0-(((2,4-DIMETHYL-1,3-DITHIOLAN-2-yl)METHYLENE)AMINO)-	100/10000	e
1563662	CARBOFURAN	10/10000	
75150	CARBON DISULFIDE	10000	
786196	CARBOPHENOTHION	500	e
57749	CHLORDANE	1000	d
470906	CHLORFENVINFOS	500	e
7782505	CHLORINE	100	
24934916	CHLORMEPHOS	500	e
999815	CHLORMEQUAT CHLORIDE	100/10000	e,h
79118	CHLOROACETICACID	100/10000	e
107073	CHLOROETHANOL	500	e
627112	CHLOROETHYLCHLOROFORMATE	1000	e
67663	CHLORFORM	10000	d,l
542881	CHLOROMETHYL ETHER	100	d,h
107302	CHLOROMETHYL METHYL ETHER	100	c,d
3691358	CHLOROPHACINONE	100/10000	e
1982474	CHLOROXURON	500/10000	e
21923239	CHLORTHIOPHOS	500	e,h
10025737	CHROMIC CHLORIDE	1/10000	e
10210681	COBALT CARBONYL	10/10000	e,h
62207765	COBALT,((2,2'-(1,2-ETHANEDIYL-BIS(NITRILOMETHYLIDYNE)))[q E]IS(6-FLUOROPHENOLATO))(2-)N,Nl,0,0l	100/10000	e
64868	COLCHICINE	10/10000	e,h
56724	COUMAPHOS	100/10000	
5836293	COUMATETRALYL	500/10000	e
95487	CRESOL,0	1000/10000	d
535897	CRIMIDINE	100/10000	e
4170303	CROTONALDEHYDE	1000	
123739	CROTONALDEHYDE(E)-	1000	
506683	CYANOGEN BROMIDE	500/10000	
506785	CYANOGEN IODIDE	1000/10000	e
2636262	CYANOPHOS	1000	e
675149	CYANURIC FLUORIDE	100	e
66819	CYCLOHEXIMIDE	100/10000	e
108918	CYCLOHEXYLAMINE	10000	e,l
17702419	DECABORANE(14)	500/10000	e
8065483	DEMETON	500	e
919868	DEMETON-S-METHYL	500	e
10311849	DIALIFOR	100/10000	e
19287457	DIBORANE	100	e
111444	DICHLOROETHYL ETHER	10000	d
149746	DICHLOROMETHYLPHENYLSILANE	1000	e
62737	DICHLORVOS	1000	
141662	DICROTOPHOS	100	e
1464535	DIEPOXYBUTANE	500	d
814493	DIETHYL CHLOROPHOSPHATE	500	e,h
164254	DIETHYLCARBAMAZINE CITRATE	100/10000	e
71636	DIGITOXIN	100/10000	c,e
2238075	DIGLYCIDYL ETHER	1000	e
20830775	DIGOXIN	10/10000	e,h
115264	DIMEFOX	500	e
60515	DIMETHOATE	500/10000	
2524030	DIMETHYL PHOSPHOROCHLORIDOTHIOATE	500	e
77781	DIMETHYL SULFATE	500	d
75785	DIMETHYLDICHLOROSILANE	500	e,h
57147	DIMETHYLHYDRAZINE	1000	d
99989	DIMETHYL-P-PHENYLEDIAMINE	10/10000	e
644644	DIMETILAN	500/10000	e
534521	DINITROCRESOL	10/10000	
88857	DINOSEB	100/10000	
1420071	DINOTERB	500/10000	e
78342	DIOXATHION	500	e
82666	DIPHACINONE	10/10000	e
152169	DIPHOSPHORAMIDE, OCTAMETHYL-	100	
298044	DISULFOTON	500	
514738	DITHIAZANINE IODIDE	500/10000	e
541537	DITHIOBIURET	100/10000	
316427	EMETINE, DIHYDROCHLORIDE	1/10000	e,h
115297	ENDOSULFAN	10/10000	
2778043	ENDOTHION	500/10000	e
72208	ENDRIN	500/10000	
106898	EPICHLOROHYDRIN	1000	d,l
2104645	EPN	100/10000	e

ADMINISTRATIVE REGISTER - 57

50146	ERGOCALCIFEROL	1000/10000	c,e
379793	ERGOTAMINE TARTRATE	500/10000	e
1622328	ETHANESULFONYL CHLORIDE, 2-CHLORO-	500	e
10140871	ETHANOL, 1,2-DICHLORO-, ACETATE	1000	e
563122	ETHION	1000	
13194484	ETHOPROPHOS	1000	e
538078	ETHYLBIS(2-CHLOROETHYL)AMINE	500	e,h
371620	ETHYLENE FLUOROHYDRIN	10	c,e,h
75218	ETHYLENE OXIDE	1000	d,l
107153	ETHYLENEDIAMINE	10000	
151564	ETHYLENEIMINE	500	d
542905	ETHYLTHIOCYANATE	10000	e
22224926	FENAMIPHOS	10/10000	e
122145	FENITROTHION	500	e
115902	FENSULFOTHION	500	e,h
4301502	FLUENETIL	100/10000	e
7782414	FLUORINE	500	k
640197	FLUOROACETAMIDE	100/10000	i
144490	FLUOROACETIC ACID	10/10000	e
359068	FLUOROACETYL CHLORIDE	10	c,e
51218	FLOUROURACIL	500/10000	e
944229	FONOFOS	500	e
50000	FORMALDEHYDE	500	d,l
107164	FORMALDEHYDE CYANOHYDRIN	1000	e,h
23422539	FORMETANATE HYDROCHLORIDE	500/10000	e,h
2540821	FORMOTHION	100	e
17702577	FORMPARANATE	100/10000	e
21548323	FOSTHIETAN	500	e
3878191	FUBERIDAZOLE	100/10000	e
110009	FURAN	500	
13450903	GALLIUM TRICHLORIDE	500/10000	e
77474	HEXACHLOROCYCLOPENTADIENE	100	d,h
4835114	HEXAMETHYLENEDIAMINE, NIN-DIBUTYL-	500	e
302012	HYDRAZINE	1000	d
74908	HYDROCYANIC ACID	100	
7647010	HYDROGEN CHLORIDE (GAS ONLY)	500	e,l
7664393	HYDROGEN FLUORIDE	100	
7722841	HYDROGEN PEROXIDE (CONC. GREATER THAN 52%)		
7783075	HYDROGEN SELENIDE	10	e
7783064	HYDROGEN SULFIDE	500	
123319	HYDROQUINONE	500/10000	
13463406	IRON, PENTACARBONYL-	100	e
297789	ISOBENZAN	100/10000	e
78820	ISOBUTYRONITRILE	10000	e,h
102363	ISOCYANIC ACID, 3,4-DICHLOROPHENYL ESTER	500/10000	e
465736	ISODRIN	100/10000	
55914	ISOFLUORPHATE	100	c
4098719	ISOPHORONE DIISOCYANATE	100	b,e
108236	ISOPROPYL CHLOROFORMATE	1000	e
119380	ISOPROPYLMETHYLPYRAZOLYL DIMETHYL-CARBAMATE	500	e
78977	LACTONITRILE	1000	e
21609905	LEPTOPHOS	500/10000	e
541253	LEWISITE	10	c,e,h
58899	LINDANE	1000/10000	d
7580678	LITHIUM HYDRIDE	100	b,e
109773	MALONONITRILE	500/10000	
12108133	MANGANESE, TRICARBONYL METHYLCYCLO-PENTADIENYL	100	e
51752	MECHLORETHAMINE	10	c,e
950107	MEPHOSFOLAN	500	e
1600277	MERCURIC ACETATE	500/10000	e
7487947	MERCURIC CHLORIDE	500/10000	e
21908532	MERCURIC OXIDE	500/10000	e
10476956	METHACROLEIN DIACERATE	1000	e
760930	METHACRYLIC ANHYDRIDE	500	e
126987	METHACRYLONITRILE	500	h
920467	METHACRYLOYL CHLORIDE	100	e
30674807	METHACRYLOYLOXYETHYLISOCYANATE	100	e,h
10265926	METHAMIDOPHOS	100/10000	e
558258	METHANESULFONYL FLUORIDE	1000	e
950370	METHIDATHION	500/10000	e
2032657	METHIOCARB	500/10000	
16752775	METHOMYL	500/10000	h
151382	METHOXYETHYLMERCURIC ACETATE	500/10000	e

ADMINISTRATIVE REGISTER - 58

80637	METHYL 2-CHLOROACRYLATE	500	e
74839	METHYL BROMIDE	1000	l
79221	METHYL CHLOROFORMATE	500	d,h
60344	METHYL HYDRAZINE	500	
624839	METHYL ISOCYANATE	500	f
556616	METHYL ISOTHIOCYANATE	500	b,e
74931	METHYL MERCAPTAN	500	
3735237	METHYL PHENKAPTON	500	e
676971	METHYL PHOSPHONIC DICHLORIDE	100	b,e
556649	METHYL THIOCYANATE	10000	e
78944	METHYL VINYL KETON	10	e
502396	METHYLMERCURIC DICYANAMIDE	500/10000	e
75796	METHYLTRICHLOROSILANE	500	e,h
1129415	METOLCARB	100/10000	e
7786347	MEVINPHOS	500	
315184	MEXACARBATE	500/10000	
50077	MITOMYCIN C	500/10000	d
69232224	MONOCROTOPHOS	10/10000	e
2763964	MUSCIMOL	500/10000	a,h
505602	MUSTARD GAS	500	e,h
13463393	NICKEL CARBONYL	1	d
54115	NICOTINE	100	c
65305	NICOTINE SULFATE	100/10000	e
7697372	NITRIC ACID	1000	
10102439	NITRIC OXIDE	100	c
98953	NITROBENZENE	1000	
1122607	NITROCYCLOHEXANE	500	e
10102440	NITROGEN DIOXIDE	100	
62759	NITROSDIMETHYLAMINE	1000	d,h
991424	NORBORMIDE	100/10000	e
PMN82147	ORGANORHODIUM COMPLEX (PMN-82-147)	10/10000	e
630604	OUABAIN	100/10000	c,e
23135220	OXAMYL	100/10000	e
78717	OXETANE, 3,3-BIS(CHLOROMETHYL)	500	e
2497976	OXYDISULFOTON	500	e,h
10028156	OZONE	100	e
1910425	PARAQUAT	10/10000	e
2074502	PARAQUAT METHOSULFATE	10/10000	e
56382	PARATHION	100	c,d
298000	PARATHION-METHYL	100/10000	c
12002038	PARIS GREEN	500/10000	d
19624227	PENTABORANE	500	e
2570265	PENTADECYLAMINE	100/10000	e
79210	PERACETIC ACID	500	e
594423	PERCHLOROMETHYLMERCAPTAN	500	
108952	PHENOL	500/10000	
4418660	PHENOL 2,2'-THIOBIS(4-CHLORO-6-METHYL-	100/10000	e
64006	PHENOL,3-(I-METHYLETHYL)-, METHYLCARBAMATE	500/10000	e
58366	PHENOXARSINE, 10,101-OXIDI	500/10000	e
696286	PHENYL DICHLOROARAIN	500	d,h
59881	PHENYLHYDRAZINE HYDROCHLORIDE	1000/10000	e
62384	PHENYLMERCURY ACETATE	500/10000	
2097190	PHENYLSILATRANE	100/10000	e,h
103855	PHENYLTHIOUREA	100/10000	
298022	PHORATE	10	
4104147	PHOSACETIM	100/10000	e
947024	PHOSFOLAN	100/10000	e
75445	PHOSGENE	10	l
732116	PHOSMET	10/10000	e
13171216	PHOSPHAMIDON	100	e
7803512	PHOSPHINE	500	
2703131	PHOSPHONOTHIOIC ACID, METHYL-,O-ETHYL O-	500	e
	(4-(METHYLTHIO) ESTER		
50782699	PHOSPHONOTHIOIC ACID, METHYL-,S-(2-(BIS	100	e
	(I-METHYLETHYL)AMINO)ETHYL O-ETHYL ESTER		
2665307	PHOSPHONOTHIOIC ACID, METHYL-,O-(4-NITRO-	500	e
	PHENYL)O-PHENYL ESTER		
3254635	PHOSPHORIC ACID, DIMETHYL4-(METHYLTHIO)	500	e
	PHENYL ESTER		
2587908	PHOSPHOROTHIOIC ACID, O,O-DIMETHYL-S-	500	c,e,g
	(2-METHYLTHIO) ETHYL ESTER		
7723140	PHOSPHORUS	100	b,h
10025873	PHOSPHORUS OXYCHLORIDE	500	d
10026138	PHOSPHORUS PENTACHLORIDE	500	b,e
1314563	PHOSPHORUS PENTOXIDE	10	b,e

7719122	PHOSPHORUS TRICHLORIDE	1000	
57476	PHYSOSTIGMINE	100/10000	e
57647	PHYSOSTIGMINE, SALICYLATE(1:1)	100/10000	e
124878	PICROTOXIN	500/10000	e
110894	PIPERIDINE	1000	e
23505411	PIRIMIFOS-ETHLY	1000	e
10124502	POTASSIUM ARSENITE	500/10000	d
151508	POTASSIUM CYANIDE	100	b
506616	POTASSIUM SILVER CYANIDE	500	b
2631370	PROMECARB	500/10000	e,h
106967	PROPARGYL BROMIDE	10	e
57578	PROPIOLACTONE, BETA-	500	e
107120	PROPIONITRILE	500	
542767	PROPIONITRILE, 3-CHLORO-	1000	
70699	PROPIOPHENONE, 41-AMINO	100/10000	e,l,g
109615	PROPYL CHLOROFORMATE	500	e
75569	PROPYLENE OXIDE	10000	l
75558	PROPYLENEIMINE	10000	d
2275185	PROTHOATE	100/10000	e
129000	PYRENE	1000/10000	c
140761	PYRIDINE, 2-METHYL-5-VINYL-	500	e
504245	PYRIDINE, 4-AMINO-	500/10000	4
1124330	PRIDINE, 4-NITRO-,I-OXIDE	500/10000	e
53558251	PYRIMINIL	100/10000	e,h
14167181	SALCOMINE	500/10000	e
107448	SARIN	10	e,h
7783008	SELENIOS ACID	1000/10000	
7791233	SELENIUM OXYCHLORIDE	500	e
563417	SEMICARBAZIDE HYDROCHLORIDE	1000/10000	e
3037727	SILANE, (4-AMINOBTYL)DIETHOXYMETHYL-	1000	e
7631892	SODIUM ARSENATE	1000/10000	d
7784465	SODIUM ARSENITE	500/10000	d
26628228	SODIUM AZIDE(NA(N3))	500	b
124652	SODIUM CACODYLATE	100/10000	e
143339	SODIUM CYANIDE(NA(CN))	100	b
62748	SODIUM FLOUROACETATE	10/10000	
13410010	SODIUM SELENATE	100/10000	e
10102188	SODIUM SELENITE	100/10000	h
10102202	SODIUM TELLURITE	500/10000	e
900958	STANNANE, ACETOXYTRIPHENYL-	500/10000	e,g
57249	STRYCHNINE	100/10000	c
60413	STRYCHNINE, SULFATE	100/10000	e
3689245	SULFOTEP	500	
3569571	SULFOXIDE, 3-CHLOROPROPYLCOTYL	500	e
7446095	SULFUR DIOXIDE	500	e,l
7783600	SULFUR TETRAFLUORIDE	100	e
7446119	SULFUR TRIOXIDE	100	b,e
7664939	SUFURIC ACID	1000	
77816	TABUN	10	c,e,h
13494809	TELLURIUM	500/10000	e
7783804	TELLURIUM HEXAFLUORIDE	100	e,k
107493	TEPP	100	
13071799	TERBUFOS	100	e,h
78002	TETRAETHYL LEAD	100	c,d
597648	TETRAETHYL TIN	100	c,e
75741	TETRAMETHYL LEAD	100	c,e,l
509148	TETRANITROMETHANE	500	
10031591	THALLIUM SULFATE	100/10000	h
6533739	THALLOUS CARBONATE	100/10000	c,h
7791120	THALLOUS CHLORIDE	100/10000	c,h
2757188	THALLOUS MALONATE	100/10000	c,e,h
7446186	THALLOUS SULFATE	100/10000	
2231574	THIOCARBAZIDE	1000/10000	e
39196184	THIOFANOX	100/10000	
297972	THIONAZIN	500	
108985	THIOPHENOL	500	
79196	THIOSEMICARBAZIDE	100/10000	
5344821	THIOUREA, (2-CHLOROPHENYL)-	100/10000	
614788	THIOUREA, (2-METHYLPHENYL)-	500/10000	e
7550450	TITANIUM TETRACHLORIDE	100	e
584848	TOLUENE 2,4-DIISOCYANATE	500	
91087	TOLUENE 2,6-DIISOCYANATE	100	
110576	TRANS-1,4-DICHLOROBUTENE	500	e
1031476	TRIAMIPHOS	500/10000	e
24017478	TRIAZOFOS	500	e

ADMINISTRATIVE REGISTER - 60

76028	TRICHLOROACETYL CHLORIDE	500	e
115219	TRICHLOROETHYLSILANE	500	e,h
327980	TRICHLORONATE	500	e,k
98135	TRICHLOROPHENYLSILANE	500	e,h
1558254	TRICHLORO(CHLOROMETHYL)SILANE	100	e
27137855	TRICHLOR(DICHLOROPHENYL)SILANE	500	e
998301	TRIETHOXSILANE	500	e
75774	TRIMETHYLCHLOROSILANE	1000	e
824113	TRIMETHYLOLPROPANE PHOSPHITE	100/10000	e,h
1066451	TRIMETHYLTIN CHLORIDE	500/10000	e
639587	TRIPHENYLTIN CHLORIDE	500/10000	e
555771	TRIS(2-CHLOROETHYL)AMINE	100	e,h
2001958	VALINOMYCIN	1000/10000	c,e
1314621	VANADIUM PENTOXIDE	100/10000	
08054	VINYL ACETATE MONOMER	1000	d,l
81812	WARFARIN	500/10000	
129066	WARFARINSODIUM	100/10000	e,h
28347139	XYLYENE DICHLORIDE	100/10000	e
58270089	ZINC, DICHLORO(4,4-DIMETHYL-5(((METHYLAM- ION)CARBONYL)OXY)IMINO)PENTANENITRILE) (T-4)-	100/10000	e
1314847	ZINC PHOSPHIDE	500	

*Only the statutory or final RQ is shown. for more information, see 40 CFR Table 302.4.

Notes:

- a This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.
- b This material is a reactive solid. The TPQ does not default to 10,000 pounds for nonpowder, nonmolten, nonsolution form.
- c The calculate TPQ changed after technical review as described in the technical support document.
- d Indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or other toxicity is completed.
- e Statutory reportable quantity for purposes of notification under SARA sect 304(a)(2).
- f The statutory 1 pound reportable quantity for methyl isocyanate may be adjusted in a future rulemaking action.
- g New chemicals added that were not part of the original list of 402 substances.
- h Revised TPQ based on new or reevaluated toxicity data.
- j TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.
- k The TPQ was revised after proposal due to calculation error.
- i Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other Chemicals").

NOTE: For chemicals that are solids, there may be two TPQs given (e.g., 500/10,000). In these cases, the lower quantity applies for solids in powder form with particles size less than 100 microns, or if the substance is in solution or in molten form. Otherwise, the 10,000 pound TPQ applies.

TAB Q-7-__

COVERED FACILITIES

FACILITY NAME	FAC EMERGENCY RESP COORD	COMMUNICATIONS
St. _____	_____	Office # _____
City _____	Title _____	Home # _____
		R. Freq _____
		Pager # _____

ALTERNATE FAC EMERG RESP COORD

_____	Office # _____
_____	Home # _____
Title _____	R. Freq _____

HAZARDOUS CHEMICAL(S)

NAME	UN ID#/CAS#	FORM	PACKAGED CONTAINER	MAXIMUM QUANTITY	HEALTH RISK
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SKETCH OF FACILITY AND STORAGE AREAS

ADMINISTRATIVE REGISTER - 61

FACILITY RESPONSE POINT (RP) AND DIRECTIONS

STAGING AREA (Support units will report and await assignment by local organization)

TRANSPORTATION ROUTES AND MODES OF TRANSPORTATION (include supplier and telephone number—describe how chemicals are handled—list hazardous points along the routes)

SPECIAL FACILITIES LIKELY TO BE AFFECTED BY A RELEASE (List affected facilities and day/night contacts)

PROTECTIVE ACTIONS (In-place sheltering of evacuation—give brief description of area(s) where protection actions may be required—add evacuation procedures to Annex EE)

EMERGENCY EQUIPMENT ON HAND/TRAINING/EXERCISING

SPILL CONTAINMENT/CLEAN-UP/DISPOSAL

EMERGENCY NOTIFICATION

Local 24 hr. warning number (LEPC)

Haz-mat Coord.

(Day) or
(Night) or

Alt. Coord.

(Day) or
(Night) or

Fire Dept.

Police Dept.

DES Coord.

(Day) or
(Night) or

Rescue or

Ambulance or

Kentucky Emergency Response Commission (KERC) 502-564-7815

Kentucky DES Area Coordinator

(O) _____
(H) _____

[illegible]

Page ___ of ___ pages

KENTUCKY EMERGENCY RESPONSE COMMISSION
TIER TWO INSTRUCTIONS
GENERAL INFORMATION

Submission of this Tier Two form is required by the Kentucky Emergency Response Commission in accordance with Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 312 and KRS 39.990 and subsequent regulations. The purpose of this Tier Two form is to provide state and local officials and the public with specific information on hazardous chemicals present at your facility during the past year.

CERTIFICATION

The owner or operator or officially designated representative of the owner or operator must certify that all information included in the Tier Two submission is true, accurate, and complete. On the first page of the Tier Two report, enter your full name and official title. Sign your name and enter the current date. Also, enter the total number of pages included in the Confidential and Nonconfidential information Sheets as well as all attachments. An original signature is required on at least the first page of the submission. Submissions to the SERC, LEPC, and fire department must each contain an original signature on at least the first page. Subsequent pages must contain either an original signature, a photocopy of the original signature, or a signature stamp. Each page must contain the date on which the original signature was affixed to the first page of the submission and the total number of pages in the submission.

YOU MUST PROVIDE ALL INFORMATION REQUESTED ON THIS FORM TO FULFILL ANNUAL CHEMICAL INVENTORY REQUIREMENTS.

THE KENTUCKY EMERGENCY RESPONSE COMMISSION REQUIRES SUBMISSION OF THE TIER TWO FORM.

WHO MUST SUBMIT THIS FORM

This request applies to the owner or operator of any facility that is required, under regulations implementing the Occupational Safety and Health Act of 1970, to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical present at the facility. MSDS requirements are specified in the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, found in Title 29 of the Code of Federal Regulations at 1910.1200.

WHAT CHEMICALS ARE INCLUDED

You must report the required information on this Tier Two form for each hazardous chemical present at your facility in quantities equal to or greater than established threshold amounts (discussed below), unless the chemicals are excluded under Section 311(e) of Title III. Hazardous chemicals are any substance for which your facility must maintain an MSDS under OSHA's Hazard Communication Standard.

WHAT CHEMICALS ARE EXCLUDED

Section 311(e) of Title III excludes the following substances:

- (I) Any food, food additive, color additive,

drug, or cosmetic regulated by the Food and Drug Administration:

(II) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use:

(III) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public:

(IV) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual:

(V) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

OSHA regulations, Section 1910.1200(b), stipulate exemptions from the requirement to prepare or have available an MSDS.

REPORTING THRESHOLDS

Minimum thresholds have been established for Tier Two reporting under Title III, Section 312. These thresholds are as follows:

For Extremely Hazardous Substances (EHSs) designated under section 302 of Title III, the reporting threshold is 500 pounds (or 227 kg.) or the threshold planning quantity (TPQ), whichever is lower:

For all other hazardous chemicals for which facilities are required to have or prepare an MSDS, the minimum reporting threshold is 10,000 pounds (or 4,540 kg.).

You need to report hazardous chemicals that were present at your facility at any time during the previous calendar year at levels that equal or exceed these thresholds. For instructions on threshold determinations for components of mixtures, see "What About Mixtures?" on page 2 of these instructions.

Please read these instructions carefully. Print or type all responses.

WHEN TO SUBMIT THIS FORM

Owners or operators of facilities that have hazardous chemicals on hand in quantities equal to or greater than set threshold levels must submit a Tier Two form by March 1.

WHERE TO SUBMIT FEE

(See Fee Schedule on page 4)

Checks shall be made payable to: "Kentucky State Treasurer" and shall be marked "For KyERC Fee Account". Fees and form shall be mailed to:

Chairman, Kentucky Emergency Response Commission
EOC Building, Boone National Guard Center
Frankfort, KY 40601-6168

WHERE TO SUBMIT THIS FORM

Send a completed Tier Two form(s) to each of the following organizations:

- 1. Your State Emergency Response Commission.
- 2. Your Local Emergency Planning Committee.

3. The fire department with jurisdiction over your facility.

PENALTIES

Any owner or operator who violates any Tier Two reporting requirements shall be subject to penalties as set forth in P.L. 99-499, Title III, Section 325 and KRS Chapter 39.990 and subsequent regulations.

If your Tier Two responses require more than one page use additional forms and fill in the page number at the bottom of the form.

REPORTING PERIOD

Enter the appropriate calendar year, beginning January 1 and ending December 31.

FACILITY IDENTIFICATION

Enter the full name of your facility (and company identifier where appropriate).

Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that describe the physical location of your facility (e.g. longitude and latitude). Include city, county, state, and zip code.

Enter the primary Standard Industrial Classification (SIC) code and the Dun & Bradstreet number for your facility. The financial officer of your facility should be able to provide the Dun & Bradstreet number. If your firm does not have this information, contact the State or regional office of Dun & Bradstreet to obtain your facility number or have one assigned.

OWNER/OPERATOR

Enter the owner's or operator's full name, mailing address, and phone number.

EMERGENCY CONTACT

Enter the name, title, and work phone number of at least one local person or office who can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility.

Provide an emergency phone number where such emergency information will be available 24 hours a day, every day. This requirement is mandatory. The facility must make some arrangement to ensure that a 24 hour contact is available.

IDENTICAL INFORMATION

Check the box indicating identical information, located below the emergency contacts on the Tier Two form, if the current chemical information being reported is identical to that submitted last year. Chemical descriptions, hazards, amounts, and locations must be provided in this year's form, even if the information is identical to that submitted last year.

CHEMICAL INFORMATION: Description, Hazards, Amounts, and Locations

The main section of the Tier Two form requires specific information on amounts and locations of hazardous chemicals, as defined in the OSHA Hazard Communication Standard.

If you choose to indicate that all of the information on a specific hazardous chemical is identical to that submitted last year, check the appropriate optional box provided at the right side of the storage codes and locations on the Tier Two form. Chemicals descriptions, hazards, amounts, and locations must be provided even if the information is identical to that submitted last year.

- What units should I use?

Calculate all amounts as weight in pounds. To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

- What about mixtures?

If a chemical is part of a mixture, you have the option of reporting either the weight of the entire mixture or only the portion of the mixture that is a particular hazardous chemical (e.g., if a hazardous of only 5% of a particular hazardous chemical, you can indicate either 100 lbs. of the mixture or 5lbs. of the chemical).

The option used for each mixture must be consistent with the option used in your Section 311 reporting.

Because EHSs are important to Section 303 planning, EHSs have lower thresholds. The amount of an EHS at a facility (both pure EHS substances and EHSs in mixtures) must be aggregated for purposes of threshold determination. It is suggested that the aggregation calculation be done as a first step in making the threshold determination. Once you determine whether a threshold for an EHS has been reached, you should report either the total weight of the EHS at your facility, or the weight of each mixture containing the EHS.

CHEMICAL DESCRIPTION

1. Enter the Chemical Abstract Service registry number (CAS). For mixtures, enter the CAS number of the mixtures as a whole if it has been assigned a number distinct from its constituents. For a mixture that has no CAS number, leave this item blank or report the CAS number of as many constituent as possible.

If you are withholding the name of a chemical in accordance with criteria specified in Title III, Section 322, enter the generic class or category that is structurally descriptive of the chemical (e.g., list toluene disocyanate as organic (sooyante) and check the box marked Trade Secret. Trade secret information should be submitted to EPA and must include a substantiation. Please refer to EPA's final regulation on trade secrecy (53 FR 28772, July 29, 1988) for detailed information on how to submit trade secrecy claims.

2. Enter the chemical name or common name of each hazardous chemical.
3. Check box for ALL applicable descriptors: pure or mixture; and solid, liquid, or gas; and whether the chemical is or contains an EHS.
4. If the chemical is a mixture containing EHS, enter the chemical name of each EHS in the mixture.

EXAMPLE:

You have pure chlorine gas on hand, as well as two mixtures that contain liquid chlorine. You write "chlorine" and enter the CAS number. Then you check "pure" and "mix" -- as well as "liquid" and "gas".

PHYSICAL AND HEALTH HAZARDS

For each chemical you have listed, check all the physical and health hazard boxes that apply. These hazard categories are defined in 40 CFR 370.2. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200.

**Hazard Category Comparison
For Reporting Under Section 311 and 312**

EPA's Hazard Categories	OSHA's Hazard Categories
Fire Hazard	Flammable Combustion Liquid Pyrophoric Oxidizer
Sudden Release of Pressure	Explosive Compressed Gas
Reactive	Unstable Reactive Organic Peroxide Water Reactive
Immediate (Acute) Health Hazards	Highly Toxic Toxic Irritant Sensitizer Corrosive
	Other hazardous Chemicals with an adverse effect with short term exposure
Delayed (Chronic) Health Hazard	Carcinogens
	Other hazardous chemicals with an adverse effect with long term exposure

MAXIMUM AMOUNT

1. For each hazardous chemical, estimate the greatest amount present at your facility on any single day during the reporting period.
2. Find the appropriate range value code in Table I.

3. Enter this range value as the Maximum Amount.
4. If range value 05 (100,000 to 999,999) is used for the maximum daily amount, enter the actual weight in pounds in the Inventory column directly below the code number. This is necessary to determine the appropriate fee category.

TABLE I REPORTING RANGE

Range Value	Weight Range in Pounds From... To...
01	0 99
02	100 999
03	1,000 9,999
04	10,000 99,999
05	100,000 999,999
06	1,000,000 9,999,999
07	10,000,000 49,999,999
08	50,000,000 99,999,999
09	100,000,000 499,999,999
10	500,000,000 999,999,999
11	1 billion higher than 1 billion

EXAMPLE:

You received one large shipment of solvent mixture last year. The shipment filled five 5,000-gallon storage tanks. You know that the solvent contains 10% benzene, which is a hazardous chemical.

You figure that 10% of 25,000 gallons is 2,500 gallons. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 2,500 gallons by 7.29 pounds per gallon to get a weight of 18.225 pounds.

Then you look at Table I and find that the range value 04 corresponds to 18.225. You enter 04 as the Maximum Amount.

AVERAGE DAILY AMOUNT

1. For each hazardous chemical, estimate the average weight in pounds that was present at your facility during the year.

To do this, total all daily weights and divide by the number of days the chemical was present on the site.

2. Find the appropriate range value in Table I.

3. Enter this range value as the Average Daily Amount.

EXAMPLE:

The 25,000-gallon shipment of solvent you received last year was gradually used up and completely gone in 315 days. The sum of the daily volume levels in the tank is 4,536,000 gallons. By dividing 4,536,000 gallons by 315 days on site, you calculate an average daily amount of 14,400 gallons.

You already know that the solvent contains 10% benzene, which is a hazardous chemical. Since 10% of 14,400 is 1,440, you figure that you had an average of 1,440 gallons of benzene. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 1,440 by 7.29 to get a weight of 10,500 pounds.

Then you look at Table I and find that the range value 04 corresponds to 10,500. You enter 04 as the Average Daily Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 10,500 in the shaded area.)

NUMBER OF DAYS ON SITE

Enter the number of days that the hazardous chemical was found on site.

EXAMPLE:

The solvent composed of 10% benzene was present for 315 days at your facility. Enter 315 in the space provided.

STORAGE CODES AND STORAGE LOCATIONS

List all nonconfidential chemical locations in this column, along with storage types/conditions associated with each location. Please note that a particular chemical may be located in several places around the facility. Each row of boxes followed by a line represents a unique location for the same chemical.

Storage Codes: Indicate the types and conditions of storage present.

- Look at Table II. For each location, find the appropriate storage type and enter the corresponding code in the first box.
- Look at Table III. For each location, find the appropriate storage types for pressure and temperature conditions. Enter the applicable pressure code in the second box. Enter the applicable temperature code in the third box.

TABLE II - STORAGE TYPES

CODES TYPES OF STORAGE

A	Above ground tank
B	Below ground tank
C	Tank inside building
D	Steel drum
E	Plastic or nonmetallic drum
F	Can
G	Carboy
H	Silo
I	Fiber drum
J	Bag
K	Box
L	Cylinder
M	Glass bottles or jugs
N	Plastic bottles or jugs
O	Tote bin
P	Tank wagon
Q	Rail car
R	Other

TABLE III - TEMPERATURE AND PRESSURE CONDITIONS

CODES STORAGE CONDITIONS

	(PRESSURE)
1.	Ambient pressure
2.	Greater than ambient pressure
3.	Less than ambient pressure
	(TEMPERATURE)
4.	Ambient temperature
5.	Greater than ambient temperature

- Less than ambient temperature but not cryogenic
- Cryogenic conditions

EXAMPLE:

The benzene in the main building is kept in a tank inside the building, at ambient pressure and less than ambient temperature.

Table II shows you that the code for a tank inside a building is C. Table III shows you that the code for ambient pressure is 1, and the code for less than ambient temperature is 6.

You enter: C-1-6

TIER TWO INSTRUCTIONS

Storage Locations

Provide a brief description of the precise location of the chemical, so that emergency responders can locate the area easily. You may find it advantageous to provide the optional site plan or site coordinates as explained below.

For each chemical, indicate at a minimum the building or lot. Additionally, where practical, the room or area may be indicated. You may respond in narrative form with appropriate site coordinates or abbreviations.

If the chemical is present in more than one building, lot, or area location, continue your responses down the page as needed. If the chemical exists everywhere at the plant site simultaneously, you may report that the chemical is ubiquitous at the site.

Optional Attachments: If you choose to attach one of the following, check the appropriate Attachments box at the bottom of the Tier Two form.

- A site plan with site coordinates indicated for building, lots, areas, etc. throughout your facility.
- A list of site coordinate abbreviations that correspond to building, lots, areas, etc. throughout your facility.
- A description of dikes and other safeguard measures for storage locations throughout your facility.

EXAMPLE:

You have benzene in the main room of the main building, and in tank 2 in tank field 10. You attach a site plan with coordinates as follows: main building = G-2, tank field 10 = B-6. fill in the Storage Location as follows:

B-6 [Tank 2] G-2 [Main Room]

CONFIDENTIAL INFORMATION

Under Title III, Section 324, you may elect to withhold location information on a specific chemical from disclosure to the public, if you choose to do so.

- Enter the word "confidential" in the Nonconfidential Location section of the Tier Two form on the first line of the storage locations.
- On a separate Tier Two Confidential Location Information Sheet, enter the name and CAS number of each chemical for which you are keeping the location confidential.
- Enter the appropriate location and storage information, as described above for nonconfidential locations.
- Attach the Tier Two Confidential Location information Sheet to the Tier Two form. This separates confidential locations from other information that will be disclosed to the public.

CERTIFICATION

Instructions for this section are included on page one of these instructions.

FEE SCHEDULE

Check appropriate box on the form.

- \$0 Category One Facility is owned or operated by local, state or federal government.
- \$40 Category Two Facility has no less than 10,000 pounds and no more than 499,999 pounds of each of ten (10) or fewer hazardous substances.

The combined total of all hazardous substances shall not exceed 499,999 pounds.
- \$250 Category Three Facility has 10,000 pounds or more of each 11 or more hazardous substances. The combined total of all hazardous substance shall not exceed 499,999 pounds.
- \$250 Category Four Facility has a total of over 499,999 pounds of hazardous substances.
- \$250 Category Five Facility has an extremely hazardous substance in excess of the threshold planning quantity.

DEPARTMENT FOR MILITARY AFFAIRS Division of Disaster and Emergency Services (Amended After Hearing)

106 KAR 1:090. Kentucky emergency response commission fee account grant requirements for local emergency planning committees.

RELATES TO: KRS 39.800 to 39.990, 42 USC 11001 to 11050

STATUTORY AUTHORITY: KRS 39.817, 39.845, 39.850
NECESSITY AND FUNCTION: This regulation establishes criteria and procedures to be met by local emergency planning committees requesting funds generated by KRS 39.817.

Section 1. To be eligible for financial assistance, local emergency planning committees which have extremely hazardous substances as listed in 106 KAR 1:080, Section 6, in excess of the threshold planning quantity present in their

community shall meet all the following criteria:

(1) The local emergency planning committee shall meet all requirements set forth in KRS 39.840.

(2) The local emergency planning committee shall have an emergency response plan pursuant to KRS 39.840(1)(a), (e), (f) and 39.860 that has been approved by the Kentucky Emergency Response Commission.

(a) The local emergency planning committee's emergency response plan shall contain an approved Tab Q-7 listed in Section 6 of 106 KAR 1:080 for each facility in the planning district that has an extremely hazardous substance listed in Section 6 of 106 KAR 1:080 in excess of the threshold planning quantity.

(b) The local emergency planning committee shall submit new Tab Q-7 plans [plan, with all revisions and updates, shall be submitted] to the State Disaster and Emergency Services Area Coordinator within sixty (60) days of notification from the facility has an extremely hazardous substance in excess of the threshold planning quantity [no later than April 1 each year].

(c) After new Tab Q-7 plans are submitted, no later than April 1 each year, the local emergency planning committee shall review the Tab Q-7 plans and send certification to the state disaster and emergency services area coordinator stating that there were no changes and therefore the plan is correct as is; or the plan has been revised and the revisions are included with the certification.

(d) [(c)] The State Disaster and Emergency Services Area Coordinator shall review new Tab Q-7 plans [the plan, with all revisions and updates,] for completeness, note any recommendations and forward them [it] to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of receipt from the local emergency planning committee [no later than May 1].

(e) The state disaster and emergency services area coordinator shall review Tab Q-7 revisions and certifications received from the local emergency planning committee for completeness, note any recommendations and forward them to the Chairman of the Kentucky Emergency Response Commission, or designee, no later than May 1 each year.

(3) The local emergency planning committee shall meet at least semiannually to conduct its business and a quorum shall be required.

(4) No later than December 1 each year, the local emergency planning committee shall submit an updated membership list to the Kentucky Emergency Response Commission.

(5) In accordance with KRS Chapter 424 (Legal Notice), the local emergency planning committee shall annually publish public information on committee activities entitled "Public (Legal) Notice Advertisement" on form DES/SARA-324 as set out in Section 7 of this regulation.

Section 2. To be eligible for financial assistance, local emergency planning committees which do not have any extremely hazardous substances as listed in 106 KAR 1:080, Section 6, [Appendix A] in excess of the threshold planning quantity present in their community shall meet the following criteria:

(1) The local emergency planning committee shall meet criteria set forth in KRS 39.840 (1)(b), (c), (d), (2), (4), (5) and Section 1(4)

and (5) of this regulation.

(2) The local emergency planning committee shall meet at least annually to conduct its business and a quorum shall be required.

Section 3. Local Emergency Planning Committee Procedures. (1) If a local emergency planning committee requests financial assistance, it shall use Grant Request Form DES/SARA-303 as set out in Section 7 of this regulation and shall include a detailed budget identifying how the requested funds are to be spent.

(2) The grant request form shall be submitted to the State Disaster and Emergency Services Area Coordinator no earlier than January 1 and no later than May 1.

(3) The State Disaster and Emergency Services Area Coordinator shall review the grant request form for completeness and conformance to statutes and regulations, note any recommendations and forward it to the Chairman of the Kentucky Emergency Response Commission or designee, no later than June 1.

(4) The Chairman of the Kentucky Emergency Response Commission, or designee, shall review the grant request form for completeness and conformance to statutes and regulations, note any recommendations and forward it to the Grant Review Committee no later than July 1.

(5) The Grant Review Committee, with a quorum present, shall review all grant requests and forward their recommendations no later than August 15 to the Kentucky Emergency Response Commission for final approval.

(6) The Kentucky Emergency Response Commission shall make the grant awards no later than September 15.

(7) The State Disaster and Emergency Services Area Coordinator, the Chairman of the Kentucky Emergency Response Commission, or designee, or the Grant Review Committee may request additional information which shall be provided by the local emergency planning committee. Failure to provide the requested information shall invalidate the local emergency planning committee's request for funding.

Section 4. Requests for Modifications. (1) A modification of a grant award is required if there is a change in the grant request or if a local emergency planning committee is [unable] to expend the funds for which the grant was awarded. A request for modification shall be submitted by the LEPC for approval by the commission. Unexpended monies shall be returned to the fund.

(2) Requests for modifications of grant awards shall be submitted on Grant Request Form DES/SARA-303 as set out in Section 7 of this regulation and, except for due dates, shall be processed in accordance with Sections 3 and 6 of this regulation.

(3) Modifications may be submitted throughout the grant period.

Section 5. Supplemental Grant Awards. (1) In the event supplemental money is available, the Kentucky Emergency Response Commission shall determine the date of the supplemental allocation award and inform the local emergency planning committees of that date.

(2) Requests for supplemental money shall be submitted on Grant Request Form DES/SARA-303 as set out in Section 7 of this regulation and, except for due dates, shall be processed in

accordance with this section and Sections 3 and 6 of this regulation.

(3) If a local emergency planning committee requests supplemental money the schedule of due dates is:

(a) Thirty (30) days from notification by the Kentucky Emergency Response Commission of the availability of supplemental money, the local emergency planning committee shall submit the supplemental grant request to the State Disaster and Emergency Services Area Coordinator.

(b) Thirty (30) days from receipt of the supplemental grant request, the State Disaster and Emergency Services Area Coordinator shall review the supplemental grant request in accordance with Sections 3 and 6 of this regulation and forward it to the Chairman of the Kentucky Emergency Response Commission, or designee.

(c) Thirty (30) days from receipt of the supplemental grant request, the Chairman of the Kentucky Emergency Response Commission, or designee, shall review the supplemental grant request in accordance with Sections 3 and 6 of this regulation and forward it to the Grant Review Committee.

(d) Forty-five (45) days from receipt of the supplemental grant request, the Grant Review Committee, with a quorum present, shall review the supplemental grant request in accordance with Sections 3 and 6 of this regulation and forward their recommendations to the Kentucky Emergency Response Commission.

(e) Thirty (30) days from receipt of the recommendation of the Grant Review Committee, the Kentucky Emergency Response Commission shall make the supplemental grant award.

Section 6. Requirements for Funding Accountability. (1) Funds provided by the Kentucky Emergency Response Commission shall be deposited in a separate "(Name of County) Emergency Planning Committee Fee Account" and fiscal accountability shall be prescribed by the state auditor of public accounts. All funds shall be subject to audit by the Kentucky Emergency Response Commission and the state auditor of public accounts.

(2) The bylaws of each local emergency planning committee shall identify the position or person who will be responsible for accountability for the funds and who will be listed as the authorized applicant as shown on DES/SARA-303 [financial responsibility] and shall be submitted simultaneously with the grant request.

(3) The local emergency planning committee shall provide documentation of expenditures for the preceding year on each grant request submitted except for the initial grant request.

(4) Grant awards approved by the Kentucky Emergency Response Commission may be withheld for noncompliance with KRS 39.800 to 39.990 and administrative regulations issued thereunder and for failure to provide required documentation.

(5) All funding allocation decisions shall be made by the Kentucky Emergency Response Commission and shall be dependent upon availability of fees collected.

Section 7. Form DES/SARA-324 and grant request form DES/SARA-303 are set out in this section.

This is to certify that the Kentucky Emergency Response Commission has recommended that this administrative regulation be adopted.

JAMES H. MOLLOY, Chairman
Kentucky Emergency Response Commission

MICHAEL W. DAVIDSON, Brigadier General
APPROVED BY AGENCY: April 10, 1991
FILED WITH LRC: May 28, 1991, 11 a.m.

PUBLIC (LEGAL) NOTICE ADVERTISEMENT
COUNTY EMERGENCY PLANNING COMMITTEE

Pursuant to Section 324, Title III of the 1986 Federal Superfund Amendments and Reauthorization Act (SARA) of 1986 (PL 99-499), the following information is provided in compliance with the Community Right-to-Know requirements of the SARA Law, and the open meetings and open records provisions of Kentucky Revised Statutes. Members of the public may contact the (name of county) County Emergency Planning Committee by writing (name of chairman), Chairman of the (name of county) County Emergency Planning Committee,

(working address of chairman or committee), (city), Kentucky (zip code), or contacted by telephone at (area code), (telephone number established by the committee). The (name of county) County Emergency Planning Committee conducts meetings at (name of building), (local address), or at other locations, in accordance with the Kentucky Open Meetings Law. Members of the public may request to be notified of regular or special meetings as provided in KRS 61.820 and KRS 61.825. Records of the Planning Committee, including the county emergency response plan, material safety data sheets, and inventory forms, or any follow-up emergency notices as may subsequently be issued, are open for inspection, and members of the public who wish to review these records may do so (normal hours of business), (Eastern or Central Time), (days of the week), at (location of the office or place where custodian keeps the committee files), as required by the Kentucky Open Records Law. The local 24-hour telephone number for purposes of emergency notification, as required by SARA, is (emergency number adopted by county planning committee).

KENTUCKY EMERGENCY RESPONSE COMMISSION FEE ACCOUNT FUND

Grant Application for Grant Period 09/01/9__ to 09/31/9__

DUE DATES

LPCs to ACs 05/01

ACs to State 06/01

Final Award 09/15

Received by AC _____

Reviewed by AC _____

Initial & date

Received by State _____

Reviewed by State _____

Initial & date

APPLICANT INFORMATION

Applicant Name _____ County _____ Date _____

Enter total number of Tab Q-7's with Extremely Hazardous Substances in your county. This is the total number of facilities with extremely hazardous substances in your county.

GRANT INFORMATION

Grant Amount Requested \$ _____

Circle Type of Application: LEPC New Revised
State Agency New Revised**GRANT RECIPIENT**

Checks shall be made payable to and mailed to the AUTHORIZED APPLICANT. THE AUTHORIZED APPLICANT is the person authorized to apply for and manage the grant. The AUTHORIZED APPLICANT shall be the designated contact person. For LEPCs, the AUTHORIZED APPLICANT and designed contact person will generally be the LEPC Chairperson.

Name and Title of Authorized Applicant and Designated Contact Person

Street Address

City, Zip and Phone Number

LEPCs shall submit grant request form DES/SARA-303 to their State Disaster and Emergency Services Area Coordinator. All required documentation shall accompany the form. Incomplete grant request forms may delay processing and may result in invalidating the request.

State agencies shall submit grant request form SES/SARA-303 to the Chairman, or designee, of the Kentucky Emergency Response Commission. All required documentation shall accompany the form. Incomplete grant request forms may delay processing and may result in invalidating the request.

CERTIFICATION

I, the undersigned, certify to the Kentucky Emergency Response Commission that all the information is true and accurate. I further represent that the money received under this grant program will be used for the administration, development and implementation of the Kentucky Emergency Planning and Community Right-To-Know program, known as SARA Title III, within the guidelines mandated by P.L. 99-499/Title III, KRS Chapter 39.800 to 39.990 and subsequent regulations.

Name, Title and Date

DES/SARA-303
106 KAR 1:090

BUDGET FOR GRANT APPLICATION 09/01/9__ to 09/31/9__

ATTACHMENTS

Detailed budget sheet for each budget category you request

Documentation for preceeding year's award -

Copy of published DES/SARA-324

Bylaws

INELIGIBLE ITEMS

Emergency response equipment

Reimbursement for emergency response and/or cleanup of a release

Requests for salaries by LEPCs

BUDGET CATEGORIES	GRANT REQUEST	GRANT AWARD
Right-To-Know responsibilities--Includes legal notice DES/SARA-324		
Data Management--Includes receiving and maintaining data under 302(c)/KRS 39.845; 304/KRS 39.840(b), 311/312/KRS 39.840(c)		
Telephone--Includes 24-hour warning point for releases and cost of telephone for LEPC business		
Services--Includes contracts* to support KRS 39.800 to KRS 39.990.		
Office Supplies-- Includes postage, printing, copying and paper		
File cabinets, desk, chairs		
Commission-approved training		
Commission-approved travel		
TOTAL GRANT REQUEST		
LESS CARRY-OVER MONIES		
ADJUSTED GRANT AWARD		

*Contracts for personal services shall be in conformance with state laws and regulations.

DES/SARA-303
106 KAR 1:090

DEPARTMENT FOR MILITARY AFFAIRS
Division of Disaster and Emergency Services
(Amended After Hearing)

106 KAR 1:100. Kentucky emergency response commission fee account grant requirements for state agencies.

RELATES TO: KRS 39.800 to 39.990

STATUTORY AUTHORITY: KRS 39.817

NECESSITY AND FUNCTION: This regulation establishes criteria and procedures to be met by state agencies requesting funds generated by KRS 39.817.

Section 1. Eligibility of State Agencies. State agencies that perform functions to assist the Kentucky Emergency Response Commission in the administration of its programs and activities at the state level are eligible to apply for funding.

Section 2. State Agency Procedures. (1) State agencies may apply for financial assistance by completing Grant Request Form DES/SARA-303 as set out in 106 KAR 1:090 and shall include a detailed budget identifying how the requested funds are to be spent.

(2) State agencies may request funding for staff to support the commission in the administration of its programs and activities at the state level. If a request for staff is included in the grant request, the state agencies shall attach a position description detailing job duties and an organization chart defining that position within the agency.

(3) The grant request form shall be submitted directly to the Chairman of the Kentucky Emergency Response Commission, or designee, no later than May 1.

(4) The Chairman of the Kentucky Emergency Response Commission, or designee, shall review the grant request form for completeness and conformance to administrative regulations and statutes, note any recommendations and forward it to the Grant Review Committee no later than July 1.

(5) The Grant Review Committee, with a quorum present, shall review all grant requests from state agencies and forward their recommendations no later than August 15 to the Kentucky Emergency Response Commission for final approval.

(6) The Kentucky Emergency Response Commission shall make the grant awards no later than September 15.

(7) The Chairman of the Kentucky Emergency Response Commission, or designee, or the Grant Review Committee may request additional information which shall be provided by the state agency. Failure to provide the requested information shall invalidate the state agency's request for funding.

Section 3. Requests for Modifications. (1) A request for modification of a grant award is required if there is a change in the grant request or if a state agency is unable to expend the funds for which the grant was awarded. [A request the grant was awarded.] A request for modification must be submitted by the state agency for approval by the commission. Unexpended monies shall be returned to the fund.

(2) Requests for modifications of grant awards shall be submitted on Grant Request Form DES/SARA-303 as set out in 106 KAR 1:090 and,

except for due dates, shall be processed in accordance with Sections 2 and 4 of this regulation. Requests for modifications may be submitted throughout the grant period.

Section 4. Requirements for Funding Accountability. (1) Funds provided by the Kentucky Emergency Response Commission shall be subject to fiscal accountability prescribed by the state auditor of public accounts. A memorandum of agreement between the state agency making application and the Chairman of the Kentucky Emergency Response Commission shall be executed. All funds shall be subject to audit by the Kentucky Emergency Response Commission and the state auditor of public accounts.

(2) Grant awards approved by the Kentucky Emergency Response Commission may be withheld for noncompliance with KRS 39.800 to 39.990 and administrative regulations issued thereunder and for failure to provide required documentation.

(3) All funding allocation decisions shall be made by the Kentucky Emergency Response Commission and shall be dependent upon availability of fees collected.

This is to certify that the Kentucky Emergency Response Commission has recommended that this administrative regulation be adopted.

JAMES H. MOLLOY, Chairman
Kentucky Emergency Response Commission

MICHAEL W. DAVIDSON, Brigadier General
APPROVED BY AGENCY: April 10, 1991
FILED WITH LRC: May 28, 1991 at 11 a.m.

DEPARTMENT FOR MILITARY AFFAIRS
Division of Disaster and Emergency Services
(Amended After Hearing)

106 KAR 1:120. Kentucky emergency response commission fee account grant distribution formula.

RELATES TO: KRS 39.800 to 39.990

STATUTORY AUTHORITY: KRS 39.817

NECESSITY AND FUNCTION: This regulation establishes administrative support and the grant distribution formula to be used in awarding grants for funds generated by KRS 39.817.

Section 1. Local Emergency Planning Committee Grant Distribution Formula. (1) At least fifty (50) percent of funds collected annually by KRS 39.817 shall be awarded to eligible local emergency planning committees which submit grant requests for administration, development and implementation of the Kentucky Emergency Planning and Community Right-to-Know program, known as SARA Title III, within the guidelines mandated by PL 99-499, Title III, KRS 39.800 to 39.990 and subsequent administrative regulations.

(2) The grant distribution formula to determine how much money will be available to each local emergency planning committee is:

(a) Ten (10) percent of the total amount (A) collected by April 1 divided by 120 local emergency planning committees.

.1(A)
120 Local Emergency Planning Committees

Hypothetical example: $\frac{.1(200,000)}{120} = \167

(b) Plus twenty (20) percent of the total amount (A) collected statewide times the ratio of Kentucky Emergency Response Commission - required and approved Tab Q-7s (Qc) in the county to the total Kentucky Emergency Response Commission - approved Tab Q-7s (Qs) in the state.

$$.2(A) \frac{Q_c}{Q_s}$$

Hypothetical example: $\frac{.2(200,000) \frac{13}{1,000}}{1,000} = \520

(c) Plus twenty (20) percent of the total amount (A) collected statewide times the ratio of fee-generating Tiers (Tc) in the county to the total number of fee generating Tiers (Ts) in the state.

$$.2(A [a]) \frac{T_c}{T_s}$$

Hypothetical example:
 $\frac{.2(200,000) \frac{30}{1,000}}{1,000} = \$1200 [400]$

(d) Therefore the formula for local emergency planning committee grant (Ga) distribution to determine how much money will be available to each eligible local emergency planning committee is:

$$Ga = \frac{.1(A)}{120 \text{ LEPCs}} + .2(A [a]) \frac{Q_c}{Q_s} + .2(A) \frac{T_c}{T_s}$$

(3) The grant (Gr) distribution formula to determine how much money an eligible local emergency planning committee which submits a grant request form may receive is:

$$Gr = \frac{.1(A)}{\text{Total eligible LEPCs}} + .2(A) \frac{Q_c}{Q_s} + .2(A) \frac{T_c}{T_s}$$

(4) All grant awards shall be based upon the amount of money requested by the eligible local emergency planning committee and the formula shown in this section.

Section 2. Notice of Amount of Availability of Funds to Each Local Emergency Planning Committee. (1) No later than April 1 each year the Kentucky Emergency Response Commission shall notify the local emergency planning committees how much money will be available to each eligible local emergency planning committee which submits a grant request form. This amount shall be based upon the total amount of funds available in the Kentucky Emergency Response Commission fee account divided pursuant to Section 1 of this regulation.

(2) Notification of money available shall not be construed as an automatic grant award to a local emergency planning committee. Each local emergency planning committee who wants an award shall submit a grant request form in accordance with 106 KAR 1:090.

Section 3. State Agency Grant Distribution. No more than fifty (50) percent of funds collected annually by KRS 39.817 shall be allocated by the Kentucky Emergency Response Commission to state agencies other than local emergency planning

committees which submit grant requests for administration, development and implementation of the Kentucky Emergency Planning and Community Right-to-Know program, known as SARA Title III, within the guidelines mandated by PL 99-499, Title III, KRS 39.800 to 39.990 and subsequent administrative regulations.

Section 4. Availability of Additional Funds. The Kentucky Emergency Response Commission may set a date and notify all local emergency planning committees and state agencies of the availability of additional funds collected after April 1 or which were returned to the commission during the year. Any additional funds shall be distributed in accordance with Sections 1(1) and 3 of this regulation.

Section 5. Administrative support required by KRS 39.817 shall be provided by the Division of Disaster and Emergency Services.

This is to certify that the Kentucky Emergency Response Commission has recommended that this administrative regulation be adopted.

JAMES H. MOLLOY, Chairman
 Kentucky Emergency Response Commission

MICHAEL W. DAVIDSON, Brigadier General
 APPROVED BY AGENCY: April 10, 1991
 FILED WITH LRC: May 28, 1991 at 11 a.m.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Amended After Hearing)

301 KAR 1:085. Mussel shell harvesting.

RELATES TO: KRS 150.025, 150.110, 150.170, 150.175, 150.190, 150.510, 150.520

STATUTORY AUTHORITY: KRS 13A.150, 150.025

NECESSITY AND FUNCTION: It is necessary to regulate the manner of taking mussels because of their [the] value and their susceptibility to [of these animals for] overharvest. This amendment is necessary to protect three (3) species of mussels designated as endangered under the Endangered Species Act. These species are the orange-footed pimple-back, Plethobasus cooperianus, the pink mucket, Lampsilis orbiculata, and the rough pigtoe, Pleurobema plenum. [close musseling in the Big South Fork National River and Recreational Area to bring this regulation into conformance with federal restrictions.]

Section 1. Conforming with KRS 150.170, all persons who actively participate in the harvesting and sale of mussels or mussel shells, whether or not they own or possess the gear being used in the harvest of mussels or mussel shells, shall have an appropriate license. Those persons having a valid mussel buyers license are authorized to sell mussels and mussel shells. No boat shall be used in musseling operations without a licensed operator in the boat.

Section 2. The mussel season is open year round in all streams and on all beds, except as specified in this section.

(1) Musseling is prohibited in the Tennessee River from Kentucky Dam downstream to river mile seventeen and eight-tenths (17.8), an area

established as a mussel sanctuary.

(2) Musseling is prohibited within the stream segments 200 yards below any dam on any stream.

(3) Musseling is prohibited on the Cumberland River from Barkley Dam downstream to the U.S. Highway 62 bridge.

(4) Musseling is prohibited in all embayments on Barkley and Kentucky Lakes.

(5) Musseling is prohibited in the Ohio River between river mile 418 and river mile 419 and between river mile 966.3 and river mile 970.0 establishing these areas as mussel sanctuaries. [an area established as a mussel sanctuary.]

(6) Musseling is prohibited on the Big South Fork of the Cumberland River and tributaries above the confluence of Koger Creek.

(7) Musseling is prohibited in the Green River from the western boundary of Mammoth Cave National Park downstream to the confluence with Woodbury Dam. [Lock and Dam #5 downstream one and three-tenths (1.3) miles to the state highway 185 bridge.] an area established as a mussel sanctuary.

(8) Musseling is prohibited in the Barren River from the Barren River Lake dam downstream to the confluence with the Green River. [Lock and Dam #1 downstream three and five-tenths (3.5) miles to the confluence with Mortar Branch.] an area established as a mussel sanctuary.

Section 3. Musseling is permitted during the hours of 6 a.m. and 6 p.m. daily except in Barkley and Kentucky Lakes where the hours are 8 a.m. to 6 p.m.

Section 4. The statewide size limits for taking of mussels shall be as follows. All mussels smaller than these minimum sizes shall [must] immediately be returned to the water from which taken.

(1) Washboard mussels, *Megaloniais gigantea*, shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of three and three-fourths (3 3/4) inches.

(2) Three (3) ridge mussels, *Amblema plicata*, shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and three-fourths (2 3/4) inches.

(3) All other mussels, except the Asiatic clam, *Corbicula* sp. shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and one-half (2 1/2) inches.

(4) The Asiatic clam, *Corbicula* sp., may be taken at any size.

Section 5. Mussel harvesting from the waters of the Commonwealth of Kentucky, except as provided in Section 8 of this regulation, shall be by brail only. No more than two (2) brails each sixteen (16) feet or less in length shall be simultaneously operated from any boat. More than two (2) brails may be carried aboard the boat.

Section 6. Mussel brail hooks when used shall be constructed of wire of at least fourteen (14) gauge; smaller wire is prohibited.

Section 7. Prongs of hooks shall be no longer than one and one-fourth (1 1/4) inch as measured from the tip of point to place on hook where the prongs are joined.

Section 8. The Commissioner may designate as disaster areas waters in which all live mussels have been killed, and may issue a special permit allowing the use of various harvest methods.

Section 9. No mussels designated as endangered shall be taken.

Section 10. Subsections (7) and (8) in Section 2 of this regulation shall not be enforced until January 1, 1992.

DON R. McCORMICK, Commissioner

DAVID H. GODBY, Chairman

RONALD E. GENTRY, Secretary

APPROVED BY AGENCY: June 12, 1991

FILED WITH LRC: June 12, 1991 at 11 a.m.

EDUCATION PROFESSIONAL STANDARDS BOARD (Amended After Hearing)

704 KAR 20:580. Certification revocation procedures.

RELATES TO: KRS 161.120, 335B.010 to 335B.070

STATUTORY AUTHORITY: KRS 161.028, 161.120

NECESSITY AND FUNCTION: KRS 161.120 provides that any Kentucky certification for school personnel may be revoked or suspended by the Education Professional Standards Board. This regulation identifies the conditions for initiating revocation proceedings and the procedures to be followed, including the rules governing revocation hearings.

Section 1. (1) In addition to those grounds provided in KRS 161.120, action to revoke any Kentucky certificate may be initiated by the Education Professional Standards Board upon receiving one (1) or more of the following:

[(a) Report from district school superintendent, as required in KRS 161.120, on a certified school employee whose contract is terminated or not renewed for grounds set forth in KRS 161.120(1); who resigns from, or otherwise leaves, a position under threat of contract termination, or nonrenewal for grounds set forth in KRS 161.120(1); who is convicted in a criminal prosecution; or who is otherwise known to have engaged in such actions or conduct as might reasonably be expected to warrant consideration for certificate revocation. The duty to report shall exist without regard to any disciplinary action, or lack thereof, by the superintendent, and the required report shall be submitted within thirty (30) days of the event giving rise to the duty to report.]

(a) (b) Report of criminal prosecution for persons who are not employed in a professional school position, but who hold a Kentucky certificate.

(b) (c) Report of certificate revocation or suspension from another state.

(c) (d) Report received from a school superintendent resulting from an unsatisfactory criminal records check as required by KRS 160.380.

(d) (e) Report from the chief state school officer or local board of education of conduct of the superintendent which might reasonably be construed as grounds for revocation as set forth in KRS 161.120(1).

(2) Failure to report by the superintendent as outlined in KRS 161.120 [subsection (1)(a) and

(d) of this section] may constitute grounds for revocation of the superintendent's certificate.

Section 2. (1) Upon receiving a report as identified in Section 1 of this regulation, the Executive Secretary of the Education Professional Standards Board shall, on behalf of the board, secure available documentation and information relating to the cause for certificate revocation. [In the case of a certified school employee, the Education Professional Standards Board shall provide a copy of the report to the certified employee and inform him of the right to file a written rebuttal with the executive secretary within thirty (30) days of receipt of notice.]

(2) The Education Professional Standards Board, or its designee, shall make the determination that the report warrants or does not warrant a hearing for certificate revocation. In making this determination, the board or its designee, shall take into account the conditions outlined in Section 3 of this regulation.

(3) If the Education Professional Standards Board, or its designee, makes the determination that a hearing is not warranted based on reports identified in Section 1(1)(a) and (d), the certified employee shall be informed of the decision not to initiate revocation proceedings.

(4)(a) Upon determination to initiate revocation proceedings the Education Professional Standards Board, through its designee, shall inform the certificate holder by certified mail of the decision to initiate proceedings and by informing him in writing of the specific detailed [the] charges against him and set a time and date for a hearing. [The hearing shall take place no less than twenty (20) days nor more than forty-five (45) days after the certificate holder receives the statement of charges.]

(b) A continuance requested by the certificated employee may be granted for good cause shown, including, but not limited to, pending criminal charges making it inadvisable for the employee to testify at any administrative hearing, and late entry of an attorney into the case on behalf of the employee. Objections to a continuance request by the school district involved shall be considered on a case-by-case basis.

(5) The hearing [may be public or private at the discretion of the certificate holder, who may be represented by counsel, and] shall be conducted by a quorum of the Education Professional Standards Board.

[(6) Upon completion of the hearing, the Education Professional Standards Board may by a majority vote render its decision or may defer its action for no more than five (5) days. A certificate may be revoked for a specific minimum period or for an indefinite period.]

[(7) If the Education Professional Standards Board takes action to revoke, the certificate holder shall be notified by certified mail of the revocation action, the duration of the revocation, and procedure to apply for reissuance of the certificate as provided in KRS 161.120(1).]

[(8)] All Kentucky school superintendents, state directors of teacher education and certification, and the NASDTEC-CAA Clearinghouse operated by the National

Association of State Directors of Teacher Education and Certification shall be notified of the certificate revocation action. Information of certificate revocation shall be entered into the teacher certification record of the certificate holder including the computer data bank maintained by the Division of Teacher Education and Certification.

Section 3. Revocation proceedings shall be automatically initiated on receipt of a report on a certificate holder under the following conditions:

(1) Conviction of a felony.
(2) Conviction on any charge involving sexual misconduct.

(3) Conviction on any charge involving child abuse.

(4) Conviction on any misdemeanor where a student is involved.

(5) Providing false information on a certificate application which affects the eligibility of the applicant for a Kentucky certificate and/or forged transcripts of credits.

(6) Dismissal on grounds of willful neglect of duty, misconduct in office, or immorality.

(7) Revocation or denial of a certificate by another state for reasons and through procedures that are the same as, or substantially equivalent to, those permitting similar action in Kentucky.

(8) Admission of criminal conduct, such as that exemplified in plea bargaining. For purposes of this subsection, criminal conduct shall not mean actions in the nature of minor traffic violations, alcohol related misdemeanor convictions where no student or school related activity is involved or other conduct of similar nature.

Section 4. When the board has not been able to notify a certificate holder of a scheduled hearing [In all cases where the Education Professional Standards Board is unable, after reasonable diligence, to notify a certificate holder of a scheduled hearing on pending charges, the hearing shall be continued generally until the individual can be notified or presents himself for hearing.] such charges shall not be dropped in the interim, and the fact of pending revocation charges shall be appropriately noted in the individual's certification record and shall be communicated to all Kentucky school superintendents and to all state directors of teacher education and certification.

Section 5. [(1) Any individual whose certificate is revoked may apply for reissuance of the Kentucky certificate when satisfactory evidence can be furnished of good moral character, mental and physical health, and such other evidence as the Education Professional Standards Board may deem necessary to establish the applicant's fitness for reissuance. When the board's order of revocation sets forth a specific minimum period of revocation, an individual may not apply for reissuance prior to the end of the minimum revocation period.

(2)] Applicants for reissuance of a revoked certificate must, in addition to meeting the requirement of KRS 161.120(5), satisfy all current educational requirements for the certificate.

Section 6. Rules for Hearings. (1) The Education Professional Standards Board delegates to its executive secretary the authority to grant or deny motions to postpone, and similar prehearing motions.

(2) Except in extraordinary circumstances, the executive secretary shall not rule on prehearing motions to dismiss and similar motions which can be deferred until the time of the hearing.

(3) [The presence of witnesses may be required upon subpoenas issued by the chief state school officer at the request of the Chairman of the Education Professional Standards Board or the certified employee. Each witness shall be required to take an oath or affirmation prior to testimony.] Witnesses appearing pursuant to KRS 161.120(3)(b) [subpoena] shall receive fees and mileage as prescribed by law for witnesses in civil action.

(4) Discovery.

(a) On petition of any party, the Executive Secretary of the Educational Professional Standards Board may order that the testimony of any material witness may be taken by deposition in the manner prescribed by law for depositions and civil actions.

(b) Depositions may also be taken by the use of audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, and the request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the chief state school officer may issue a subpoena requiring the appearance of the witness.

(c) The certificate holder or the Education Professional Standards Board may request that the other party produce for inspection or provide copies of any designated documents or any tangible things which are relevant to the proceeding and are not otherwise exempt from disclosure. A party may charge a fee to reimburse for the actual cost of producing or copying documents.

(5) Evidence.

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but [erroneous] rulings constituting "harmless error" in the admission of [on] evidence shall not preclude Education Professional Standards Board action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence which is otherwise admissible may be received in written form.

(b) All evidence shall be offered and made a part of the record in the case, except for matters stipulated to and except as provided in subsection (d) of this section. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support the revocation of a certificate [a fact or position] rests on the party or agency attempting to revoke the certificate [opponent

fact or position].

(c) The certificate holder and the Education Professional Standards Board, or the officer prosecuting the action, [other party] shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.

(d) The Education Professional Standards Board may take notice of judicially cognizable facts, and the Education Professional Standards Board may take official notice of general, technical, or scientific facts. Members of the Education Professional Standards Board may utilize their [its] experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

(e) The executive secretary shall have discretion to require the parties to submit prior to the hearing date documents which may be introduced as evidence, names and addresses of witnesses, and other information to facilitate the hearing. The Education Professional Standards Board shall have discretion to require the parties to submit proposed findings of fact and conclusions of law.

Section 7. 704 KAR 20:450 is hereby repealed.

JANICE WEAVER, Chairman

APPROVED BY AGENCY: June 12, 1991

FILED WITH LRC: June 12, 1991 at 11:30 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(Amended After Hearing)

805 KAR 4:010. Licensing and classification of blasters.

RELATES TO: KRS 351.315, 351.325

STATUTORY AUTHORITY: KRS Chapter 13A, 351.335

NECESSITY AND FUNCTION: KRS 351.315 requires the Department of Mines and Minerals to license blasters. This regulation establishes [spells out] the licensing requirements and duties of a blaster to effect this law.

[Section 1. Licensing of Blasters. (1) No person shall detonate explosives in any blasting operation in which more than five (5) pounds of explosives or the equivalent are used in a single charge or in which less than five (5) pounds of explosives is used by a regular user, excluding blasting for agriculture and underground coal, unless he is licensed by the department. The department shall issue a license to use explosives to any person who:]

[(a) Has worked in blasting operations for at least twenty-four (24) months under the immediate supervision of an experienced blaster; and]

[(b) Has passed an examination, prescribed by the department which shall test the examinee's practice of blasting operations and the storage, moving, handling, and detonation of explosives.]

[(2) Application for license shall be in writing upon a form furnished by the department and shall be accompanied by a fee of twenty (20) dollars. If the applicant is successful in passing the examination, a license to detonate explosives shall be issued upon the payment of an additional fee of five (5) dollars.]

[(1) [(3)] The department shall have two (2)

classifications of blasting licenses for each of which there shall be a separate test [and two (2) tests]; one (1) termed "Kentucky Blaster's License," and one (1) termed "Limited Kentucky Blaster's License."

(2) [(4)] Persons holding a Limited Kentucky Blaster's License shall not conduct a blasting operation in which more than five (5) pounds of explosives are used in a single charge.

(3) [(5)] Each blaster shall be required to renew his license each year by application to the department, which application shall be accompanied by a fee of ten (10) dollars. [The commissioner may suspend any license for due cause but no license may be revoked until the licensee has been granted a hearing.]

(4) [(6)] A blaster who fails to renew his Kentucky Blasters License within five (5) years of the expiration date of his last valid license shall be required to reapply for a license and retake the blasters examination in a manner established in KRS 351.315 [as specified in subsection (2) of this section]. Blasters not [falling] in the above category may have their licenses renewed by paying to the department a sum equal to the annual renewal fees for the years of nonrenewal.

(5) [(7)] The commissioner may grant a thirty (30) day nonrenewable blaster's license to any person qualified under KRS 351.315(3) upon the payment of a five (5) dollar fee.

(6) For [(8)] The definitions of a blaster for] the purpose of licensure, a blaster [a license] is:

(a) A [blaster is a] person who makes any or all of the following decisions:

1. Decides hole size, spacing, or depth;
2. Decides total quantity of explosives;
3. Decides quantity of explosives in each hole;
4. Decides timing delays to be used.

(b) He shall also [must] be present when the charge is detonated and either physically detonate[s] the charge or give[s] the order to detonate the charge.

(c) He shall complete and sign a record for each blast as required in KRS 351.360.

(7) [(9)] A licensed blaster shall not take any instruction on the activities described [covered] in subsection (6) [(8)] of this section from a person not holding a blaster's license if compliance with such instruction may [will] result in an unlawful act or unlawful effect of the blast.

(8) [(10)] Anyone failing a blaster's examination may not retake the examination in less than thirty (30) days.

[(11)] The commissioner may suspend any license for due cause but no license may be revoked until the licensee has been granted a hearing.]

(9) [(12)] Persons involved in seismic exploration of the subsurface geology and detonating explosives solely for the purpose of monitoring seismic waves generated by such a detonation must hold either a Kentucky Blasters License or a Limited Kentucky Blaster's License. The five (5) pound limitation in subsection (2) [(4)] of this section may be waived for the purpose of seismic exploration based upon a written request to the department.

[(10)] Persons engaged in blasting operations in oil production and detonating explosives for the purpose of enhancing oil production, cutting casing, or other similar purposes, where the explosives are placed in an oil well, must hold either a Kentucky Blaster's License or a Limited

Kentucky Blaster's License. The five (5) pound limitation in subsection (2) of this section may be waived for the purpose of oil well shooting based upon a written request to the department. The use of shaped charges of less than ninety (90) [ten (10)] grams weight to perforate casing or strata does not meet the definition of blasting operation and does not require either license.

[(11)] [(13)] Any person who is a licensed blaster in another state where the qualifications prescribed at the time of licensing were, in the opinion of the commissioner, equal to those prescribed in the Commonwealth at the date of application, and where reciprocal licensing privileges satisfactory to the department are granted to licensees of the Commonwealth, may be granted a license without an examination.] Application for the reciprocal [such] license described in KRS 351.315(3) shall be on a form furnished by the department and accompanied by a fee of ten (10) dollars.

THEODORE T. COLLEY, Secretary
CARL ANKROM, Acting Commissioner
LARRY C. SCHNEIDER, Director

APPROVED BY AGENCY: June 5, 1991

FILED WITH LRC: June 6, 1991 at 10 a.m.

CABINET FOR HUMAN RESOURCES
Office of the Secretary
Family Resource & Youth Services Centers
(Amended After Hearing)

900 KAR 4:010. Criteria for awarding grants for family resource and youth services centers.

RELATES TO: KRS 156.497, 158.360, 160.345

STATUTORY AUTHORITY: KRS 156.497(6), 194.050

NECESSITY AND FUNCTION: KRS 156.497 requires that the Cabinet for Human Resources issue an administrative regulation to establish criteria for the awarding of family resource and youth services centers grants. The grant program shall be established to provide qualifying public schools in school districts with financial assistance to implement family resource and youth services centers. Grants shall be awarded through a financial agreement between the cabinet and a local public school district on an annual basis. All qualifying public schools within a school district shall have established and implemented a family resource, youth services, or combination family resource and youth services center by the close of state fiscal year (FY) 95 or June 30, 1995. This regulation implements the provisions of KRS 156.497 to establish an interagency task force on family resource and youth services centers to review grant applications, monitor centers, and oversee the implementation process until December 31, 1995.

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

(1) A "core component" means an activity or service provided for children or their families required to be implemented as part of a family resource or youth services center. For a family resource center, there shall be six (6) core components as set forth by KRS 156.497(3)(a)

through (f). For a youth services center, there shall be five (5) core components as set forth by KRS 156.497(4)(a) through (e).

(2) "Economically disadvantaged" means any child enrolled in a school program who is eligible to receive free school meals or a member of the eligible child's immediate family.

(3) "Family resource center" means an entity with a unique blend of components and approaches designed to promote the flow of human resources and support to preschool and elementary school children and their families to strengthen their functioning and to enhance the growth and development of the individual members and the family unit.

(4) "Human resources and support" means activities or services provided for children and families through a center which shall include, but is not limited to, the core components specified in subsection (1) of this section and any other optional components determined through a needs analysis to be conducted as part of the application process.

(5) "Local advisory body" means a membership body as defined in subsection (6) of this section. This body shall provide initial and ongoing representation of the views and opinions of major sectors of the community.

(6) "Membership of a local advisory body" means that at least one-third (1/3) of the members shall be parents of students in the eligible school or schools who should represent the socioeconomic and racial composition of the community and the cultural diversity of each school's student body. In addition, for a youth services center, defined in subsection (10) of this section, at least two (2) youth representatives who represent the socioeconomic and racial composition of the community and the cultural diversity of each school's student body, shall serve as members. Additional members of a local advisory body shall be representative of, but not limited to, school staff, and individuals from the community, human resource agencies and organizations, the private sector, churches, and civic organizations.

(7) "Optional component" means an activity or service provided for children or their families which is in addition to those components specified by KRS 156.497(3)(a) through (f) and KRS 156.497(4)(a) through (e) and designed to satisfy unique community needs.

(8) "Qualifying school" means any local public school within the Commonwealth in which twenty (20) percent or more of its student body is eligible to receive free school meals.

(9) "School consortium" means a group of two (2) or more qualifying public schools within the same community, geographical area, or school district which decide to join together to apply for a grant for one (1) common family resource center, youth services center, or a combined family resource and youth services center which is accessible to the children, youth, and families from each school.

(10) "Youth services center" means any entity with a unique blend of components and approaches designed to promote the flow of human resources and support to middle school, junior high school, and high school students and their families to strengthen their functioning and enhance the growth and development of the individual members and the family unit.

Section 2. Family Resource and Youth Centers Grant Program. (1) The Cabinet for Human Resources through promulgation of this regulation shall establish criteria for the selection of each individual school or school consortium to be awarded grants for family resource and youth services centers.

(2) The interagency task force on family resource and youth services centers, appointed by the Governor, shall be responsible for approving the selection criteria promulgated in this regulation, reviewing grant applications, monitoring progress of the centers, and overseeing their implementation.

(3) Annually, upon review of the grant applications, the interagency task force on family resource and youth services centers shall make its recommendations for centers to be funded to the Secretary of the Cabinet for Human Resources.

(4) Grants shall be awarded annually on a competitive or a continuation basis through FY 95. All qualifying schools shall have submitted applications and implemented centers by the close of FY 95 or June 30, 1995. Centers which have been implemented in a prior year of funding shall continue to make application for successive years of funding, but not on a competitive basis.

(5) Grant proposal instructions as specified in subsection (6) of this section shall be developed by the Cabinet for Human Resources and approved by the interagency task force on family resource and youth services centers.

(6) The grant proposal instructions shall require each school or school consortium applying for a grant to address the following elements:

(a) A statement of need which shall identify the services and activities which are deficient in the community for the families and children to be served through the center;

(b) Proposed goals which shall indicate in broad and general terms, planned outcomes to be achieved by the center;

(c) Planning and implementation activities which shall describe the functions and types of steps to be taken to prepare the center to become operational;

(d) A description of the existing service delivery system which shall identify the types of services currently available in the community, any barriers to receiving those services, any gaps in services, and any services that are not available;

(e) The level of community involvement which shall describe how the center plans to access services and activities that can be provided from existing community resource agencies and other entities in the community, and how it shall develop written agreements of collaboration with these service providers;

(f) A description of the role, functions, and representation on the local advisory body which shall provide an overview of the governance and decision-making responsibilities for the center;

(g) Information dissemination which shall describe the strategies to be developed for marketing the center to the people in the community;

(h) A training plan which shall indicate how the various individuals to be involved with the center shall be trained on its functions, goals, and activities;

(i) A description of a plan for minimizing

stigma at the center which shall discuss planned efforts to make the center a comfortable, pleasant, and nonthreatening environment which is available for all members of the community;

(j) Parental consent and confidentiality rights which shall describe the procedures developed to obtain parental permission for the provision of services and for the sharing of confidential information among the various agencies providing services;

(k) The major program components to be provided by the center which shall address the service and activities, both core and optional, to meet the needs of the families and children to be served;

(l) Staffing for the center which shall describe the hiring procedures, staff qualifications, and duties and responsibilities of those employed at the center;

(m) The program and services site which shall indicate the location of the center, where various services and activities are to be provided, their accessibility to children and families, and a tentative schedule of the hours of operation;

(n) A work plan which shall be a complete form or forms, entitled "Work Plan Format", indicating a needs statement, goal, objective or objectives, tasks, timelines, and outcomes for each core and optional component to be provided through the center;

(o) A financial strategy and budget which shall include an outline of the agencies and organizations providing target services, outside funding sources and amounts, the number of children and families served on an annual basis, and an estimate of the unmet financial need. A form, the "Component Budget Description", shall be completed indicating a budget description for each core and optional component. A form, the "Center Operating Budget", shall be completed for the total center operating budget;

(p) A program evaluation plan which shall provide a description of how all projected outcomes included in the work plan shall be evaluated at the end of the contract year as well as a description of quarterly progress reports to be submitted;

(q) Endorsements or letters of commitment for the center which shall be included as attachments to the proposal from key members of the community and from agencies and organizations which intend to provide services or assistance at the center;

(r) An application cover sheet, a form entitled "Kentucky Family Resource and Youth Services Center FY 92 Application Cover Sheet", which shall be attached to the proposal and provides specific information about the proposed center;

(s) An application committee or advisory council membership list, a form entitled "Application/Advisory Council", which shall be included with the center proposal;

(t) An assurances page, a form entitled "Assurances and Certification", which shall be attached to the proposal and assures compliance with all federal, state, and local policies and guidelines; and

(u) A program abstract which shall be included and contains a summarization of the major components of the proposal.

(7) Application review teams comprised of three (3) members each shall review proposals and score each application according to its

ability to address each of the elements required in the proposal instructions, including the core and optional components.

(a) Each element shall be assigned a weight from one (1) to three (3) according to its degree of importance in implementing the center proposal;

(b) A rating scale of zero to four (4) shall be used to score each element according to its ability to address what is requested in the proposal instructions;

(c) The rating of zero to four (4) multiplied by the weight assigned to each element shall give the total points awarded for each element; and

(d) Bonus points shall be given to applications based on the adoption of school-based decision-making councils and the percentage of children eligible to receive free school meals.

(8) Criteria for the selection of centers shall be on the basis of the total scores achieved and documented on an application rating form developed by the Cabinet for Human Resources.

(9) Selection criteria shall also take into consideration the following factors:

(a) The percentage of children eligible to receive free school meals for each school to be served by the center;

(b) The existence of a school-based decision-making council;

(c) The size of the center in terms of the number of children eligible for free school meals. Consideration shall be given to large, medium-sized, and small center applications;

(d) A demonstrated collaborative effort on the part of existing human services and education systems;

(e) Evidence of local initiatives to encourage delivery of human services currently unavailable in the center's area;

(f) The local contribution of the community in terms of additional funds, space, transportation;

(g) Geographical distribution around the state;

(h) Representation from urban, rural, and suburban settings; and

(i) A reasonable balance between the numbers of family resource and youth services centers.

(10) A minimum acceptable score shall be established by the interagency task force on family resource and youth services centers which shall be the lowest score any application can receive in order to be recommended for funding.

(11) Proposal reviewers shall be selected by the Secretary of the Cabinet for Human Resources based on recommendations received from the interagency task force on family resource and youth services centers and other key education and human resource agencies and organizations.

(12) Each member of a proposal review team shall be trained on the application review and scoring criteria prior to evaluating an application.

(13) In the event of fifteen (15) percent or more variance of at least one (1) reviewer's score from the median score, the proposal shall be reevaluated by another review team.

(14) Upon individual review of each application assigned for evaluation, an average score will be determined for each application.

(15) In the case of applications which receive average scores, priority in ranking shall be given to those that have a higher percentage of students eligible for free school meals.

(16) Once average scores are tabulated for all applications submitted, the applications shall be ranked according to the average score received and presented to the interagency task force on family resource and youth services centers for approval.

(17) Written notification shall be provided to each school district making an application providing notice of funding or nonfunding for each center proposed.

Section 3. Provisions contained in this regulation shall be enforced as of May 13, 1991.

Section 4. Material Incorporated by Reference.

(1) Forms necessary for submission of family resource and youth services centers grant application are incorporated by reference effective May 13, 1991.

(2) These forms may be inspected and copied at the Cabinet for Human Resources, Family Resource and Youth Services Centers, 275 East Main Street, Fourth Floor - West, Frankfort, Kentucky, 40621, from 8 a.m. to 4:30 p.m., Monday through Friday.

RONNIE DUNN, Project Coordinator

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: June 4, 1991

FILED WITH LRC: June 5, 1991 at 10 a.m.

PROPOSED AMENDMENTS RECEIVED AS OF NOON, JUNE 14, 1991

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.075, 18A.0751, 18A.111
 STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751
 NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.111 relates specifically to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or 12th month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Conservation Officer Trainee	12 months
2112	DES Duty Officer	12 months
2113	DES Duty Officer Senior	12 months
2306	Park Ranger	12 months
2312	Park Ranger Captain	12 months
2408	MVE Trainee	12 months
2435	MVE Inspector Trainee	12 months
2480	Water Patrol Officer	12 months
2493	Mounted Security Officer	12 months
2494	Mounted Security Sergeant	12 months
2495	Mounted Security Captain	12 months
2496	Mounted Security Officer Trainee	12 months
3254	Boiler Inspector Trainee	12 months
3416	Financial Institution Examiner Trainee	12 months
5141	Education Teacher Rank III	12 months
5142	Education Teacher Rank II	12 months
5143	Education Teacher Rank I	12 months
7203	Forest Guard	12 months
7205	Forest Ranger	12 months
7207	Forest Ranger Unit	12 months
7209	Forest Ranger District	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

(4) Effective July 1, 1991, the following job classifications in the Department of Education shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
5303	Exceptional Children Consultant I	12 months
5304	Exceptional Children Consultant II	12 months
5305	Exceptional Children Program Manager I	12 months
5306	Exceptional Children Program Manager II	12 months
5309	Education Academic Program Consultant I	12 months
5310	Education Academic Program Consultant II	12 months
5311	Education Academic Program Manager I	12 months
5312	Education Academic Program Manager II	12 months
5313	Education Administration Program Consultant I	12 months
5314	Education Administration Program Consultant II	12 months
5315	Education Administration Program Manager I	12 months
5316	Education Administration Program Manager II	12 months
5321	Education Facilities Program Consultant	12 months
5323	Education Facilities Program Manager	12 months
5324	Education Instructional Services Advisor	12 months
5325	School Accreditation Evaluator	12 months
5327	School Accreditation Evaluation Manager	12 months
5329	School Food Services Program Consultant	12 months
5330	School Food Services Program Coordinator	12 months
5331	School Food Services Program Manager	12 months
5337	Education Financial Analyst	12 months
5341	Education Health/P.E. Program Consultant I	12 months
5342	Education Health/P.E. Program Consultant II	12 months
5343	Education Reading Program Consultant I	12 months
5344	Education Reading Program Consultant II	12 months
5345	Education Social Studies Program Consultant I	12 months
5346	Education Social Studies Program Consultant II	12 months

5347	Education Science Program Consultant I	12 months
5348	Education Science Program Consultant II	12 months
5349	Education Language Arts Program Consultant I	12 months
5350	Education Language Arts Program Consultant II	12 months
5351	Education Math Program Consultant I	12 months
5352	Education Math Program Consultant II	12 months
5353	Education Primary Program Consultant I	12 months
5354	Education Primary Program Consultant II	12 months
5355	Education Vocational Program Consultant I	12 months
5356	Education Vocational Program Consultant II	12 months

Section 2. Promotional Probationary Period.
(1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. If an employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion. When the employee is notified, copies of the notice of reversion shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion, except as provided in KRS 18A.111.

Section 3. Probationary Period Upon Reinstatement. An employee who is reinstated, except an employee ordered reinstated pursuant to KRS 18A.111(3), to a position in the classified service shall serve a promotional probationary period.

JAMES M. SHAKE, Chairman

THOMAS C. GREENWELL, Commissioner

APPROVED BY AGENCY: June 7, 1991

FILED WITH LRC: June 13, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1991 at 8:30 a.m. in 5 Fountain Place, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 17, 1991, 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: Commonwealth of Kentucky, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified employees.

(a) Direct and indirect costs or savings to those affected: No appreciable change.

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs (note any effects upon competition): NA

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: NA

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: NA

(3) Assessment of anticipated effect on state and local revenues: NA

(4) Assessment of alternative methods; reasons why alternatives were rejected: NA

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

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation must apply equally to all classified employees and all state agencies with classified employees.

DEPARTMENT OF PERSONNEL (Proposed Amendment)

101 KAR 2:035. Compensation plan and pay incentive systems.

RELATES TO: KRS 18A.030, 18A.110, 18A.165, 156.016

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

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the classified service. This regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements. Additionally, this regulation specifically implements KRS 156.016, relating to reemployed or reinstated Department of Education employees who are terminated on June 30, 1991.

Pursuant to the terms of KRS 156.016, the statute is specifically designated for single time use only and is only to apply to the Department of Education. [and replaces 101 KAR 2:030.]

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

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

- (a) Which is the same as that paid at the time of separation from state service if such salary is within the current pay grade;
- (b) Higher than that paid at the time of separation from state service due to salary schedule or pay grade adjustments;
- (c) In accordance with the standards used for making new appointments; or
- (d) Lower than that paid at the time of separation from the classified service if such salary is within the current pay grade.

(2) Former employees who were separated from state service by layoff and who are reinstated or reemployed in the same or a similar job classification within five (5) years from the date of layoff may receive the salary they were receiving at the time of layoff, even if such salary is above the maximum of the pay grade. Former Department of Education employees who were separated from state service pursuant to KRS 156.016 and who are reinstated or reemployed in the same or similar classification with the Department of Education may receive the salary they were receiving at the time of separation, even if such salary is above the maximum of the pay grade. Any Department of Education employee who is reinstated or reemployed into the Department of Education pursuant to the provisions of this regulation and KRS 156.016 shall retain his accumulated annual leave, sick leave, and compensatory leave, the provisions of 101 KAR 2:100 notwithstanding.

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

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

(b) Which equals or exceeds the midpoint of the pay grade may be considered for a probationary increment at the time of completion of the probationary period. If such employee is not considered for an increment upon completion of the probationary period, he shall be considered for an increment at the beginning of

the month following completion of twelve (12) months service from the date of reemployment, reinstatement or appointment.

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

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

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

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

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

(6) Reversion.

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

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

(7) Pay grade changes. An employee who is advanced to a higher pay grade through a class. reevaluation and grade adjustment under Section 7 of this regulation may receive a salary

increase of five (5) percent or ten (10) percent except that in no case shall the employee's salary after such increase be below the minimum of the new pay grade.

(8) Other salary adjustments.

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, effective on or after January 3, 1986, may have his salary adjusted upon request by the appointing authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

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

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

(2) Annual increment dates shall be established:

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

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

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

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

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

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Receives an educational achievement award;

(g) Returns from military leave;

(h) Is reclassified; [or]

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

(j) Is reemployed or reinstated into the Department of Education under the provisions of KRS 156.016 and this regulation.

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

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

be counted in determining increment eligibility for a part-time employee.

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

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

(2) For receiving outside of work hours an approved high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test. The approved diploma, certificate, or passing score must have been obtained on or after January 1, 1984 while in state service. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary but not more than \$2,500. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

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

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

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

Section 6. Salary Schedule Adjustment. When the commissioner authorizes an adjustment of all grades in the pay schedule, employees who are below the new minimum rates shall have their salaries adjusted at least to the minimum rates of their grades. The commissioner may authorize

a salary increase for those employees who are at or above the minimum rate based upon the availability of funds. The percentage of such increase shall be determined by the commissioner and shall be uniform for all eligible employees.

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

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

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

Section 8. Paid Overtime. Overtime for which pay is authorized shall be in accordance with 101 KAR 2:100, Section 4, and the Fair Labor Standards Act 29 USC §201, et seq. and have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet. Overtime payments shall not be added to base salary or wages.

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

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

ineligible for a shift differential premium payment.

Section 11. Outstanding Merit Increase. (1) Subject to the approval of the commissioner and contingent upon the availability of sufficient budgeted funds, an appointing authority may within his sole discretion, recommend any permanent, full-time, classified employee with at least twelve (12) months continuous service for an outstanding merit increase equal to five (5) percent of his base pay. An outstanding merit increase shall consist of a lump sum payment which shall not be added to base pay.

(2) An employee may be recommended for an outstanding merit increase if:

(a) His job performance is judged to be outstanding by the appointing authority; or

(b) In the discretion of the appointing authority, the employee's acts or ideas have resulted in significant financial savings or improvement in services to the Commonwealth and its citizens.

(3) An employee shall not be eligible for recommendation for an outstanding merit increase if he has received an outstanding merit increase within the preceding twelve (12) months.

(4) The appointing authority shall submit written justification to the commissioner and the personnel action form shall be approved by the appointing authority and the commissioner to be effective.

Section 12. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly. (17 Ky.R. 1233; Am. 2171; eff. 12-6-90.)

This is to certify that pursuant to KRS 18A.110(6), the regulations listed below were submitted to the Personnel Board by the Commissioner of Personnel on May 17, 1991. The board at its regular scheduled meeting on June 7, 1991, reviewed the department's proposals and made certain recommendations which were forwarded to the commissioner for his consideration. The regulations reviewed were as follows: 101 KAR 2:035E and 101 KAR 2:035.

JAMES M. SHAKE, Chairman

WALLACE G. WILKINSON, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: May 23, 1991

FILED WITH LRC: June 14, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 23, 1991 at 9:30 a.m. in Room 285, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 18, 1991, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 204, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers

(1) Type and number of entities affected: This regulation would affect only those employees of the Department of Education whose employment will be terminated by operation of KRS 156.016 at the close of business, June 30, 1991, and who are reemployed or reinstated as employees in the newly constituted Department of Education after that date. The precise number of how many employees will be affected is unknown, however, the Department of Education currently has approximately 886 employees.

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs are anticipated, however, it is estimated that the cost of lump sum accumulated annual and compensatory leave to Department of Education employees terminated by KRS 156.016 would be approximately \$2,300,000. This regulation would permit transition of leave time by former Department of Education employees who are hired in the new department after June 30, 1991. While the budgetary liability would remain constant, the immediate savings to the department would be proportional to the number of former employees hired.

1. First year: Up to \$2,300,000.

2. Continuing costs or savings: None anticipated.

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

(b) Reporting and paperwork requirements: This regulation should result in a reduction of actions processed.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Some consideration was given to amending 101 KAR 2:100 (leave regulation) to conform, however, that alternative was incorporated in this regulation and rejected in the other because of the limited purpose and scope of the rule.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Potential conflict with 101 KAR 2:100 which would have required a payment for accumulated annual leave and compensatory leave upon termination was resolved by creating an exception for reemployed or reinstated employees in the Department of Education after June 30, 1991.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This regulation shall not apply to former Department of Education employees terminated by

operation of KRS 156.016 who exercise reemployment rights in agencies other than the Department of Education.

TIERING: Was tiering applied? Yes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR part 900, Subpart F, Sections 900.601-900.606 (48 FR 9209, March 4, 1983).

2. State compliance standards. The purpose of this amendment is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if

standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)**

201 KAR 9:031. Examinations.

RELATES TO: KRS 311.530 to 311.620, 311.990

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish standards and rules regarding examination scope, content, passing scores, testing opportunities and test score recognition.

Section 1. Basic Requirement; Passing Score. All applicants for any license or permit issued by the board shall provide written proof of having successfully completed an examination approved by the board with a minimum passing score of seventy-five (75) or its numerical equivalent. The passing score must have been determined on the basis of performance in a single sitting and scores based on an average of scores from multiple sittings will not be considered. All applicants taking Component I and Component II of the FLEX must obtain a minimum score of seventy-five (75) on each component in order to be considered passing. No combination of Component I and Component II scores will be considered.

Section 2. Examinations Approved by the Board. The following examinations are approved by the board in regard to the fulfillment of the examination requirement for licensure:

(1) Examinations administered by the licensure authority of another state, United States territory or Canadian province upon sufficient proof that the examination consisted of comprehensive testing in the basic and clinical sciences;

(2) The Federation Licensure Examination (FLEX);

(3) The examination administered by the National Board of Medical Examiners; and

(4) The examination administered by the National Board of Examiners for Osteopathic Physicians and Surgeons.

The board may deny a license or permit when in the board's opinion the examination by which the applicant is seeking to fulfill the examination requirement inadequately tested the applicant's knowledge, education, training and competency.

Section 3. Examination Administered by Board.

(1) The board will administer the Federation

Licensure Examination (FLEX) twice yearly in accord with protocol established by the Federation of State Medical Boards of the United States, Inc. The executive director shall oversee the examination and may expel any person for fraudulent or disruptive behavior.

(2) The executive director may allow an applicant to sit for the FLEX when in his or her opinion the applicant appears to have fulfilled the appropriate eligibility requirements. Allowing an applicant to sit for the FLEX or any component thereof shall not be considered as certification that any requirement for licensure has been fulfilled.

Section 4. Eligibility for Examination. (1) An applicant shall be eligible to take both components of the FLEX if the applicant has fulfilled all other requirements for regular licensure.

(2) An applicant shall be eligible to take Component I of the FLEX if the applicant has graduated from a medical school approved by the board [fulfilled all other requirements for limited licensure-institutional practice].

(3) An applicant shall be eligible to take Component II of the FLEX if the applicant has previously passed Component I or completed one (1) year of approved postgraduate training or is currently enrolled in an approved postgraduate training program [and has fulfilled all other requirements for regular licensure].

[(4) An applicant who has not fulfilled the particular postgraduate training requirement at the time the FLEX is administered may sit for the examination upon showing that this requirement will be fulfilled within seven (7) months of the examination date.]

(4) [(5)] An applicant who has failed the FLEX on three (3) previous occasions may sit for the FLEX or a component thereof upon proof that the applicant has completed since the time of the applicant's last failure one (1) additional year of approved postgraduate training in addition to the number of years of postgraduate training normally required to sit for the FLEX or a component thereof.

(5) [(6)] No person shall be eligible to sit for the FLEX or a component thereof if the applicant has failed the FLEX on three (3) previous occasions except as provided in subsection (5) of this section. All failures prior to June 1, 1985, and failures thereafter of the FLEX components shall be added together to determine an applicant's total number of prior failures. An applicant who by a combination of failures of the entire exam, whenever given, and components thereof has accumulated three (3) failures of the entire exam or a component thereof shall be ineligible to sit for the exam or any component thereof except as provided in subsection (5) of this section.

Section 5. Recognition of Passing Scores by Endorsement. The board will not recognize a passing score of the FLEX by endorsement if the applicant who by a combination of failures of the entire exam, whenever given, and components thereof has accumulated three (3) failures of the entire exam. The board will recognize a passing score on an applicant's fourth attempt upon proof that the applicant has obtained since the third failure one (1) additional year of approved postgraduate training in addition to

the number of years of postgraduate training normally required for the type of licensure the applicant seeks.

ROYCE E. DAWSON, M.D., President

APPROVED BY AGENCY: June 12, 1991

FILED WITH LRC: June 13, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment to a current administrative regulation will be held on Tuesday, July 23, 1991 at 10 a.m., ET, 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 July 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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 applicants for a Kentucky medical license who apply to sit for the FLEX examination.

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings. Costs remain the same.

1. First year: See (1)(a) above.

2. Continuing costs or savings: See (1)(a) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): See (1)(a) above.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements for applicant.

(2) Effects on the promulgating administrative body: Number of applicants could increase slightly, which would increase agency workload.

(a) Direct and indirect costs or savings: Any additional monies generated by increased number of applicants would be offset by administrative workload.

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: Anticipate reporting and paperwork requests to increase slightly.

(3) Assessment of anticipated effect on state and local revenues: No changes anticipated; fees remain same.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was leaving the regulation as is;

however, as currently drafted, the regulation excludes certain applicants from sitting for the FLEX examination.

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

(a) Necessity of proposed regulation if in conflict: N/A - see (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A - see (5) above.

(6) Any additional information or comments: The board feels that this proposed amendment will allow all qualified applicants to sit for FLEX examination.

TIERING: Was tiering applied? Yes

FINANCE AND ADMINISTRATION CABINET Kentucky Board of Medical Licensure (Proposed Amendment)

201 KAR 9:041. Fee schedule.

RELATES TO: KRS 311.530 to 311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565

NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish a schedule of fees for services rendered by the board.

Section 1. Fee Schedule.

(1) Fee for sitting for both components of examination administered by board - \$500 [450].

(a) Component I - \$250 [225].

(b) Component II - \$300 [275].

(2) Fee for initial issuance of regular license - \$150.

(3) Fee for initial issuance of limited license - \$65.

(4) Fee for annual registration or renewal of any license - \$65.

(5) Penalty for late annual registration or renewal:

(a) March 1 - April 1 - \$25.

(b) After April 1 - \$100.

(6) Fee for reregistration of inactive license - \$90.

(7) Endorsement of licensee to licensing agency of another jurisdiction - \$20.

(8) Certification of licensee's examination grades to licensing agency of another jurisdiction - \$10.

(9) Fee for temporary permit (credited to fee for regular license if subsequently issued) - \$50.

(10) Fee for emergency permit - \$15.

(11) Fee for duplicate license certificate - \$10.

(12) Fee for copy of "Kentucky Medical Directory" - \$10.

(13) Fee for one (1) year subscription to Newsletter (fee waived for licensees) - \$5.

(14) Fee for license application - \$25.

(15) Fee for sitting for competency examination administered by board - \$275.

ROYCE E. DOWSON, M.D., President

APPROVED BY AGENCY: June 12, 1991

FILED WITH LRC: June 13, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment to a current administrative regulation will be held on Tuesday, July 23, 1991 at 10 a.m., ET, 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 July 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

(1) Type and number of entities affected: This regulation will affect all licensees or applicants who sit for the FLEX examination or any component thereof.

(a) Direct and indirect costs or savings to those affected: There will be an increased cost for sitting for FLEX examination or any component thereof.

1. First year: Costs will increase as set out in the proposed regulation.

2. Continuing costs or savings: These costs will continue to be incurred by the licensees who sit for the FLEX examination or any component thereof.

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

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This regulation will allow the board to recoup its costs associated with administering the FLEX examination.

(a) Direct and indirect costs or savings: Mailing, postage, shipping costs and examination costs can all be recouped by this regulation.

1. First year: Savings cannot be adequately calculated.

2. Continuing costs or savings: Savings would be continuous annually as long as costs incurred by the board did not increase.

3. Additional factors increasing or decreasing costs: No additional factors which would increase or decrease costs.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: This regulation would increase the board's income which in turn would

effect the General Fund and state and local taxes.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were considered, specifically providing these services at no costs, but the board decided that the board's budget could not withstand such alternatives.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in conflict, overlapping or duplicated by this regulation.

(a) Necessity of proposed regulation if in conflict: N/A - see (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A - see (5) above.

(6) Any additional information or comments: The board is not making money by this regulation, they only wish to recoup their costs in providing these services.

TIERING: Was tiering applied? Yes

TOURISM CABINET

Department of Fish and Wildlife Resources (Proposed Amendment)

301 KAR 3:021. Hunting and fishing license fees.

RELATES TO: KRS 150.025, 150.175, 150.225, 150.237, 150.240, 150.280, 150.290, 150.525, 150.660, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: The commissioner, with the concurrence of the Fish and Wildlife Resources Commission, finds it necessary to establish the hunting and fishing license fees schedule in this regulation to generate the necessary funds to finance programs to protect, manage, and conserve the fish and wildlife resources of the state so a permanent and continued supply will be maintained for the benefit of present and future generations. The purpose of this amendment is to delete the Ohio River Fishing License, add a three (3) day nonresident fur buyer license and to change the falconry license fee [buyer/seller taxidermist license].

Section 1. License, tag, permit and stamp fees are as follows:

(1) Sport fishing licenses:

Statewide fishing license (resident): \$8.50

Statewide fishing license (nonresident): \$20.00

Joint statewide fishing license (resident): \$15.30

[Ohio River fishing license (resident Ohio, Indiana and Illinois only): \$8.50]

3-day fishing license (nonresident only): \$7.50

15-day fishing license (nonresident only): \$12.50

Trout stamp (resident or nonresident): \$3.50

(2) Commercial fishing licenses:

Commercial fishing license (resident) plus ten

(10) commercial gear tags: \$72.00

Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: \$500.00

(3) Commercial fishing gear tags (not to be sold singly):

Commercial fishing gear tag (resident) blocks of 10 tags: \$6.50

Commercial fishing gear tag (nonresident) blocks of 10 tags: \$58.00
 (4) Special commercial fishing permit: \$500.00
 (5) Live fish and bait dealers licenses:
 Live fish and bait dealers license (resident) Separate license required for each place of business: \$25.50
 Live fish and bait dealers license (nonresident): \$42.50
 (6) Mussel licenses:
 Musseling license (resident): \$100.00
 Musseling license (nonresident): \$500.00
 Mussel buyer's license (resident): \$100.00
 Mussel buyer's license (nonresident): \$300.00
 (7) Hunting licenses:
 Statewide hunting license (resident): \$8.50
 Statewide hunting license (nonresident): \$75.00
 Statewide hunting license, small game only (5-day nonresident): \$20.00
 Statewide junior hunting license (resident only): \$4.00
 Statewide waterfowl stamp: \$5.25
 (8) Hunting and fishing license (combination resident): \$15.00
 (9) Trapping licenses:
 Trapping license (statewide resident): \$11.50
 Trapping license (resident landowner/tenant): \$6.00
 Trapping license (nonresident): \$115.00
 Trap tags, each (resident or nonresident): \$.20
 (10) Big game licenses:
 Big game permit, deer (resident or nonresident): \$17.50
 Junior big game permit, deer (resident or nonresident): \$11.50.
 Big game permit, turkey (resident or nonresident): \$15.00
 (11) Taxidermist license: \$11.50
 (12) Commercial guide licenses:
 Commercial guide license (resident): \$14.50
 Commercial guide license (nonresident): \$42.50
 (13) Fur dealer's licenses:
 Fur processor's license (resident): \$150.00
 Fur buyer's license (resident): \$30.00
 Fur buyer's license (nonresident): \$230.00
Fur buyer's license (3 day nonresident): \$40.00
 (14) Special nonresident hunting preserve license valid only for preserve issued (not required if hunter has valid hunting license): \$8.50
 (15) Kentucky regulated shooting preserve permit: \$35.00
 (16) Commercial fox hound training enclosure permit: \$250.00
 (17) Pet and propagation permit:
 Pet and propagation permit, noncommercial: \$6.00
 Pet and propagation permit, commercial: \$30.00
 (18) Collecting permits:
 Educational collecting permit: \$3.00
 Scientific collecting permit: \$150.00
 (19) Food permits:
 Food permit for selling bobwhite quail from propagation farms only: \$150.00
 Retail food permit for propagated quail: \$2.50
 (20) Commercial waterfowl shooting area permit (operator's license): \$40.00
 (21) Falconry permit (birds of prey): \$15.00 [12.00]
 (22) Pay lake license (minimum \$50 for first two (2) acres or less; \$10 per additional acre or part thereof, up to maximum of \$100
 (23) Shoot to retrieve field trial permit (per trial, maximum four (4) days): \$50.00
 Shoot to retrieve field trial permit (single

day): \$15.00.

(24) Bird dog training device permit: \$2.50

Section 2. Except for scientific or educational collecting permits as specified in 301 KAR 4:070 the licenses, permits, stamps or tags authorized by this regulation shall not be changed, altered, or defaced in any manner. All licenses, permits, tags, and stamps are nontransferable.

Section 3. Unless otherwise specified below, the licenses, tags, and permits listed in this regulation shall expire on December 31 of the year issued.

(1) Those licenses, tags, permits and stamps listed in Section 1(1), (2), (3), (7), (8), (9) and (10) of this regulation, except short-term nonresident licenses, shall be valid from March 1 through the last day of February the following year[, except that those issued for the 1989 license year shall be valid from January 1, 1989 through February 28, 1990].

(2) Those licenses, tags and permits listed in Section 1(17) [and (21)] of this regulation shall be valid for one (1) year from date of issue.

(3) Short-term nonresident licenses, special commercial fishing permits, commercial waterfowl area shooting permits and shoot-to-retrieve field trial permits shall be valid only for the date or dates specified on each license.

(4) Falconry permits shall be valid for three (3) years from date of issue.

DON R. McCORMICK, Commissioner

DAVID H. GODBY, Chairman

RONALD E. GENTRY, Secretary

APPROVED BY AGENCY: March 5, 1991

FILED WITH LRC: June 14, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 24, 1991 at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by July 19, 1991, 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: Mr. 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: There are approximately 65 falconers in Kentucky. We expect to sell approximately 12 3-day nonresident fur buyer licenses. The last year the Ohio River Fishing license was sold, there were around 468 sold.

(a) Direct and indirect costs or savings to those affected:

1. First year: The nonresident fur buyers will benefit from the sale of the nonresident license since they will not have to purchase the full season license if they are buying in the state on an irregular basis. Ohio River fishermen will not have any savings as a regular fishing license is still required at the same price. The approximately 65 falconers will incur an additional \$3.00 fee but the permit will last three years.

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: Paperwork requirements for falconers will be greatly reduced by going to the three year permit. Elimination of the Ohio River Fishing License will require that the department and vendors handle fewer types of licenses.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Paperwork requirements for falconers will be greatly reduced by going to the three year permit. Elimination of the Ohio River Fishing License will require that the department and vendors handle fewer types of licenses.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be a reduction as falconers will report every three years as opposed annually.

(3) Assessment of anticipated effect on state and local revenues: Less income will be realized in the sale of annual nonresident fur buyer licenses due to the availability of the 3-day license. Other revenues should remain the same.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Due to settlement of litigation between Ohio, Indiana and Illinois regarding their respective boundaries in the Ohio River, it became unnecessary to continue to sell the Ohio River fishing license. Declining fur buying by both resident and nonresident fur buyers precipitated the 3-day nonresident license creation. It was done to encourage participation in the fur market by nonresident buyers and thus increase the value of the furs to sellers. Failure to implement the longer duration of falconers permits would place Kentucky out of synchronization with federal requirements.

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)**

401 KAR 31:010. General provisions for hazardous wastes.

RELATES TO: KRS 224.830 through 224.877, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.864

NECESSITY AND FUNCTION: KRS 224.864(3) requires the Natural Resources and Environmental Protection Cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and list hazardous waste. This regulation establishes the general provisions necessary for identification and listing of a hazardous waste.

Section 1. Purpose and Scope. (1) This chapter identifies those wastes which are subject to regulation as hazardous wastes under 401 KAR Chapters 32 through 40 and which are subject to the notification and permitting requirements of KRS 224.830 through 224.877. In this chapter:

(a) This regulation defines the terms "waste" and "hazardous waste," identifies those wastes which are excluded from regulation under 401 KAR Chapters 32 through 40 and establishes special management requirements for hazardous waste produced by limited quantity generators and hazardous waste which is recycled.

(b) 401 KAR 31:020 sets forth the criteria used by the cabinet to identify characteristics of hazardous waste and to list particular hazardous wastes.

(c) 401 KAR 31:030 identifies characteristics of hazardous waste.

(d) 401 KAR 31:040 lists particular hazardous wastes.

(2)(a) The definition of waste contained in this chapter applies only to wastes that are also hazardous for purposes of the regulations implementing those provisions of KRS Chapter 224 relating to hazardous waste management. This chapter identifies only some of the materials which are hazardous wastes under KRS 224.033(10), 224.071, and 224.877. For example, it does not apply to materials (such as nonhazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled.

(b) This chapter identifies only some of the materials which are wastes and hazardous wastes under KRS 224.033(10), 224.071, and 224.877. A material which is not defined as a waste in this chapter, or is not a hazardous waste identified or listed in this chapter is still a waste and a hazardous waste for purposes of this regulation if:

1. In the case of KRS 224.033(10), the cabinet has reason to believe that the material may be a waste within the meaning of KRS 224.005 and a hazardous waste within the meaning of KRS 224.005 ; or

2. In the case of KRS 224.071, the statutory elements are established.

(3) For the purposes of Sections 2, 6, 8 and 9 of this regulation:

(a) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was

produced without processing;

(b) "Sludge" has the same meaning used in Section 1 of 401 KAR 30:010;

(c) A "by-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(d) A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(e) A material is "used or reused" if it is either:

1. Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

2. Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(f) "Scrap metal" is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad boxcars), which when worn or superfluous can be recycled.

(g) A material is "recycled" if it is used, reused, or reclaimed.

(h) A material is "accumulated speculatively" if it is accumulated before being recycled.

1. A material is not accumulated speculatively, if the person accumulating it can show:

a. That the material is potentially recyclable and has a feasible means of being recycled; and

b. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

2. In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from regulation under Section 4(3) of this regulation are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

Section 2. Definition of a Waste. (1)(a) A "waste" is any discarded material that is not excluded by Section 4(1) of this regulation or that is not excluded by a variance granted under Section 1 or 2 of 401 KAR 30:080, or Section 8 or 9 of this regulation.

(b) A "discarded material" is any material which is:

1. "Abandoned," as explained in subsection (2) of this section; or

2. "Recycled," as explained in subsection (3) of this section; or

3. Listed in subsection (4) of this section.

(2) Materials are waste if they are "abandoned" by being:

(a) Disposed of; or

(b) Burned or incinerated; or

(c) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(3) The following materials are wastes if they are "recycled" - or accumulated, stored, or treated before recycling - as specified in paragraphs (a) through (d) of this subsection.

(a) "Used in a manner constituting disposal."

1. Materials noted with a "(waste)" in column (1) of Table 1 in paragraph (e) of this subsection are wastes when they are:

a. Applied to or placed on the land in a manner that constitutes disposal; or

b. Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which case the product itself remains a waste).

2. However, commercial chemical products listed in Section 4 of 401 KAR 31:040 are not wastes if they are applied to the land and that is their ordinary manner of use.

(b) The following materials are "burned for energy recovery:"

1. Materials noted with a "(waste)" in column (2) of Table 1 in paragraph (e) of this subsection are wastes when they are:

a. Burned to recover energy;

b. Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

2. However, commercial chemical products listed in Section 4 of 401 KAR 31:040 are not wastes if they are themselves fuels.

(c) The following materials are "reclaimed." Materials noted with a "(waste)" in column (3) of Table 1 in paragraph (e) of this subsection are wastes when reclaimed.

(d) The following materials are "accumulated speculatively." Materials noted with a "(waste)" in column (4) of Table 1 in paragraph (e) of this subsection are wastes when accumulated speculatively.

(e) The following Table 1 identifies materials which are wastes when "used in a manner constituting disposal," "burned for energy recovery," "reclaimed," or "accumulated speculatively." Materials noted with the word "(waste)" in Table 1 are considered to be wastes for the purposes of 401 KAR Chapters 32 through 40 and KRS Chapter 224. Materials noted with a dash "-" in Table 1 are not considered to be a waste for the purposes of 401 KAR Chapters 32 through 40 and KRS Chapter 224.

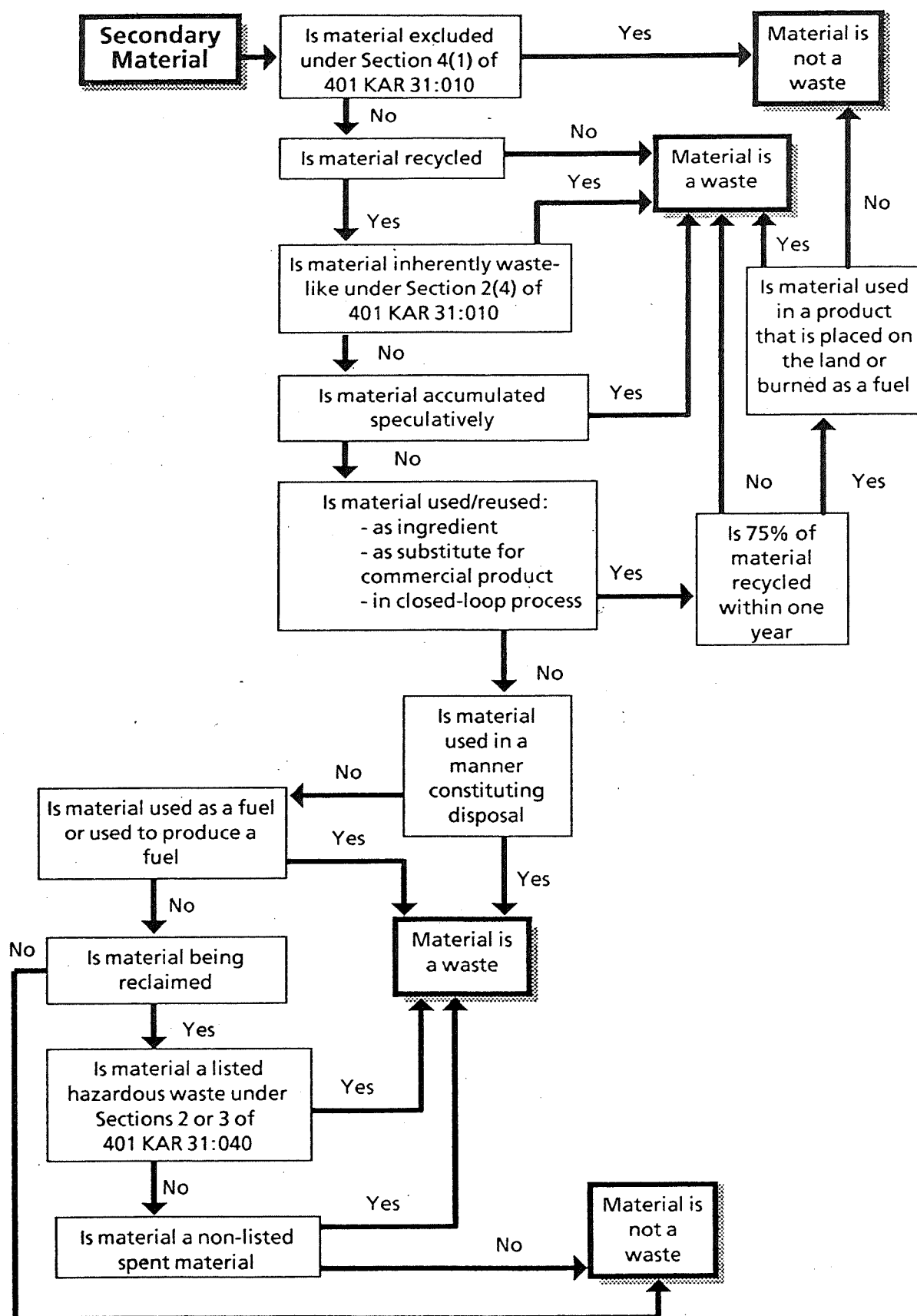
TABLE 1

	Use constituting disposal 401 KAR 31:010 Section 2(3)(a) (1)	Energy recovery/ fuel 401 KAR 31:010 Section 2(3)(b) (2)	Reclamation 401 KAR 31:010 Section 2(3)(c) (3)	Speculative accumulation 401 KAR 31:010 Section 2(3)(d) (4)
Spent materials	(waste)	(waste)	(waste)	(waste)
Sludges (listed in Sections 2 or 3 of 401 KAR 31:040)	(waste)	(waste)	(waste)	(waste)
Sludges exhibiting a characteristic of hazardous waste	(waste)	(waste)	-	(waste)
By-products (listed in Sections 2 or 3 of 401 KAR 31:040)	(waste)	(waste)	(waste)	(waste)
By-products exhibiting a characteristic of hazardous waste	(waste)	(waste)	-	(waste)
Commercial chemical products listed in Section 4 of 401 KAR 31:040	(waste)	(waste)	-	-
Scrap metal	(waste)	(waste)	(waste)	(waste)

NOTE - The terms "spent materials," "sludges," "by-products," and "scrap metal" are defined in Section 1 of this regulation.

(f) The following Table 2 is a decision tree for deciding which secondary materials are wastes when recycled.

TABLE 2. Decision Tree for Deciding Which Secondary Materials Are Wastes When Recycled



(4) The following materials are wastes when they are recycled in any manner:

(a) Hazardous Waste Numbers F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028 (chlorinated dioxins, chlorinated dibenzofurans and chlorinated phenols).

(b) The cabinet shall use the following criteria to add wastes to the list in paragraph (a) of this subsection:

1.a. The materials are ordinarily disposed of, burned, or incinerated; or

b. The materials contain toxic constituents listed in Section 1 of 401 KAR 31:170 and these constituents are not ordinarily found in raw materials or products for which the material substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

2. The material may pose a substantial hazard to human health and the environment when recycled.

(5) "Materials that are not wastes when recycled."

(a) Materials are not wastes when they can be shown to be recycled by being:

1. Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

2. Used or reused as effective substitutes for commercial products; or

3. Returned to the original process from which they are generated, without first being reclaimed. The material shall be returned as a substitute for raw material feedstock, and the process shall use raw materials as principal feedstocks.

(b) The following materials are wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraph (a) through 3 of this subsection):

1. Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

2. Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

3. Materials accumulated speculatively; or

4. Materials listed in subsection (4)(a) of this section.

(6) "Documentation of claims that materials are not wastes or are conditionally exempt from regulation." Respondents in enforcement actions pursuant to 401 KAR Chapter 40, [actions to enforce regulations implementing the provisions in KRS Chapter 224 relating to hazardous waste management] who raise a claim that a certain material is not waste, or is conditionally exempt from regulation, shall demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they shall provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials shall show that they have the necessary equipment to do so.

Section 3. Definition of a Hazardous Waste.

(1) A waste, as defined in Section 2 of this regulation is a hazardous waste if:

(a) It is not excluded from regulation as a

hazardous waste under Section 4(2) of this regulation; and

(b) It meets any of the following criteria:

1. It exhibits any of the characteristics of hazardous waste identified in 401 KAR 31:030.

2. It is listed in 401 KAR 31:040 and has not been excluded from the lists under 401 KAR 31:060 and 401 KAR 31:070.

3. It is a mixture of any waste and a hazardous waste that is listed in 401 KAR 31:040 solely because it exhibits one (1) or more of the characteristics of hazardous waste identified in 401 KAR 31:030, unless the resultant mixture no longer exhibits any characteristics of hazardous waste identified in 401 KAR 31:030.

4. It is a mixture of any waste and one (1) or more hazardous wastes listed in 401 KAR 31:040 and has not been excluded from this paragraph under Sections 1 and 2 [1(2)] of 401 KAR 31:060; [040,] however, the following mixtures of wastes and hazardous wastes listed in 401 KAR 31:040 are not hazardous wastes (except by application of subparagraph 1 or 2 of this paragraph) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the CWA [Clean Water Act] (including wastewater at facilities which have eliminated the discharge of wastewater) and:

a. One (1) or more of the following spent solvents listed in Section 2 of 401 KAR 31:040; [,] carbon tetrachloride, tetrachloroethylene, or trichloroethylene provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed one (1) part per million; or

b. One (1) or more of the following spent solvents listed in Section 2 of 401 KAR 31:040; [,] methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, or spent chlorofluorocarbon solvents provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed twenty-five (25) parts per million; or

c. One (1) of the following wastes listed in Section 3 [4] of 401 KAR 31:040, heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050); or

d. A discarded commercial chemical product, or chemical intermediate listed in Section 4 of 401 KAR 31:040, arising from minimal [de minimis] losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this paragraph, minimal ["de minimis"] losses include those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process

equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

e. Wastewater resulting from laboratory operations containing toxic (T) wastes listed in 401 KAR 31:040, provided that the annualized average flow of laboratory wastewater does not exceed one (1) percent of total wastewater flow into the headworks of the facility's wastewater treatment or pretreatment system, or provided the wastes' combined annualized average concentration does not exceed one (1) part per million in the headworks of the facility's wastewater treatment or pretreatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation.

(2) A waste which is not excluded from regulation under subsection (1), paragraph (a) of this section becomes a hazardous waste when any one (1) of the following events occur:

(a) In the case of a waste listed in 401 KAR 31:040 of this regulation when the waste first meets the listing description set forth in 401 KAR 31:040;

(b) In the case of a mixture of solid waste (including wastes subject to the Atomic Energy Act) and one (1) or more hazardous wastes when a hazardous waste listed in 401 KAR 31:040 is first added to the waste; or

(c) In the case of any other waste (including a waste mixture or wastes subject to the Atomic Energy Act) when the waste exhibits any of the characteristics identified in 401 KAR 31:030.

(3) Unless and until it meets the criteria of subsection (4) of this section:

(a) A hazardous waste shall remain a hazardous waste.

(b)1. Except as otherwise provided in subparagraph 2 of this paragraph, any waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from wastes and that are used beneficially are not wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

2. The following wastes are not hazardous even though they are generated from the treatment, storage, or disposal of hazardous waste, unless they exhibit one (1) or more of the characteristics of hazardous waste:

a. Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332).

b. Waste from burning any of the materials exempted from regulation by Section 6(1)(c)5-9 of this regulation.

(4) Any waste described in subsection (3) of this section is not a hazardous waste if it meets the following criteria:

(a) In the case of any waste, it does not exhibit any of the characteristics of hazardous waste identified in 401 KAR 31:030.

(b) In the case of a waste which is a listed waste under 401 KAR 31:040, contains a waste

listed under 401 KAR 31:040 or is derived from a waste listed in 401 KAR 31:040, it also has been excluded from Section 1(3) of 401 KAR 31:060 and 401 KAR 31:070.

Section 4. Exclusions. (1) The following materials are not wastes for the purpose of this chapter:

(a) Domestic sewage and any mixture of domestic sewage and other wastes that pass through a sewer system to a publicly-owned treatment works for treatment;

(b) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the CWA [Clean Water Act], as amended; however, this exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment;

(c) Irrigation return flows;

(d) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 USC 2011 et seq., except as provided in Section 3 of this regulation;

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

(f) Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless they are accumulated speculatively as defined in Section 1(3) of this regulation.

(g) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in Section 1(3) of this regulation.

(h) Mining overburden returned to the mine site; and

(i) Material from the extraction, beneficiation, and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.

(j) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process, provided:

1. Only tank storage is involved, and the entire process through completion of reclamation, is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

2. Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

3. The secondary materials are never accumulated in such tanks for over twelve (12) months without being reclaimed; and

4. The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal, as provided in 401 KAR Chapter 36.

(2) Any waste which meets the requirements of this subsection is not a hazardous waste.

(a) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel), or reused. "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters,

campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under the waste management regulations, if the [such] facility:

1. Receives and burns only:

a. Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and [or]

b. Waste from commercial or industrial sources that does not contain hazardous waste; and

2. The [Such] facility does not accept hazardous wastes and the owner or operator of the [such] facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in the [such] facility.

(b) Agricultural wastes generated by any of the following and which are returned to the soils as fertilizers:

1. The growing and harvesting of agricultural crops.

2. The raising of animals, including animal manures.

(c) Mining overburden returned to the mine site.

(d) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(e) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.

(f) 1. Wastes which fail the test for the toxicity characteristic [of EP toxicity] because chromium is present or are listed in 401 KAR 31:040 due to the presence of chromium, which do not fail the test for the toxicity characteristic [of EP toxicity] for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

a. The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

b. The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

c. The waste is typically and frequently managed in nonoxidizing environments.

2. Specific wastes which meet the standard in subparagraph 1a, b and c of this paragraph (so long as they do not fail the test for any other characteristic) are:

a. Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam house; through-the-blue; and shearling.

b. Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam house; through-the-blue; and shearling.

c. Buffing dust generated by the following subcategories of the leather tanning and

finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam house; through-the-blue.

d. Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam house; through-the-blue; and shearling.

e. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam house; through-the-blue; and shearling.

f. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

g. Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

h. Wastewater treatment sludges from the production of TiO₂ pigment using chromium-bearing ores by the chloride process.

(g) Waste from the extraction, beneficiation, and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore. For the purpose of this paragraph, waste from the processing of ores and minerals does not include:

1. Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production;

2. Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities;

3. Sludge from treatment of process wastewater or acid plant blowdown from primary zinc production;

4. Spent potliners from primary aluminum reduction;

5. Emission control dust or sludge from ferrochromium/silicon production;

6. Emission control dust or sludge from ferrochromium production.

(h) Cement kiln dust waste.

(i) Waste which consists of discarded wood or wood products which fails the test for the toxicity characteristic solely for arsenic [of EP toxicity] and which is not a hazardous waste for any other reason or reasons, if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(j) Petroleum - contaminated media and debris that fail the test for the toxicity characteristic of 401 KAR 31:030 (hazardous waste codes D018 through D043 only) and are subject to the corrective action regulations under 401 KAR Chapter 42.

(3) A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste-treatment-manufacturing unit, is not subject to regulation under 401 KAR Chapters 32, 33, 34, 35, 37, 38 and 39 until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than

ninety (90) days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(4) Samples.

(a) Except as provided in paragraph (b) of this subsection, a sample of waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter; [or] 401 KAR Chapter 32, 33, 34, 35, 37, 38 and 39; or [to] the notification requirements of 401 KAR Chapter 32 and 38 when:

1. The sample is being transported to a laboratory for the purpose of testing; or
2. The sample is being transported back to the sample collector after testing; or
3. The sample is being stored by the sample collector before transport to a laboratory for testing; or
4. The sample is being stored in a laboratory before testing; or
5. The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or
6. The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(b) In order to qualify for the exemption in paragraphs (a)1 and 2 of this subsection, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

1. Comply with DOT, USPS [U.S. Department of Transportation (DOT), U.S. Postal Service (USPS)], or any other applicable shipping requirements; or
2. Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:
 - a. Assure that the following information accompanies the sample:
 - (i) The sample collector's name, mailing address, and telephone number;
 - (ii) The laboratory's name, mailing address, and telephone number;
 - (iii) The quantity of the sample;
 - (iv) The date of shipment; and
 - (v) A description of the sample.
 - b. Package the sample so that it does not leak, spill, or vaporize from its packaging.
 - c. This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (a) of this subsection.

Section 5. Special Requirements for Hazardous Waste Generated by Limited Quantity Generators.

(1) A generator is a limited quantity generator in a calendar month if he generates less than 100 kilograms of hazardous waste in that month, except as specified in subsection (5) of this section.

(2) Except for those wastes identified in subsections (5), (6), (7), and (10) of this section, a limited quantity generator's hazardous wastes are not subject to regulation under 401 KAR Chapters 32 through 39 and the notification requirements of KRS 224.864(3), provided the generator complies with the regulations of subsections (6), (7), and (10) of

this section.

(3) Hazardous waste that is not subject to regulation or that is subject only to Sections 2 and 3 of 401 KAR 32:010 and Sections 1(3) and 2 of 401 KAR 32:040 is not included in the quantity determinations of this chapter and 401 KAR Chapters 32 through 40 and is not subject to any requirements of those regulations. Hazardous waste that is subject to the requirements of Section 6(2) and (3) of this regulation and 401 KAR 36:030, 401 KAR 36:040, and 401 KAR 36:060 is included in the quantity determination of this chapter, and is subject to the requirements of 401 KAR Chapters 32 through 40.

(4) In determining the quantity of hazardous waste generated [he generates], a generator need not include:

- (a) [His] Hazardous waste when it is removed from on-site storage; or
 - (b) Hazardous waste produced by on-site treatment (including reclamation) of his hazardous waste, so long as the hazardous waste that is treated was counted once; or
 - (c) Spent materials that are generated, reclaimed, and subsequently reused on site, so long as spent materials have been counted once.
- (5) If a generator generates acutely hazardous waste in a calendar month in quantities greater than set forth in this subsection [below], all quantities of that acutely hazardous waste are subject to regulations applicable to generators of greater than 1,000 kilograms of nonacutely hazardous waste in a calendar month [regulation] under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.855 and 224.864 through 224.877:

- (a) A total of one (1) kilogram of acute hazardous wastes listed in Section[s] 2, 3, or [and] 4(5) of 401 KAR 31:040.
- (b) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous wastes listed in Section[s] 2, 3 or [and] 4(5) of 401 KAR 31:040.
- (6) A limited quantity generator may accumulate hazardous waste on site in tanks or containers. If he accumulates at any time more than [a total of] 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than set forth in subsection (5)(a) or (b) of this section, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under 401 KAR Chapters 32 through 39 and the notification and permitting requirements of KRS 224.830 through 224.877. The time period set out in 401 KAR 32:030, Section 5 for accumulation of wastes on-site begins for a limited quantity generator when the accumulated wastes exceed the applicable exclusion level.

(7) In order for a limited quantity generator to be excluded from full regulations under this section, the generator shall:

- (a) Comply with the requirements of 401 KAR 32:010, Section 2;
- (b) If he stores his hazardous waste on-site, store[s] it in compliance with [the requirements of] subsection (6) of this section; and
- (c) Either treat or dispose of [his] hazardous waste in an on-site facility, or ensure direct delivery [within ten (10) days] to an off-site storage, treatment, or disposal facility [. To ensure delivery of a waste, the manifested or unmanifested shipment shall be sent to a

registered or permitted facility], either of which if located in the U.S. is:

1. Permitted under 401 KAR Chapter 38;
2. In interim status under 401 KAR Chapters 35 and 38;
3. Located outside of Kentucky and is permitted under 40 CFR Part 270 or in interim status under 40 CFR Parts 270 and 265;
4. Located outside of Kentucky and is authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;
5. Permitted to manage municipal or industrial solid waste and is specifically approved for that waste; or

6. A facility which:

a. Beneficially uses or reuses, or legitimately recycles or reclaims its [his] waste; or

b. Treats its [his] waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(8) Hazardous waste subject to the reduced requirements of this section may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section unless the mixture meets any of the characteristics of hazardous wastes identified in 401 KAR 31:030.

(9) If a limited quantity generator mixes a solid waste with a hazardous waste that exceeds the quantity exclusion level of this section, the mixture shall be [is] subject to full regulation.

(10) If a limited quantity generator's hazardous wastes are mixed with used oil, the mixture shall be [is] subject to Sections 1 through 5 of 401 KAR 36:050, if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment shall [is] also be so regulated if it is destined to be burned for energy recovery.

Section 6. Requirements for Recyclable Materials. (1)(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (2) and (3) of this section, except for the materials listed in paragraphs (b) and (c) of this subsection. Hazardous wastes that are recycled shall be known as "recyclable materials."

(b) The following recyclable materials are not subject to the requirements of this section, but are regulated under 401 KAR Chapter 36 and all applicable provisions of 401 KAR Chapters 38 and 39:

1. Recyclable materials used in a manner constituting disposal (see 401 KAR 36:030);
2. Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under 401 KAR 34:240 or 401 KAR 35:240 (see 401 KAR 36:040);
3. Used oil that exhibits one (1) or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under 401 KAR 34:240 and 35:240 (see 401 KAR 36:040);
4. Recyclable materials from which precious metals are reclaimed (see 401 KAR 36:060); and
5. Spent lead-acid batteries that are being reclaimed (see 401 KAR 36:070).

(c) The following recyclable materials are not

subject to regulation under 401 KAR Chapters 32 through 38, and are not subject to the notification requirements of KRS 224.864(3):

1. Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in 401 KAR 32:050:

a. A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, shall comply with the requirements applicable to a primary exporter in Sections 4, 7(1)(a) through (d), (f), and (2) and Section 8 of 401 KAR 32:050; export these [such] materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 401 KAR 32:050; and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

b. Transporters transporting a shipment for export shall [may] not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, shall ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment, and shall ensure that it is delivered to the facility designated by the person initiating the shipment.

2. Used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

3. Used oil that exhibits one (1) or more of the characteristics of hazardous waste but is recycled in some other manner than being burned for energy recovery;

4. Scrap metal;

5. Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if the [such] wastes result from normal petroleum refining, production, and transportation practices;

6. Oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;

7. Coke and coal tar from the iron and steel industry that contains EPA Hazardous Waste No. K087 (Decanter tank tar sludge from coking operations) from the iron and steel production process;

8.a. Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under Section 1(5) [7(5)] of 401 KAR 36:050 [040] and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

b. Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining, production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under Section 1(5) [7(5)] of 401 KAR 36:050 [040]; and

c. Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and

transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under Section 1(5) [7(5)] of 401 KAR 36:050 [040]; and

9. Petroleum coke produced from petroleum refinery hazardous wastes containing oil at the same facility at which the [such] wastes were generated, unless the resulting coke product exceeds one (1) or more of the characteristics of hazardous waste in 401 KAR 31:030.

(2) Generators and transporters of recyclable materials are subject to the applicable requirements of 401 KAR Chapters 32 and 33 and the notification requirements under KRS 224.864(3) and 224.873, except as provided in subsection (1) of this section.

(3)(a) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of 401 KAR 34:010 through 34:210, 401 KAR 35:010 through 35:210, 401 KAR Chapters 36 through 38, and the notification requirements under KRS 224.864(3) and 224.866, except as provided in subsection (1) of this section. (The recycling process itself is exempt from regulation.)

(b) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsection (1) of this section:

1. The owner or operator shall submit an annual notification to the cabinet. After the date of promulgation of this regulation, the owner or operator shall submit an initial notification on a schedule determined by the cabinet. Subsequent annual notifications shall be submitted to the cabinet at least thirty (30) days before the expiration date shown on the notification; and

2. Sections 2 and 3 of 401 KAR 35:050 (dealing with the use of the manifest and manifest discrepancies).

Section 7. Residues of Hazardous Waste in Empty Containers. (1)(a) Any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in subsection (2) of this section, is not subject to [regulation under] 401 KAR Chapters 32, 33, 34, 35, 37, 38, and 39 but is subject to [regulations under] 401 KAR Chapter 47.

(b) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in subsection (2) of this section is subject to [regulations under] 401 KAR Chapters 32, 33, 34, 35, 37, 38, and 39; [and] 401 KAR 30:020; and 401 KAR 30:030.

(2)(a) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in Section 2, 3, or 4(5) of 401 KAR 31:040, is empty if:

1. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

2. No more than two and five-tenths (2.5) centimeters (one (1) inch) of residue remain on the bottom of the container or inner liner; or

3.a. No more than three (3) percent by weight

of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size; or

b. No more than three-tenths (0.3) percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

(b) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(c) A container or an inner liner removed from a container that has held an acute hazardous waste listed in Section 2, 3, or 4(5) of 401 KAR 31:040 is empty if:

1. The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

2. The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by test conducted by the generator, to achieve equivalent removal; or

3. In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.

Section 8. PCB Wastes Regulated Under the Toxic Substance Control Act. The disposal of PCB - containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under 40 CFR Part 761 (1990) and that are hazardous only because they fail the test for the toxicity characteristic (hazardous waste codes D018 through D043 only) are exempt from 401 KAR Chapters 31 through 35, 37, and 38, including the notification requirements of these chapters.

Section 9. [8.] Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-case Basis. (1) The cabinet may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in Section 6(1)(b)3 of this regulation [401 KAR 31:010] shall be regulated under Section 6(2) and (3) of this regulation. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained or because the materials being accumulated or stored together are incompatible. In making this decision, the cabinet shall consider the following factors:

(a) The types of materials accumulated or stored and the amounts accumulated or stored;

(b) The method of accumulation or storage;

(c) The length of time the materials have been accumulated or stored before being reclaimed;

(d) Whether any contaminants are being released into the environment, or are likely to be so released; and

(e) Other relevant factors.

(2) The procedures for this decision are set forth in Section 9 of this regulation.

Section 10. [9.] Procedures for Case-by-case Regulation of Hazardous Waste Recycling Activities. The cabinet shall use the following procedures when determining whether to regulate hazardous waste recycling activities described in Section 6(1)(b)4 [3] of this regulation [401

KAR 31:010] under the provisions of Section 6(2) and (3) of this regulation [401 KAR 31:010] rather than under the provisions of 401 KAR 36:060 (precious metals [spent lead-acid batteries] being reclaimed).

(1) If a generator is accumulating the waste, the cabinet shall issue a notice setting forth the factual basis for the decision and stating that the person shall comply with the applicable requirements of 401 KAR 32:010, 32:030, 32:040, and 32:050. The notice shall become final within thirty (30) days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the cabinet shall hold a public hearing. The cabinet shall provide notice of the hearing to the public and allow public participation at the hearing. The cabinet shall issue a determination after the hearing stating whether or not compliance with 401 KAR Chapter 32 is required. The order shall become[s] effective thirty (30) days after service of the determination, unless the cabinet specifies a later date.

(2) If the person is accumulating the recyclable material as a storage facility, the notice shall state that the person shall obtain a permit in accordance with all applicable provisions of 401 KAR Chapter 38. The owner or operator of the facility shall apply for a permit within no more than six (6) months of notice. If the owner or operator of the facility wishes to challenge the cabinet's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit shall specify the reasons for the cabinet's determination. The question of whether the cabinet's decision was proper shall remain open for consideration during the public comment period discussed under Section 8 of 401 KAR 38:050 and in any subsequent hearing.

Section 11. [10.] Regulation of Mixed Radioactive Hazardous Wastes. Radioactive mixed wastes are wastes that contain both hazardous wastes subject to KRS Chapter 224 and radioactive wastes subject to the Atomic Energy Act (AEA). Radioactive mixed wastes are subject to all the requirements of 401 KAR Chapters 30 through 40 [the Kentucky hazardous waste management regulations] and the Atomic Energy Act.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: June 13, 1991

FILED WITH LRC: June 14, 1991 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1991, at 10 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below, by July 22, 1991, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to

be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on July 25, 1991. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Hale

(1) Type and number of entities affected: This regulation affects generators of hazardous waste. There presently are 434 full quantity generators, 534 small quantity generators, and 1104 limited quantity generators. It also affects treatment, storage, and disposal facilities. There are 100 such facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The toxicity characteristic (TC) requirements replace the extraction procedure toxicity analysis (EP) with a new extraction procedure, toxicity characteristic leaching procedure (TCLP). TCLP adds 25 new organic constituents to the 8 metals and 6 pesticides on the EP list of regulated constituents. A TCLP analysis will cost approximately \$5,000, whereas the EP analysis costs approximately \$3,000. By adding new wastes to the universe of regulated wastes, this regulation will affect generators and treatment, storage, and disposal facilities already operating under RCRA as well as waste handlers not previously regulated. First year costs will vary based on the status of the facility or generator. New hazardous waste handlers will experience costs in complying with full hazardous waste regulations. This cost was previously not experienced as the waste was not considered hazardous.

2. Continuing costs or savings: First year costs will continue as different types of generators and facilities are transitioned into the requirements. Permit fees as well as costs associated with storage and handling of hazardous waste will be experienced.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The TCLP requirements subject new wastes to regulatory control under RCRA. It does not introduce new requirements for the management of hazardous waste. These HSWA regulations became effective at the federal level September 25, 1990. There are no additional or different costs associated with the Kentucky regulations.

(b) Reporting and paperwork requirements: The regulated community will be required to notify the cabinet by either a permit modification, permit application, or notification. Newly regulated wastes will be subject to full recordkeeping and reporting requirements associated with the hazardous waste program.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional costs will be experienced by the cabinet as more wastes will be considered hazardous and will enlarge the scope of the hazardous waste program.

2. Continuing costs or savings: First year costs will continue.

3. Additional factors increasing or decreasing costs: There are no additional factors

increasing or decreasing costs.

(b) Reporting and paperwork requirements: The cabinet will experience increased permitting and generator notification activity.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment contain federal requirements published in the Federal Register on March 29, 1990, and June 29, 1990, concerning TCLP.

Alternative: 1. Less stringent: The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent: More stringent requirements were not adopted because these regulations adequately protect human health and the environment.

3. Present proposal: The present proposal includes changes based on KRS Chapter 13A; EPA's comments to Kentucky's HSWA I authorization application; and Federal Registers dated March 29, 1990, and June 29, 1990, concerning the toxicity characteristic leaching procedure.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which conflict, overlap or duplicate this administrative 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: TIERING: Was tiering applied? Yes. This administrative regulation differentiates between the type of hazardous waste that is generated, and the type of treatment, storage or disposal facility.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendments adopt the March 29, 1990 Federal Register amendments to 40 CFR 261.4 and 261.8. It also adopts the June 29, 1990 Federal Register amendments to 40 CFR 261.4.

2. State compliance standards. The proposed amendments to this regulation include changes based on EPA comments to Kentucky's HSWA I authorization application; in-house requests for site corrections; and Federal Registers published March 29, 1990, and June 29, 1990 concerning the toxicity characteristic leaching procedure.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate replaces the extraction procedure toxicity test with the toxicity characteristic leaching procedure. Kentucky has adopted this requirement identically.

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 requirements are identical to federal regulations at 40 CFR 261.4 and 261.8 as published in the Federal Register on March 29,

1990 and June 29, 1990.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed requirements are identical to the federal regulations at 40 CFR 261.4 and 261.8 as published in the Federal Register on March 29, 1990 and June 29, 1990.

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

401 KAR 31:030. Characteristics of hazardous waste.

RELATES TO: KRS 224.830 through 224.877, 224.994

STATUTORY AUTHORITY: KRS 13A.210, 224.017, 224.864

NECESSITY AND FUNCTION: KRS 224.864(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This regulation establishes the characteristics of a hazardous waste.

Section 1. General. (1) A waste, as defined in Section 2 of 401 KAR 31:010 which is not excluded from regulation as a hazardous waste under Section 4(2) of 401 KAR 31:010, is a hazardous waste if it exhibits any of the characteristics identified in this regulation.

(2) A hazardous waste which is identified by a characteristic in this regulation, but is not listed as a hazardous waste in 401 KAR 31:040, is assigned the EPA Hazardous Waste Number set forth in the respective characteristics in this regulation. This number shall [must] be used in complying with the notification requirements of 401 KAR Chapters 32 and 38 and the [certain] recordkeeping and reporting requirements under 401 KAR Chapters 31 through 40 [the waste management regulation relating to hazardous waste.]

(3) For purposes of this regulation, the cabinet shall [will] consider a sample obtained using any of the applicable sampling methods specified in 401 KAR 31:100 to be a representative sample within the meaning of 401 KAR 30:010.

Section 2. Characteristic of Ignitability. (1) A waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(a) It is a liquid, other than an aqueous solution containing less than twenty-four (24) percent alcohol by volume and has a flash point less than sixty (60) degrees C 140 degrees Fahrenheit), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79 or D-93-80 ([incorporated by reference,] see Section 3 of 401 KAR 30:010), or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78 ([incorporated by reference,] see Section 3 of 401 KAR 30:010), or as determined by an equivalent test method approved by the cabinet [director] and the administrator under procedures set forth in Section 2 of 401 KAR 30:020.

(b) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(c) It is an ignitable compressed gas as defined in 49 CFR 173.300 (1990) and as determined by the test methods described in that regulation or equivalent test methods approved by the cabinet [director] and the administrator under Section 2 of 401 KAR 30:020.

(d) It is an oxidizer as defined in 49 CFR 173.151 (1990).

(2) A waste that exhibits the characteristic of ignitability, but is not listed as a hazardous waste in 401 KAR 31:040, has the EPA hazardous waste number of D001.

Section 3. Characteristic of Corrosivity. (1) A waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(a) It is aqueous and has a pH less than or equal to two (2) or greater than or equal to twelve and five-tenths (12.5), as determined by a pH meter using either an EPA test method or an equivalent test method approved by the cabinet [director] and the administrator under the procedures set forth in Section 2 of 401 KAR 30:020. The EPA test method for pH is specified as Method 5.2 in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" ([incorporated by reference,] see Section 3 of 401 KAR 30:010).

(b) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (approximately 0.250 inch) per year at a test temperature of fifty-five (55) degrees Centigrade (approximately 130 degrees Fahrenheit) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" ([incorporated by reference,] see Section 3 of 401 KAR 30:010) or an equivalent test method approved by the cabinet [director] and the administrator under the procedures set forth in Section 2 of 401 KAR 30:020.

(2) A waste that exhibits the characteristic of corrosivity, but is not listed as a hazardous waste in 401 KAR 31:040, has the EPA Hazardous Waste Number of D002.

Section 4. Characteristic of Reactivity. (1) A waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(a) It is normally unstable and readily undergoes violent change without detonating.

(b) It reacts violently with water.

(c) It forms potentially explosive mixtures with water.

(d) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(e) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between two (2) or twelve and five-tenths (12.5), can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(f) It is capable of detonation or explosive

reaction if it is subjected to a strong initiating source or if heated under confinement.

(g) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(h) It is a forbidden explosive as defined in 49 CFR 173.51 (1990), or a Class A explosive as defined in 49 CFR 173.53 (1990), or a Class B explosive as defined in 49 CFR 173.88 (1990).

(2) A waste that exhibits the characteristic of reactivity, but is not listed as a hazardous waste in 401 KAR 31:040, has the EPA Hazardous Waste Number of D003.

Section 5. Toxicity Characteristic [of EP Toxicity]. (1) A waste exhibits the characteristic of [EP] toxicity if, using the test methods described in 401 KAR 31:110 or equivalent methods approved by the cabinet [director] and the administrator under the procedures set forth in Section 2 of 401 KAR 30:020 and 31:060, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 (see subsection (3) of this section) at a concentration equal to or greater than the respective value given in that Table. Where the waste contains less than five-tenths (0.5) percent filterable solids, the waste itself, after filtering using methodology outlined in 401 KAR 31:110, is considered to be the extract for the purposes of this section.

(2) A waste that exhibits the characteristic of [EP] toxicity, but is not listed as a hazardous waste in 401 KAR 31:040, has the EPA Hazardous Waste Number specified in Table 1 which corresponds to the toxic contaminant causing it to be hazardous.

(3) Table 1. Maximum Concentration of Contaminants for the Toxicity Characteristic [of EP Toxicity]

EPA Hazardous Waste Number	Chemical Contaminant	Service Number	Abstract Regulatory Level (mg/L)
D004	Arsenic	7440-38-2	5.0
D005	Barium	7440-39-3	100.0
D018	Benzene	71-43-2	0.5
D006	Cadmium	7440-43-9	1.0
D019	Carbon tetra- chloride	56-23-5	0.5
D020	Chlordane	57-74-9	0.03
D021	Chlorobenzene	108-90-7	100.0
D022	Chloroform	67-66-3	6.0
D007	Chromium	7440-47-3	5.0
D023	o-Cresol	95-48-7	200.0 ²
D024	m-Cresol	108-39-4	200.0 ²
D025	p-Cresol	106-44-5	200.0 ²
D026	Cresol	=====	200.0 ²
D016	2,4-D	94-75-7	10.0
D027	1,4-Dichloro- benzene	106-46-7	7.5
D028	1,2-Dichloro- ethane	107-06-2	0.5
D029	1,1-Dichloro- ethylene	75-35-4	0.7
D030	2,4-Dinitro- toluene	121-14-2	0.13 ¹
D012	Endrin	72-20-8	0.02
D031	Heptachlor (and its epoxide)	76-44-8	0.00 ¹
D032	Hexachloro- benzene	118-74-1	0.13 ¹

D033	Hexachloro- butadiene	87-68-3	0.5
D034	Hexachloro- ethane	67-72-1	3.0
D008	Lead	7439-92-1	5.0
D013	Lindane	58-89-9	0.4
D009	Mercury	7439-97-6	0.2
D014	Methoxychlor	72-43-5	10.0
D035	Methyl ethyl ketone	78-93-3	200.0
D036	Nitrobenzene	98-95-3	2.0
D037	Pentachloro- phenol	87-86-5	100.0
D038	Pyridine	110-86-1	5.0 ¹
D010	Selenium	7782-49-2	1.0
D011	Silver	7440-22-4	5.0
D039	Tetrachloro- ethylene	127-18-4	0.7
D015	Toxaphene	8001-35-2	0.5
D040	Trichloro- ethylene	79-01-6	0.5
D041	2,4,5-tri- chlorophenol	95-95-4	400.0
D042	2,4,6-tri- chlorophenol	88-06-2	2.0
D017	2,4,5-TP (Silvex)	93-72-1	1.0
D043	Vinyl chlor- ide	75-01-4	0.2

1 - Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.

2 - If o-, m- and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/l.

[EPA Hazardous		Maximum Concentration
Waste Number	Contaminant	(milligrams per liter)
D004	Arsenic	5.0
D005	Barium	100.0
D006	Cadmium	1.0
D007	Chromium	5.0
D008	Lead	5.0
D009	Mercury	0.2
D010	Selenium	1.0
D011	Silver	5.0
D012	Endrin (1,2,3,4,10, hexachloro-1,7-epoxy-1, 4,4a,5,6,7,8,8a-octahydro- 1,4-endo,endo-5,8-dimethano naphthalene)	0.02
D013	Lindane (1,2,3,4,5, 6-hexachlorocyclohexane, gamma isomer)	0.4
D014	Methoxychlor (1,1,1-Tri- chloro-2, 2-bis(p-methoxy- phenyl) ethane)	10.0
D015	Toxaphene(C ₁₀ H ₁₀ Cl ₈ technical chlorinated camphene, 67-69 percent chlorine)	0.5
D016	2,4-D, (2,4-Dichloro phenoxyacetic acid)	10.0
D017	2,4,5-TP Silvex (2,4, 5-Trichlorophenoxypro- pionic acid)]	1.0

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: June 13, 1991

FILED WITH LRC: June 14, 1991 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1991, at 10 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below, by July 22, 1991, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on July 25, 1991. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Hale

(1) Type and number of entities affected: This regulation affects generators of hazardous waste. There presently are 434 full quantity generators, 534 small quantity generators, and 1104 limited quantity generators. It also affects treatment, storage, and disposal facilities. There are 100 such facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The toxicity characteristic (TC) requirements replace the extraction procedure toxicity analysis (EP) with a new extraction procedure, toxicity characteristic leaching procedure (TCLP). TCLP adds 25 new organic constituents to the 8 metals and 6 pesticides on the EP list of regulated constituents. A TCLP analysis will cost approximately \$5,000, whereas the EP analysis costs approximately \$3,000. By adding new wastes to the universe of regulated wastes, the TC rule will affect generators and treatment, storage, and disposal facilities already operating under RCRA as well as waste handlers not previously regulated. First year costs will vary based on the status of the facility or generator. New hazardous waste handlers will experience costs in complying with full hazardous waste regulations. This cost was previously not experienced as the waste was not considered hazardous.

2. Continuing costs or savings: First year costs will continue as different types of generators and facilities are transitioned into the requirements. Permit fees as well as costs associated with storage and handling of hazardous waste will be experienced.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The TCLP requirements subject new wastes to regulatory control under RCRA. It does not introduce new requirements for the management of hazardous waste. These HSWA regulations became effective at the federal level September 25, 1990. There are no additional or different costs associated with the Kentucky regulations.

(b) Reporting and paperwork requirements: The

regulated community will be required to notify the cabinet by either a permit modification, permit application, or notification. These newly regulated wastes will be subject to full recordkeeping and reporting requirements associated with the hazardous waste program.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional costs will be experienced by the cabinet as more wastes will be considered hazardous and will enlarge the scope of the hazardous waste program.

2. Continuing costs or savings: First year costs will continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The cabinet will experience increased permitting and generator notification activity.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment adopts verbatim changes to 40 CFR 261.24(a) and (b), and Table 1 as published in the Federal Register on March 29, 1990, concerning TCLP.

Alternative: 1. Less stringent: The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent: More stringent requirements were not adopted because these regulations adequately protect human health and the environment.

3. Present proposal: The present proposal includes changes based on in-house requests for typographical corrections, KRS Chapter 13A, and a Federal Register published March 29, 1990, concerning the toxicity characteristic leaching procedure.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which conflict, overlap or duplicate this administrative 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: There is no additional information.

TIERING: Was tiering applied? Yes. This administrative regulation tiers waste requirements by determining if they are hazardous by characteristic.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendments adopt the March 29, 1990 Federal Register amendments to 40 CFR 261.24(a) and (b) and Table 1.

2. State compliance standards. The proposed amendments to this regulation include changes based on in-house requests for typographical corrections, KRS Chapter 13A, and a Federal

Register published March 29, 1990, concerning the toxicity characteristic leaching procedure. Kentucky has adopted these requirements identically.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate replaces the extraction procedure toxicity test with the toxicity characteristic leaching procedure. Kentucky has adopted this requirement identically.

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 amendment is identical to federal regulations at 40 CFR 261.24(a) and (b), and Table 1 as published in the March 29, 1990, Federal Register.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment is identical to federal regulations, and does not impose stricter standards.

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

401 KAR 31:040. Lists of hazardous wastes.

RELATES TO: KRS 224.830 through 224.877, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.864(3), 224.867

NECESSITY AND FUNCTION: KRS 224.864(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This regulation establishes the lists of hazardous wastes.

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

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

Hazard Code	Class or Type of Waste
(I)	Ignitable waste
(C)	Corrosive waste
(R)	Reactive waste
(E)	<u>Toxicity characteristic</u> [EP toxic] waste
(H)	Acute hazardous waste
(T)	Toxic waste

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

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

requirements under 401 KAR Chapters 32 through 40.

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

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

Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
Generic:		
F001	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F002	The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, orthodichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above halogenated solvents or those solvents listed in F001, F004, or [and] F005; and [the] still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F003	The following spent nonhalogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent nonhalogenated solvents; and all spent solvent mixtures/blends containing, before use, one (1) or more of the above nonhalogenated solvents, and, a total of ten (10) percent or more (by volume) of one (1) or more of those solvents listed in F001, F002, F004, and F005; and [the] still bottoms from the recovery of these spent solvents and spent	(I)*
F004	solvent mixtures. The following spent nonhalogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents or those solvents listed in F001, F002, and F005; and [the] still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F005	The following spent nonhalogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents, or those solvents listed in F001, F002, or [and] F004; and [the] still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I,T)
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	(T)
F007	Spent cyanide plating bath solutions from electroplating operations.	(R,T)
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	(R,T)
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	(R,T)
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	(R,T)
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	(R,T)
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	(T)
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum.	(T)
F020	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri-	(H)

	or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)		F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.	(T)
F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol or of intermediates used to produce its derivatives.	(H)		* (I,T) shall be used to specify mixtures containing ignitable and toxic constituents.	
				Section 3. Hazardous Wastes from Specific Sources. Hazardous wastes from specific sources are:	
			Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.	(H)	Wood Preservation:		
			K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote or pentachlorophenol.	(T)
			Inorganic Pigments:		
F023	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	(H)	K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	(T)
			K003	Wastewater treatment sludge from the production of molybdate orange pigments.	(T)
			K004	Wastewater treatment sludge from the production of zinc yellow pigments.	(T)
			K005	Wastewater treatment sludge from the production of chrome green pigments.	(T)
			K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).	(T)
F024	Wastes, including but not limited to distillation residues, heavy ends, tars, and reactor clean-out wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one (1) to five (5), utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent desiccants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in Section 3 [2] of this regulation.)	(T)	K007	Wastewater treatment sludge from the production of iron blue pigments.	(T)
			K008	Oven residue from the production of chrome oxide green pigments.	(T)
			Organic Chemicals:		
			K009	Distillation bottoms from the production of acetaldehyde from ethylene.	(T)
			K010	Distillation side cuts from the production of acetaldehyde from ethylene.	(T)
F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.	(H)	K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	(R,T)
			K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	(R,T)
			K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile.	(T)
			K015	Still bottoms from the distillation of benzyl chloride.	(T)
			K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	(T)
F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole	(H)	K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	(T)
			K018	Heavy ends from the fractionation column in ethyl chloride production.	(T)
			K019	Heavy ends from the distillation of ethylene dichloride in	(T)

K020	ethylene dichloride production. Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	(T)			toluenediamine in the production of toluediamine via hydrogenation of dinitrotoluene.	
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	(T)	K115		Heavy ends from the purification of toluediamine in the production of toluediamine via hydrogenation of dinitrotoluene.	(T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	(T)	K116		Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluediamine.	(T)
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	(T)	K117		Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	(T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	(T)	K118		Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)
K093	Distillation light ends from the production of phthalic anhydride from orthoxylene.	(T)	K136		Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	(T)				
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	(T)				
K026	Stripping still tails from the production of methy ethyl pyridines.	(T)				
K027	Centrifuge and distillation residues from toluene diisocyanate production.	(R,T)				
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	(T)				
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	(T)				
K095	Distillation bottoms from the production of 1,1,1-trichloroethane.	(T)				
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	(T)				
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.	(T)				
K083	Distillation bottoms from aniline production.	(T)				
K103	Process residues from aniline extraction from the production of aniline.	(T)				
K104	Combined wastewater streams generated from nitrobenzene/aniline production.	(T)				
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	(T)				
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	(T)				
K111	Product wash waters from the production of dinitrotoluene via nitration of toluene.	(C,T)				
K112	Reaction by-product water from the drying column in the production of toluediamine via hydrogenation of dinitrotoluene.	(T)				
K113	Condensed liquid light ends from the purification of toluediamine in the production of toluediamine via hydrogenation of dinitrotoluene.	(T)				
K114	Vicinals from the purification of	(T)				
					Inorganic Chemicals:	
			K071		Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.	(T)
			K073		Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	(T)
			K106		Wastewater treatment sludge from the mercury cell process in chlorine production.	(T)
					Pesticides:	
			K031		By-product salts generated in the production of MSMA and cacodylic acid.	(T)
			K032		Wastewater treatment sludge from the production of chlordane.	(T)
			K033		Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	(T)
			K034		Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	(T)
			K097		Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	(T)
			K035		Wastewater treatment sludges generated in the production of creosote.	(T)
			K036		Still bottoms from toluene reclamation distillation in the production of disulfoton.	(T)
			K037		Wastewater treatment sludges from the production of disulfoton.	(T)
			K038		Wastewater from the washing and stripping of phorate production.	(T)
			K039		Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	(T)
			K040		Wastewater treatment sludge from the production of phorate.	(T)
			K041		Wastewater treatment sludge from the production of toxaphene.	(T)
			K098		Untreated process wastewater from	(T)

K042	the production of toxaphene. Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	(T)	Primary Zinc: K066 Sludge from treatment of process wastewater or acid plant blowdown from primary zinc production.	(T)
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	(T)	Primary Aluminum: K088 Spent potliners from primary aluminum reduction.	(T)
K099	Untreated wastewater from the production of 2,4-D.	(T)		
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	(T)	Ferroalloys: K090 Emission control dust or sludge from ferrochromiumsilicon production.	(T)
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	(C,T)	K091 Emission control dust or sludge from ferrochromium production.	(T)
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	(T)	The listing of wastes K064, K065, K066, K088, K090 and K091 as hazardous wastes shall become applicable to persons who generate or manage such wastes six (6) months after the effective date of this regulation.	
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	(T)	Secondary Lead: K069 Emission control dust/sludge from secondary lead smelting.	(T)
Explosives:			K100 Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	(T)
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	(R)	Veterinary Pharmaceuticals: K084 Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds.	(T)
K045	Spent carbon from the treatment of wastewater containing explosives.	(R)		
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	(T)	K101 Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds.	(T)
K047	Pink/red water from TNT operations.	(T)	K102 Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds.	(T)
Petroleum Refining:			Ink Formulation: K086 Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	(T)
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	(T)		
K049	Slop oil emulsion solids from the petroleum refining industry.	(T)		
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	(T)		
K051	API separator sludge from the petroleum refining industry.	(T)		
K052	Tank bottoms (leaded) from the petroleum refining industry.	(T)		
Iron and Steel:			Coking: K060 Ammonia still lime sludge from coking operations.	(T)
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	(T)	K087 Decanter tank tar sludge from coking operations.	(T)
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	(C,T)		
Primary Copper:			Section 4. Discarded Commercial Chemical Products, Off-specification Species, Container Residues, and Spill Residues Thereof. The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Section 2(1)(b)1 of 401 KAR 31:010; when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment; when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are	
K064	Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production.	(T)		
Primary Lead:				
K065	Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities.	(T)		

applied to the land in lieu of their original intended use; [or] when in lieu of their original intended use; they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel:

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

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

(3) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) of this section, unless the container is empty as defined in Section 7(2)(c) of 401 KAR 31:010.

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

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

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

Hazardous Waste No.	Substance	Chemical Abstracts No.
P023	Acetaldehyde, chloro-	107-20-0
P002	Acetamide, N-(aminothioxo-methyl)-	591-08-2
P057	Acetamide, 2-fluoro-	640-19-7
P058	Acetic acid, fluoro-, sodium salt	62-74-8
[P001]	3-(alpha-acetonyl-benzyl)-4-hydroxycoumarin and salts, when present at concentrations greater than 0.3%	81-81-2
P002	1-Acetyl-2-thiourea	591-08-2
P003	Acrolein	107-02-8
P070	Aldicarb	116-06-3
P004	Aldrin	309-00-2
P005	Allyl alcohol	107-18-6
P006	Aluminum phosphide (R,T)	20859-73-8
P007	5-(Aminomethyl)-3-isoxazolol	2763-96-4
P008	4-Aminopyridine	504-24-5
P009	Ammonium picrate (R)	131-74-8
P119	Ammonium vanadate	7803-55-6

P099	Argentate (1-), bis(cyano-C)-, potassium	506-61-6
P010	Arsenic acid H ₃ AsO ₄	7778-39-4
P012	Arsenic oxide As ₂ O ₃	1327-53-3
P011	Arsenic oxide As ₂ O ₅	1303-28-2
P011	Arsenic pentoxide	1303-28-2
P012	Arsenic trioxide	1327-53-3
P038	Arsine, diethyl-	692-42-2
P036	Arsonous dichloride, phenyl-	696-28-6
P054	Aziridine	151-56-4
P067	Aziridine, 2-methyl-	75-55-8
P013	Barium cyanide	542-62-1
P024	Benzenamine, 4-chloro-	106-47-8
P077	Benzenamine, 4-nitro-	100-01-6
P028	Benzene, (chloromethyl)-	100-44-7
P042	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-, (R)-	51-43-4
P046	Benzeneethanamine, alpha, alpha-dimethyl-	122-09-8
P014	Benzenethiol	108-98-5
P001	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, and salts, when present at concentrations greater than 0.3%	*81-81-2
P028	Benzyl chloride	100-44-7
P015	Beryllium	7440-41-7
P017	Bromoacetone	598-31-2
P018	Brucine	357-57-3
P045	2-Butanone, 3,3-dimethyl-1-(methylthio)-,0-(methylamino) carbonyl oxime	39196-18-4
P021	Calcium cyanide	592-01-8
P021	Calcium cyanide Ca(CN) ₂	592-01-8
P022	Carbon disulfide	75-15-0
P095	Carbonic dichloride	75-44-5
P023	Chloroacetaldehyde	107-20-0
P024	p-Chloroaniline	106-47-8
P026	1-(o-Chlorophenyl)thiourea	5344-82-1
P027	3-Chloropropionitrile	542-76-7
P029	Copper cyanide	544-92-3
P029	Copper cyanide Cu(CN)	544-92-3
P030	Cyanides (soluble cyanide salts), not otherwise specified	-----
P031	Cyanogen	460-19-5
P033	Cyanogen chloride	506-77-4
P033	Cyanogen chloride (CN)Cl	506-77-4
P034	2-Cyclohexyl-4,6-dinitrophenol	131-89-5
P016	Dichloromethyl ether	542-88-1
P036	Dichlorophenylarsine	696-28-6
P037	Dieldrin	60-57-1
P038	Diethylarsine	692-42-2
P041	Diethyl-p-nitrophenyl phosphate	311-45-5
P040	0,0-Diethyl 0-pyrazinyl phosphorothioate	297-97-2
P043	Diisopropylfluorophosphate (DFP)	55-91-4
P004	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a,- hexahydro-, (1alpha, 4alpha, 4beta, 5alpha, 8alpha, 8beta)-	309-00-2
P060	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a- hexahydro-, (1alpha, 4alpha, 4beta, 5beta, 8beta, 8beta)-	465-73-6
P037	2,7:3,6-Dimethanonaphth(2,3-b) oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1alpha, 2beta, 2alpha, 3beta, 6beta, 6alpha, 7beta, 7alpha)-	60-57-1

P051	2,7:3,6-Dimethanonaphth(2,3-c),oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2abeta, 3alpha, 6alpha, 6abeta, 7beta, 7aalpha)-, and metabolites	*72-20-8	P078	Nitrogen dioxide	10102-44-0
P044	Dimethoate	60-51-5	P076	Nitrogen oxide NO	10102-43-9
P046	alpha, alpha-Dimethylphenethylamine	122-09-8	P078	Nitrogen oxide NO ₂	10102-44-0
P047	4,6-Dinitro-o-cresol, and salts	*534-52-1	P081	Nitroglycerine (R)	55-63-0
P048	2,4-Dinitrophenol	51-28-5	P082	N-Nitrosodimethylamine	62-75-9
P020	Dinoseb	88-85-7	P084	N-Nitrosomethylvinylamine	4549-40-0
P085	Diphosphoramidate, octamethyl-	152-16-9	[P074]	Nickel cyanide	557-19-7
P111	Diphosphoric acid, tetraethyl ester	107-49-3	P085	Octamethylpyrophosphoramidate	152-16-9
P039	Disulfoton	298-04-4	P087	Osmium oxide OsO ₄ , (T-4)-	20816-12-0
P049	Dithiobiuret	541-53-7	P087	Osmium tetroxide	20816-12-0
P050	Endosulfan	115-29-7	P088	7-Oxabicyclo (2.2.1)heptane-2,3-dicarboxylic acid	145-73-3
P088	Endothal [Endothall]	145-73-3	P089	Parathion	56-38-2
P051	Endrin	72-20-8	P034	Phenol, 2-cyclohexyl-4, 6-dinitro-	131-89-5
P051	Endrin, and metabolites	72-20-8	P048	Phenol, 2, 4-dinitro	51-28-5
P042	Epinephrine	51-43-4	P047	Phenol, 2-methyl-4,6-dinitro-, and salts	*534-52-1
P031	Ethanedinitrile	460-19-5	P020	Phenol, 2-(1-methylpropyl)-4, 6-dinitro-	88-85-7
P066	Ethanimidothioic acid, N-(((methylamino)car-bonyl)oxy)-,methyl ester	16752-77-5	P009	Phenol, 2,4,6-trinitro-, ammonium salt (R)	131-74-8
P101	Ethyl cyanide	107-12-0	P092	Phenylmercury acetate	62-38-4
P054	Ethyleneimine	151-56-4	P093	Phenylthiourea	103-85-5
P097	Famphur	52-85-7	P094	Phorate	298-02-2
P056	Fluorine	7782-41-4	P095	Phosgene	75-44-5
P057	Fluoroacetamide	640-19-7	P096	Phosphine	7803-51-2
P058	Fluoroacetic acid, sodium salt	62-74-8	P041	Phosphoric acid, diethyl 4-nitrophenyl ester	311-45-5
P065	Fulminic acid, mercury (2+) salt (R,T)	628-86-4	P039	Phosphorodithioic acid, 0,0-diethyl S-(2-(ethylthio)ethyl) ester	298-04-4
P059	Heptachlor	76-44-8	P094	Phosphorodithioic acid, 0,0-diethyl S-((ethylthio)methyl) ester	298-02-2
P062	Hexaethyl tetraphosphate	757-58-4	P044	Phosphorodithioic acid, 0,0-dimethyl S-(2-(methylamino)-2-oxoethyl) ester	60-51-5
P116	Hydrazinecarbothioamide	79-19-6	P043	Phosphorofluoridic acid, bis (1-methylethyl) ester	55-91-4
P068	Hydrazine, methyl-	60-34-4	P089	Phosphorothioic acid, 0, 0-diethyl 0-(4-nitrophenyl) ester	56-38-2
P063	Hydrocyanic acid	74-90-8	P040	Phosphorothioic acid, 0, 0-diethyl 0-pyrazinyl ester	297-97-2
P063	Hydrogen cyanide	74-90-8	P097	Phosphorothioic acid, 0-(4-((dimethylamino) sulfonyl) phenyl) 0,0-dimethyl ester	52-85-7
P096	Hydrogen phosphide	7803-51-2	P071	Phosphorothioic acid, 0,0-dimethyl 0-(4-nitrophenyl) ester	298-00-0
P060	Isodrin	465-73-6	P110	Plumbane, tetraethyl-	78-00-2
P007	3(2H)-Isoxazolone,5-(amino-methyl)-	2763-96-4	P098	Potassium cyanide	151-50-8
P092	Mercury, (acetato-0) phenyl-	62-38-4	P098	Potassium cyanide K(CN)	151-50-8
P065	Mercury fulminate (R,T)	628-86-4	P099	Potassium silver cyanide	506-61-6
P082	Methanamine,N-methyl-N-nitroso-	62-75-9	P070	Propanal, 2-methyl-2-(methylthio)-,0-((methylamino)car-bonyl)oxime	116-06-3
P064	Methane, isocyanato-	624-83-9	P101	Propanenitrile	107-12-0
P016	Methane, oxybis (chloro-	542-88-1	P027	Propanenitrile, 3-chloro-	542-76-7
P112	Methane, tetranitro-(R)	509-14-8	P069	Propanenitrile, 2-hydroxy-2-methyl-	75-86-5
P118	Methanethiol, trichloro-	75-70-7	P081	1,2,3-Propanetriol, trinitrate (R)	55-63-0
P050	6,9-Methano-2,4,3-benzodioxathiepen, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-,3-oxide	115-29-7	P017	2-Propanone, 1-bromo-	598-31-2
P059	4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8	P102	Propargyl alcohol	107-19-7
P066	Methomyl	16752-77-5	P003	2-Propenal	107-02-8
P068	Methyl hydrazine	60-34-4	P005	2-Propen-1-ol	107-18-6
P064	Methyl isocyanate	624-83-9	P067	1,2-Propylenimine	75-55-8
P069	2-Methylactonitrile	75-86-5	P102	2-Propyn-1-ol	107-19-7
P071	Methyl parathion	298-00-0	P008	4-Pyridinamine	504-21-5
P072	alpha-Naphthylthiourea	86-88-4	P075	Pyridine,3-(1-methyl-2-pyrrolidinyl)-,(S)-, and salts	*54-11-
P073	Nickel carbonyl	13463-39-3	P114	Selenious acid, dithalium (1+)salt	12039-52-0
P073	Nickel carbonyl Ni(CO) ₄ , (T-4)-	13463-39-3			
P074	Nickel cyanide	557-19-7			
P074	Nickel cyanide Ni(CN) ₂	557-19-7			
P075	Nicotine, and salts	*54-11-5			
P076	Nitric oxide	10102-43-9			
P077	p-Nitroaniline	100-01-6			

P103	Selenourea	630-10-4	U005	Acetamide, N-9H-fluoren-2-yl-	53-96-3
P104	Silver cyanide	506-64-9	U240	Acetic acid, (2,4-dichloro- phenoxy)-, salts and esters	*94-75-7
P104	Silver cyanide Ag(CN)	506-64-9	U112	Acetic acid ethyl ester (I)	141-78-6
P105	Sodium azide	26628-22-8	U144	Acetic acid, lead (2+) salt	301-04-2
P106	Sodium cyanide	143-33-9	U214	Acetic acid, thallium (1+) salt	563-68-8
P106	Sodium cyanide Na(CN)	143-33-9	See F027	Acetic acid, (2,4,5-trichloro- phenoxy)-	93-76-5
P107	Strontium sulfide	1314-96-1	U002	Acetone (I)	67-64-1
P107	Strontium sulfide SrS	1314-96-1	U003	Acetonitrile (I,T)	75-05-8
P108	Strychnidin-10-one, and salts	*57-24-9	U004	Acetophenone	98-86-2
P018	Strychnidin-10-one, 2, 3- dimethoxy-	357-57-3	U005	2-Acetylaminofluorene	53-96-3
P108	Strychnine, and salts	*57-24-9	U006	Acetyl chloride (C,R,T)	75-36-5
P115	Sulfuric acid, dithallium (1+)salt	7446-18-6	U007	Acrylamide	79-06-1
P109	Tetraethyldithiopyrophosphate	3689-24-5	U008	Acrylic acid (I)	79-10-7
P110	Tetraethyl lead	78-00-2	U009	Acrylonitrile	107-13-1
P111	Tetraethyl pyrophosphate	107-49-3	U011	Amitrole	61-82-5
P112	Tetranitromethane (R)	509-14-8	U012	Aniline (I,T)	62-53-3
P062	Tetraphosphoric acid, hexa- ethyl ester	757-58-4	U136	Arsinic acid, dimethyl-	75-60-5
P113	Thallic oxide	1314-32-5	U014	Auramine	492-80-8
P113	Thallium oxide Tl ₂ O ₃	1314-32-5	U015	Azaserine	115-02-6
P114	Thallium (I) selenite	12039-52-0	U010	Azirino (2',3':3,4) pyrrolo (1,2-a) indole-4, 7-dione, 6-amino-8-(((aminocarbonyl) oxy) methyl)-1,1a,2,8,8a,8b- hexahydro-8a-methoxy-5- methyl-, (1aS- (1aalpha, 8beta, 8aalpha, 8balpha))-	50-07-7
P115	Thallium (I) sulfate	7446-18-6	U157	Benz(j)aceanthrylene, 1,2- dihydro-3-methyl-	56-49-5
P109	Thiodiphosphoric acid, tetra- ethyl ester	3689-24-5	U016	Benz(c)acridine	225-51-4
P045	Thiofanox	39196-18-4	U017	Benzal chloride	98-87-3
P049	Thioimidodicarbonic diamide ((H ₂ N)C(S)) ₂ NH	541-53-7	U192	Benzamide, 3,5-dichloro-N- (1,1-dimethyl-2-propynyl)-	23950-58-5
P014	Thiophenol	108-98-5	U018	Benz(a)anthracene	56-55-3
P116	Thiosemicarbazide	79-19-6	U094	Benz(a)anthracene, 7,12- dimethyl-	57-97-6
P026	Thiourea, (2-chlorophenyl)-	5344-82-1	U012	Benzenamine (I,T)	62-53-3
P072	Thiourea, 1-naphthalenyl-	86-88-4	U014	Benzenamine, 4,4'-carbon- imidoylbis (N,N-dimethyl-	492-80-8
P093	Thiourea, phenyl-	103-85-5	U049	Benzenamine, 4-chloro-2- methyl-,hydrochloride	3165-93-3
P123	Toxaphene	8001-35-2	U093	Benzenamine, N, N-dimethyl- 4-(phenylazo)-	60-11-7
P118	Trichloromethanethiol	75-70-7	U328	Benzenamine, 2-methyl-	95-53-4
P119	Vanadic acid, ammonium salt	7803-55-6	U353	Benzenamine, 4-methyl-	106-49-0
P120	Vanadium oxide V ₂ O ₅	1314-62-1	U158	Benzenamine, 4,4'-methylenebis (2-chloro-	101-14-4
P120	Vanadium pentoxide	1314-62-1	U222	Benzenamine, 2-methyl-, hydrochloride	636-21-5
P084	Vinylamine, N-methyl-N- nitroso-	4549-40-0	U181	Benzenamine, 2-methyl-5-nitro	99-55-8
P001	Warfarin, and salts, when present at concentrations greater than 0.3%	*81-81-2	U019	Benzene (I,T)	71-43-2
P121	Zinc cyanide	557-21-1	U038	Benzeneacetic acid, 4-chloro- alpha-(4-chlorophenyl)-alpha- hydroxy-, ethyl ester	510-15-6
P121	Zinc cyanide Zn(CN) ₂	557-21-1	U030	Benzene, 1-bromo-4-phenoxy-	101-55-3
P122	Zinc phosphide Zn ₃ P ₂ , when present at concentrations greater than 10% (R,T)	1314-84-7	U035	Benzenebutanoic acid, 4-(bis (2-chloroethyl)amino)-	305-03-3
*CAS number given for parent compound only			U037	Benzene, chloro-	108-90-7
(6) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in subsections (1) through (4) of this section, are identified as toxic wastes (T), unless otherwise designated, and are subject to the limited quantity generator exclusion [defined] in Section 5(1), (6), and (7) of 401 KAR 31:010. (NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:			U221	Benzenediamine, ar-methyl-	25376-45-8
			U028	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7
			U069	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2
			U088	1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2
			U102	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3
			U107	1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0
			U070	Benzene, 1,2-dichloro-	95-50-1
			U071	Benzene, 1,3-dichloro-	541-73-1
			U072	Benzene, 1,4-dichloro-	106-46-7
Hazardous Waste No.	Substance	Chemical Abstracts No.			
U001	Acetaldehyde (I)	75-07-0			
U034	Acetaldehyde, trichloro-	75-87-6			
U187	Acetamide, N-(4-ethoxyphenyl)-	62-44-2			

U060	Benzene, 1,1'-(2,2-dichloro-ethylidene)bis(4-chloro-	72-54-8	U178	Carbamic acid, methylnitroso-, ethyl ester	615-53-2
U017	Benzene, (dichloromethyl)-	98-87-3	U097	Carbamic chloride, dimethyl-	79-44-7
U223	Benzene, 1,3-diisocyanato-methyl- (R,T)	26471-62-5	U114	Carbamodithioic acid, 1,2-ethanediybis-, salts and esters	*111-54-6
U239	Benzene, dimethyl- (I,T)	1330-20-7			
U201	1,3-Benzenediol	108-46-3	U062	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	2303-16-4
U127	Benzene, hexachloro-	118-74-1			
U056	Benzene, hexahydro-(I)	110-82-7	U215	Carbonic acid, dithallium (1+) salt	6533-73-9
U220	Benzene, methyl-	108-88-3			
U105	Benzene, 1-methyl-2, 4-dinitro-	121-14-2	U033	Carbonic difluoride	353-50-4
U106	Benzene, 2-methyl-1,3-dinitro-	606-20-2	U156	Carbonochloridic acid, methyl ester (I,T)	79-22-1
U055	Benzene, (1-methylethyl)-(I)	98-82-8			
U169	Benzene, nitro-	98-95-3	U033	Carbon oxyfluoride (R,T)	353-50-4
U183	Benzene, pentachloro-	608-93-5	U211	Carbon tetrachloride	56-23-5
U185	Benzene, pentachloronitro-	82-68-8	U034	Chloral	75-87-6
U020	Benzenesulfonic acid chloride (C,R)	98-09-9	U035	Chlorambucil	305-03-3
U020	Benzenesulfonyl chloride (C,R)	98-09-9	U036	Chlordane, alpha and gamma isomers	57-74-9
U207	Benzene, 1,2,4,5-tetrachloro-	95-94-3	U026	Chlornaphazin	494-03-1
U061	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-chloro-	50-29-3	U037	Chlorobenzene	108-90-7
			U038	Chlorobenzilate	510-15-6
U247	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-methoxy-	72-43-5	U039	p-Chloro-m-cresol	59-50-7
U023	Benzene, (trichloromethyl)-	98-07-7	U042	2-Chloroethyl vinyl ether	110-75-8
U234	Benzene, 1,3,5-trinitro-	99-35-4	U044	Chloroform	67-66-3
U021	Benzidine	92-87-5	U046	Chloromethyl methyl ether	107-30-2
U202	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, and salts	*81-07-02	U047	beta-Chloronaphthalene	91-58-7
U203	1,3-Benzodioxole, 5-(2-propenyl)-	94-59-7	U048	o-Chlorophenol	95-57-8
U141	1,3-Benzodioxole, 5-(1-propenyl)-	120-58-1	U049	4-Chloro-o-toluidine, hydrochloride	3165-93-3
U090	1,3-Benzodioxole, 5-propyl-	94-58-6	U032	Chromic acid H ₂ CrO ₄ , calcium salt	13765-19-0
U064	Benzo(rst)pentaphene	189-55-9	U050	Chrysene	218-01-9
U248	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenol-butyl)-, and salts, when present at concentrations of 0.3% or less	*81-81-2	U051	Creosote	
U022	Benzo(a)pyrene	50-32-8	U052	Cresol (Cresylic acid)	1319-77-3
U197	p-Benzoquinone	106-51-4	U053	Crotonaldehyde	4170-30-3
U023	Benzotrichloride (C,R,T)	98-07-7	U055	Cumene (I)	98-82-8
U085	2,2'-Bioxirane	1464-53-5	U246	Cyanogen bromide (CN) Br	506-68-3
U021	(1,1'-Biphenyl)-4,4'-diamine	92-87-5	U197	2,5-Cyclohexadiene-1,4-dione	106-51-4
U073	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro-	91-94-1	U056	Cyclohexane (I)	110-82-7
U091	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethoxy-	119-90-4	U129	Cyclohexane, 1,2,3,4,5,6-hexachloro-(1alpha, 2alpha, 3beta, 4alpha, 5alpha, 6beta)-	58-89-9
U095	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl-	119-93-7	U057	Cyclohexanone (I)	108-94-1
U225	Bromoform	75-25-2	U130	1,3-Cyclopentadiene, 1,2,3,4,5, 5-hexachloro-	77-47-4
U030	4-Bromophenyl phenyl ether	101-55-3	U058	Cyclophosphamide	50-18-0
U128	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3	U240	2,4-D, salts and esters	*94-75-7
U172	1-Butanamine, N-butyl-N-nitroso-	924-16-3	U059	Daunomycin	20830-81-3
U031	1-Butanol (I)	71-36-3	U060	DDD	72-54-8
U159	2-Butanone (I,T)	78-93-3	U061	DDT	50-29-3
U160	2-Butanone, peroxide (R,T)	1338-23-4	U062	Diallate	2303-16-4
U053	2-Butenal	4170-30-3	U063	Dibenz(a,h) anthracene	53-70-3
U074	2-Butene, 1,4-dichloro- (I,T)	764-41-0	U064	Dibenzo(a,i) pyrene	189-55-9
U143	2-Butenoic acid, 2-methyl-, 7-((2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl)-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, (1S-(1alpha(Z),7(2S*, 3R*),7aalpha))-	303-34-4	U066	1,2-Dibromo-3-chloropropane	96-12-8
			U069	Dibutyl phthalate	84-74-2
U031	n-Butyl alcohol (I)	71-36-3	U070	o-Dichlorobenzene	95-50-1
U136	Cacodylic acid	75-60-5	U071	m-Dichlorobenzene	541-73-1
U032	Calcium chromate	13765-19-0	U072	p-Dichlorobenzene	106-46-7
U238	Carbamic acid, ethyl ester	51-79-6	U073	3,3'-Dichlorobenzidine	91-94-1
			U074	1,4-Dichloro-2-butene (I,T)	764-41-0
			U075	Dichlorodifluoromethane	75-71-8
			U078	1,1-Dichloroethylene	75-35-4
			U079	1,2-Dichloroethylene	156-60-5
			U025	Dichloroethyl ether	111-44-4
			U027	Dichloroisopropyl ether	108-60-1
			U024	Dichloromethoxy ethane	111-91-1
			U081	2,4-Dichlorophenol	120-83-2
			U082	2,6-Dichlorophenol	87-65-0
			U084	1,3-Dichloropropene	542-75-0
			U085	1,2:3,4-Diepoxybutane (I,T)	1464-53-5
			U108	1,4-Diethyleneoxide	123-91-1
			U028	Diethylhexyl phthalate	117-81-7

U086	N, N'-Diethylhydrazine	1615-80-1	U125	2-Furancarboxaldehyde (I)	98-01-1
U087	O, O-Diethyl S-methyl dithio-phosphate	3288-58-2	U147	2,5-Furandione	108-31-6
U088	Diethyl phthalate	84-66-2	U213	Furan, tetrahydro- (I)	109-99-9
U089	Diethylstilbesterol	56-53-1	U125	Furfural (I)	98-01-1
U090	Dihydrosafrole	94-58-6	U124	Furfuran (I)	110-00-9
U091	3,3'-Dimethoxybenzidine	119-90-4	U206	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-,D-	18883-66-4
U092	Dimethylamine (I)	124-40-3	U206	D-Glucose, 2-deoxy-2-(((methylnitrosoamino)-carbonyl(amino)-glycidylaldehyde	18883-66-4
U093	p-Dimethylaminoazobenzene	60-11-7	U126	Guanidine, N-methyl-N'-nitro-N-nitroso-	765-34-4
U094	7,12-Dimethylbenz(a)anthracene	57-97-6	U163	Hexachlorobenzene	70-25-7
U095	3,3'-Dimethylbenzidine	119-93-7	U127	Hexachlorobutadiene	118-74-1
U096	alpha, alpha-Dimethylbenzyl-hydroperoxide (R)	80-15-9	U128	Hexachlorocyclopentadiene	87-68-3
U097	Dimethylcarbamoyl chloride	79-44-7	U130	Hexachlorocyclopentadiene	77-47-4
U098	1,1-Dimethylhydrazine	57-14-7	U131	Hexachloroethane	67-72-1
U099	1,2-Dimethylhydrazine	540-73-8	U132	Hexachlorophene	70-30-4
U101	2,4-Dimethylphenol	105-67-9	U243	Hexachloropropene	1888-71-7
U102	Dimethyl phthalate	131-11-3	U133	Hydrazine (R,T)	302-01-2
U103	Dimethyl sulfate	77-78-1	U086	Hydrazine, 1,2-diethyl-	1615-80-1
U105	2,4-Dinitrotoluene	121-14-2	U098	Hydrazine, 1,1-dimethyl-	57-14-7
U106	2,6-Dinitrotoluene	606-20-2	U099	Hydrazine, 1,2-dimethyl-	540-73-8
U107	Di-n-octyl phthalate	117-84-0	U109	Hydrazine, 1,2-diphenyl-	122-66-7
U108	1,4-Dioxane	123-91-1	U134	Hydrofluoric acid (C,T)	7664-39-3
U109	1,2-Diphenylhydrazine	122-66-7	U134	Hydrogen fluoride (C,T)	7664-39-3
U110	Dipropylamine (I)	142-84-7	U135	Hydrogen sulfide	7783-06-4
U111	Di-n-propylnitrosamine	621-64-7	U135	Hydrogen sulfide H ₂ S	7783-06-4
U041	Epichlorohydrin	106-89-8	U096	Hydroperoxide, 1-methyl-1-phenylethyl-(R)	80-15-9
U001	Ethanal (I)	75-07-0	U116	2-Imidazolidinethione	96-45-7
U174	Ethanamine, N-ethyl-N-nitroso-	55-18-5	U137	Indeno(1,2,3-cd) pyrene	193-39-5
U155	1,2-Ethanediamine, N,N-di-methyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	91-80-5	U139	Iron dextran	9004-66-4
U067	Ethane, 1,2-dibromo-	106-93-4	U190	1,3-Isobenzofurandione	85-44-9
U076	Ethane, 1,1-dichloro-	75-34-3	U140	Isobutyl alcohol (I,T)	78-83-1
U077	Ethane, 1,2-dichloro-	107-06-2	U141	Isosafrole	120-58-1
U131	Ethane, hexachloro-	67-72-1	U142	Kepone	143-50-0
U024	Ethane, 1,1'-(methylenebis (oxy))bis(2-chloro-)	111-91-1	U143	Lasiocarpine	303-34-4
U117	Ethane, 1,1'-oxybis- (I)	60-29-7	U144	Lead acetate	301-04-2
U025	Ethane, 1,1'-oxybis(2-chloro-)	111-44-4	U146	Lead, bis(acetato-0)tetra-hydroxytri-	1335-32-6
U184	Ethane, pentachloro-	76-01-7	U145	Lead phosphate	7446-27-7
U208	Ethane, 1,1,1,2-tetrachloro-	630-20-6	U146	Lead subacetate	1335-32-6
U209	Ethane, 1,1,2,2-tetrachloro-	79-34-5	U129	Lindane	58-89-9
U218	Ethanethioamide	62-55-5	U163	MNNG	70-25-7
U226	Ethane, 1,1,1-trichloro	71-55-6	U147	Maleic anhydride	108-31-6
U227	Ethane, 1,1,2-trichloro-	79-00-5	U148	Maleic hydrazide	123-33-1
U359	Ethanol, 2-ethoxy-	110-80-5	U149	Malononitrile	109-77-3
U173	Ethanol, 2,2'-(nitrosoimino) bis-	1116-54-7	U150	Melphalan	148-82-3
U004	Ethanone, 1-phenyl	98-86-2	U151	Mercury	7439-97-6
U043	Ethene, chloro-	75-01-4	U152	Methacrylonitrile (I,T)	126-98-7
U042	Ethene, (2-chloroethoxy)-	110-75-8	U092	Methanamine, N-methyl- (I)	124-40-3
U078	Ethene, 1,1-dichloro-	75-35-4	U029	Methane, bromo-	74-83-9
U079	Ethene, 1,2-dichloro-, (E)	156-60-5	U045	Methane, chloro- (I,T)	74-87-3
U210	Ethene, tetrachloro-	127-18-4	U046	Methane, chloromethoxy-	107-30-2
U228	Ethene, trichloro-	79-01-6	U068	Methane, dibromo-	74-95-3
U112	Ethyl acetate (I)	141-78-6	U080	Methane, dichloro-	75-09-2
U113	Ethyl acrylate (I)	140-88-5	U075	Methane, dichlorodifluoro-	75-71-8
U238	Ethyl carbamate (urethane)	51-79-6	U138	Methane, iodo-	74-88-4
U114	Ethylenebisdithiocarbamic acid, salts and esters	*111-54-6	U119	Methanesulfonic acid, ethyl ester	62-50-0
U067	Ethylene dibromide	106-93-4	U211	Methane, tetrachloro-	56-23-5
U077	Ethylene dichloride	107-06-2	U153	Methanethiol (I,T)	74-93-1
U359	Ethylene glycol monoethyl ether	110-80-5	U225	Methane, tribromo-	75-25-2
U115	Ethylene oxide (1,T)	75-21-8	U044	Methane, trichloro-	67-66-3
U116	Ethylenethiourea	96-45-7	U121	Methane, trichlorofluoro-	75-69-4
U117	Ethyl ether (I)	60-29-7	U036	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	57-74-9
U076	Ethylidene dichloride	75-34-3	U154	Methanol (I)	67-56-1
U118	Ethyl methacrylate	97-63-2	U155	Methapyrilene	91-80-5
U119	Ethyl methanesulfonate	62-50-0	U142	1,3,4-Metheno-2H-cyclobuta (cd)pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachloro-octahydro-	143-50-0
U120	Fluoranthene	206-44-0			
U122	Formaldehyde	50-00-0			
U123	Formic acid (C,T)	64-18-6			
U124	Furan (I)	110-00-9			

U247	Methoxychlor	72-43-5	U081	Phenol, 2,4-dichloro-	120-83-2
U154	Methyl alcohol (I)	67-56-1	U082	Phenol, 2,6-dichloro-	87-65-0
U029	Methyl bromide	74-83-9	U089	Phenol, 4,4'-(1,2-diethyl- 1,2-ethenediyl)bis-, (E)-	56-53-1
U186	1-Methylbutadiene (I)	504-60-9	U101	Phenol, 2,4-dimethyl-	105-67-9
U045	Methyl chloride (I,T)	74-87-3	U052	Phenol, methyl-	1319-77-3
U156	Methyl chlorocarbonate (I,T)	79-22-1	U132	Phenol, 2,2'-methylenebis (3,4,6-trichloro-	70-30-4
U226	Methyl chloroform	71-55-6	U170	Phenol, 4-nitro-	100-02-7
U157	3-Methylcholanthrene	56-49-5	See F027		
U158	4,4'-Methylenebis (2-chloro- aniline)	101-14-4	See F027	Phenol, pentachloro-	87-86-5
U068	Methylene bromide	74-95-3	See F027	Phenol, 2,3,4,6-tetrachloro-	58-90-2
U080	Methylene chloride	75-09-2	See F027	Phenol, 2,4,5-trichloro-	95-95-4
U159	Methyl ethyl ketone (MEK) (I,T)	78-93-3	See F027	Phenol, 2,4,6-trichloro	88-06-2
U160	Methyl ethyl ketone peroxide (R,T)	1338-23-4	U150	L-Phenylalanine, 4-(bis(2- chloroethyl)amino)-	148-82-3
U138	Methyl iodide	74-88-4	U145	Phosphoric acid, lead (2+) salt (2:3)	7446-27-7
U161	Methyl isobutyl ketone (I)	108-10-1	U087	Phosphorodithioic acid, 0,0- diethyl S-methyl ester	3288-58-2
U162	Methyl methacrylate (I,T)	80-62-6	U189	Phosphorus sulfide (R)	1314-80-3
U161	4-Methyl-2-pentanone (I)	108-10-1	U190	Phthalic anhydride	85-44-9
U164	Methylthiouracil	56-04-2	U191	2-Picoline	109-06-8
U010	Mitomycin C	50-07-7	U179	Piperidine, 1-nitroso-	100-75-4
U059	5,12-Naphthacenedione, 8- acetyl-10-((3-amino-2,3,6- -trideoxy)-alpha-L- lyxo-hexopyranosyl)oxyl)-7,8, 9,10,tetrahydro-6,8,11-tri- hydroxy-1-methoxy-, (8S-cis)-	20830-81-3	U192	Pronamide	23950-58-5
U167	1-Naphthalenamine	134-32-7	U194	1-Propanamine (I,T)	107-10-8
U168	2-Naphthalenamine	91-59-8	U111	1-Propanamine, N-nitroso-N- propyl-	621-64-7
U026	Naphthalenamine, N,N'-bis (2-chloroethyl)-	494-03-1	U110	1-Propanamine, N-propyl- (I)	142-84-7
U165	Naphthalene	91-20-3	U066	Propane, 1,2-dibromo-3-chloro-	96-12-8
U047	Naphthalene, 2-chloro-	91-58-7	U083	Propane, 1,2-dichloro-	78-87-5
U166	1,4-Naphthalenedione	130-15-4	U149	Propanedinitrile	109-77-3
U236	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethyl (1,1'-biphenyl)-4,4'-diyl) bis(azo)bis(5-amino-4- hydroxy)-, tetrasodium salt	72-57-1	U171	Propane, 2-nitro- (I,T)	79-46-9
U166	1,4-Naphthoquinone	130-15-4	U027	Propane, 2,2'-oxybis (2-chloro-	108-60-1
U167	alpha-Naphthylamine	134-32-7	U193	1,3-Propane sultone	1120-71-4
U168	beta-Naphthylamine	91-59-8	See F027		
U217	Nitric acid, thallium(1+) salt	10102-45-1	U235	Propanoic acid, 2-(2,4,5- trichlorophenoxy)-	93-72-1
U169	Nitrobenzene (I,T)	98-95-3	U140	1-Propanol, 2-methyl- (I,T)	78-83-1
U170	p-Nitrophenol	100-02-7	U002	2-Propanone (I)	67-64-1
U171	2-Nitropropane (I,T)	79-46-9	U007	2-Propenamide	79-06-1
U172	N-Nitrosodi-n-butylamine	924-16-3	U084	1-Propene, 1,3-dichloro-	542-75-6
U173	N-Nitrosodiethanolamine	1116-54-7	U243	1-Propene, 1,1,2,3,3,3- hexachloro-	1888-71-7
U174	N-Nitrosodiethylamine	55-18-5	U009	2-Propenenitrile	107-13-1
U176	N-Nitroso-N-ethylurea	759-73-9	U152	2-Propenenitrile, 2-methyl- (I,T)	126-98-7
U177	N-Nitroso-N-methylurea	684-93-5	U008	2-Propenoic acid (I)	79-10-7
U178	N-Nitroso-N-methylurethane	615-53-2	U113	2-Propenoic acid, ethyl ester (I)	140-88-5
U179	N-Nitrosopiperidine	100-75-4	U118	2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2
U180	N-Nitrosopyrrolidine	930-55-2	U162	2-Propenoic acid, 2-methyl-, methyl ester (I,T)	80-62-6
U181	5-Nitro-o-toluidine	99-55-8	U194	n-Propylamine (I,T)	107-10-8
U193	1,2-Oxathiolane, 2,2-dioxide	1120-71-4	U083	Propylene dichloride	78-87-5
U058	2H-1,3,2-Oxazaphosphorin-2- amine, N,N-bis(2-chloroethyl) tetrahydro-, 2-oxide	50-18-0	U148	3,6-Pyridazinedione, 1,2- dihydro-	123-33-1
U115	Oxirane (I,T)	75-21-8	U196	Pyridine	110-86-1
U126	Oxiranecarboxyaldehyde	765-34-4	U191	Pyridine, 2-methyl-	109-06-8
U041	Oxirane, (chloromethyl)-	106-89-8	U237	2,4(1H,3H)-Pyrimidinedione, 5- (bis(2-chloroethyl)amino)-	66-75-1
U182	Paraldehyde	123-63-7	U164	4(1H)-Pyrimidinone, 2,3- dihydro-6-methyl-2-thioxo-	56-04-2
U183	Pentachlorobenzene	608-93-5	U180	Pyrrolidine, 1-nitroso-	930-55-2
U184	Pentachloroethane	76-01-7	U200	Reserpine	50-55-7
U185	Pentachloronitrobenzene (PCNB)	82-68-8	U201	Resorcinol	108-46-3
See F027			U202	Saccharin, and salts	*81-07-2
U161	Pentanol, 4-methyl-	108-10-1	U203	Safrole	94-59-7
U186	1,3-Pentadiene (I)	504-60-9	U204	Selenious acid	7783-00-8
U187	Phenacetin	62-44-2			
U188	Phenol	108-95-2			
U048	Phenol, 2-chloro-	95-57-8			
U039	Phenol, 4-chloro-3-methyl-	59-50-7			

ADMINISTRATIVE REGISTER - 117

U204	Selenium dioxide	7783-00-8
U205	Selenium sulfide	7488-56-4
U205	Selenium sulfide SeS_2 (R,T)	7488-56-4
U015	L-Serine, diazoacetate (ester)	115-02-6
See F027		
	Silvex (2,4,5,-TP)	93-72-1
U206	Streptozotocin	18883-66-4
U103	Sulfuric acid, dimethyl ester	77-78-1
U189	Sulfur phosphide (R)	1314-80-3
See F027		
	2,4,5-T	93-76-5
U207	1,2,4,5,-Tetrachlorobenzene	95-94-3
U208	1,1,1,2-Tetrachloroethane	630-20-6
U209	1,1,2,2-Tetrachloroethane	79-34-5
U210	Tetrachloroethylene	127-18-4
See F027		
	2,3,4,6-Tetrachlorophenol	58-90-2
U213	Tetrahydrofuran (I)	109-99-9
U214	Thallium (I) acetate	15843-14-8
U215	Thallium (I) carbonate	6533-73-9
U216	Thallium (I) chloride	7791-12-0
U216	Thallium chloride TlCl	7791-12-0
U217	Thallium (I) nitrate	10102-45-1
U218	Thioacetamide	62-55-5
U153	Thiomethanol (I,T)	74-93-1
U244	Thioperoxydicarbonic diamide $((\text{H}_2\text{N})\text{C}(\text{S}))_2\text{S}_2$, tetramethyl-	137-26-8
U219	Thiourea	62-56-6
U244	Thiram	137-26-8
U220	Toluene	108-88-3
U221	Toluenediamine	25376-45-8
U223	Toluene diisocyanate (R,T)	26471-62-5
U328	o-Toluidine	95-53-4
U353	p-Toluidine	106-49-0
U222	o-Toluidine hydrochloride	636-21-5
U011	1H-1,2,4-Triazol-3-amine	61-82-5
U227	1,1,2-Trichloroethane	79-00-5
U228	Trichloroethylene	79-01-6
U121	Trichloromonofluoromethane	75-69-4
See F027		
	2,4,5-Trichlorophenol	95-95-4
See F027		
	2,4,6-Trichlorophenol	88-06-2
U234	1,3,5-Trinitrobenzene (R,T)	99-35-4
U182	1,3,5-Trioxane, 2,4,6-trimethyl-	123-63-7
U235	Tris(2,3-dibromopropyl) phosphate	126-72-7
U236	Trypan blue	72-57-1
U237	Uracil mustard	66-75-1
U176	Urea, N-ethyl-N-nitroso-	759-73-9
U177	Urea, N-methyl-N-nitroso-	684-93-5
U043	Vinyl chloride	75-01-4
U248	Warfarin, and salts, when present at concentrations of 0.3% or less	*81-81-2
U239	Xylene (I)	1330-20-7
U200	Yohimban-16-carboxylic acid, 11, 17-dimethoxy-18((3,4,5-trimethoxybenzoyl)oxy)-, methyl ester, (3beta,16beta,17alpha,18beta,20alpha)-	50-55-5
U249	Zinc phosphide Zn_3P_2 , when present at concentrations of 10% or less	1314-84-7

*CAS number given for parent compound only.

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

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

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: June 13, 1991

FILED WITH LRC: June 14, 1991 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1991, at 10 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below, by July 22, 1991, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on July 25, 1991. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Hale

(1) Type and number of entities affected: This regulation affects generators of hazardous waste. There presently are 434 full quantity generators, 534 small quantity generators, and 1104 limited quantity generators. It also affects treatment, storage, and disposal facilities. There are 100 such facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The toxicity characteristic (TC) requirements replace the extraction procedure toxicity analysis (EP) with a new extraction procedure, toxicity characteristic leaching procedure (TCLP). TCLP adds 25 new organic constituents to the 8 metals and 6 pesticides on the EP list of regulated constituents. A TCLP analysis will cost approximately \$5,000, whereas the EP analysis costs approximately \$3,000. By adding new wastes to the universe of regulated wastes, this regulation will affect generators and treatment, storage, and disposal facilities already operating under RCRA as well as waste handlers not previously regulated. First year costs will vary based on the status of the facility or generator. New hazardous waste handlers will experience costs in complying with full hazardous waste regulations. This cost was previously not experienced as the waste was not considered hazardous.

2. Continuing costs or savings: First year costs will continue as different types of generators and facilities are transitioned into the requirements. Permit fees as well as costs associated with storage and handling of hazardous waste will be experienced.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The TCLP requirements subject new wastes to regulatory control under RCRA. It does not introduce new requirements for the management of hazardous waste. These HSWA regulations became effective at the federal level September 25, 1990. There are no additional or different costs associated with the Kentucky regulations.

(b) Reporting and paperwork requirements: The regulated community will be required to notify the cabinet by either a permit modification, permit application, or notification. These newly regulated wastes will be subject to full recordkeeping and reporting requirements associated with the hazardous waste program.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional costs will be experienced by the cabinet as more wastes will be considered hazardous and will enlarge the scope of the hazardous waste program.

2. Continuing costs or savings: First year costs will continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The cabinet will experience increased permitting and generator notification activity.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment adopts verbatim changes to 40 CFR 261.30(b) as published in the Federal Register on March 29, 1990, concerning TCLP.

Alternative: 1. Less stringent: The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent: More stringent requirements were not adopted because these regulations adequately protect human health and the environment.

3. Present proposal: The present proposal includes changes based on EPA comments to Kentucky's HSWA I authorization application, in-house requests for typographical corrections, and a Federal Register published March 29, 1990, concerning the toxicity characteristic leaching procedure.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which conflict, overlap or duplicate this administrative 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:

TIERING: Was tiering applied? Yes. This

regulation is tiered to apply to wastes that are specifically listed as hazardous wastes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendments adopt the March 29, 1990 Federal Register amendments to 40 CFR 261.30(b).

2. State compliance standards. The proposed amendments to this regulation include changes based on EPA comments to Kentucky's HSWA I authorization application, in-house requests for typographical corrections, and a Federal Register published March 29, 1990, concerning the toxicity characteristic leaching procedure (TCLP). Kentucky has adopted these requirements identically.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate replaces the extraction procedure toxicity test with the toxicity characteristic leaching procedure. Kentucky has adopted this requirement identically.

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 amendment is identical to federal regulations at 40 CFR 261.30(b) as published in the March 29, 1990, Federal Register.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment is identical to federal regulations, and does not impose stricter standards.

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

401 KAR 31:060. Rule-making petitions for hazardous waste.

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994, 40 CFR 261.11(e)(3)

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.864(3), 40 CFR 261.11(e)(3)

NECESSITY AND FUNCTION: KRS 224.864(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous wastes. This regulation establishes the procedures to add a testing or analytical method to 401 KAR Chapters 31, 34, 35, or 37, or to exclude a waste at a particular site or facility from Section 3 of 401 KAR 31:010 or the lists of hazardous wastes in 401 KAR 31:040.

Section 1. General Procedures. (1) This regulation sets forth requirements for petitions to add a testing or analytical method to 401 KAR Chapters 31, 34, 35, or 37, or to exclude a waste at a particular facility from Section 3 of 401 KAR 31:010 or the lists of hazardous wastes in 401 KAR 31:040.

(2) Each petition shall [must] be submitted to the cabinet by certified mail and shall [must] include:

(a) The petitioner's name and address;

(b) A statement of the petitioner's interest in the proposed action;

(c) A description of the proposed action, including (where appropriate) suggested regulatory language;

(d) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information; and

(e) A check payable to the Kentucky State Treasurer in the amount required by 401 KAR Chapter 39.

(3) The cabinet shall [will] make a tentative decision to grant or deny a petition. If the tentative decision is to deny, the cabinet shall [will] notify the petitioner. If the tentative decision is to grant the petition, the cabinet shall [will] propose an amendment to 401 KAR 31:070, and file the proposed amendment with the Legislative Research Commission pursuant to KRS Chapter 13A.

[(4) Upon the written request of any interested person, the cabinet will hold a public hearing as specified in KRS 13A.270.]

[(5) After evaluating all public comments the cabinet will either file the proposed amendment with the Legislative Research Commission for adoption or deny the petition.]

Section 2. Petitions to Amend 401 KAR Chapter 31 to Exclude a Waste Produced at a Particular Facility. (1) Any person seeking to exclude a waste at a particular generating facility from the lists in 401 KAR 31:040 may petition for an amendment to the regulation under this section and Section 1 of this regulation. To be successful:

(a) The petitioner shall [must] demonstrate to the satisfaction of the cabinet that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous waste or an acutely hazardous waste; and

(b) Based on a complete application the cabinet shall [must] determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed shall [could] cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(2) The procedures in this section and Section 1 of this regulation may also be used to petition the cabinet for a regulatory amendment to exclude from Section 3 of 401 KAR 31:010, a waste which is described in that section [those sections] and is either a waste listed in 401 KAR 31:040, contains a waste listed in 401 KAR 31:040, or is derived from a waste listed in 401 KAR 31:040. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner shall [must] make the same demonstration as required by subsection (1) of this section, except that where the waste is a mixture of solid waste and one (1) or more listed hazardous wastes or is derived from one (1) or more hazardous wastes, his demonstration may be made with respect to each constituent listed waste or the waste mixture as a whole. A waste which is so excluded may still be a hazardous waste in accordance with 401 KAR 31:030.

(3) If the waste is listed with codes "I," "C," "R," or "E" in 401 KAR 31:040; [,]

(a) The petitioner shall [must] show that the

waste does not exhibit the relevant characteristic for which the waste was listed as defined in Sections 2, 3, 4, or 5 of 401 KAR 31:030 using any applicable methods prescribed therein. The petitioner also shall [must] show that the waste does not exhibit any of the other characteristics defined in Sections 2, 3, 4, or 5 of 401 KAR 31:030 using any applicable methods prescribed therein; and

(b) Based on a complete application, the cabinet shall [must] determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed shall [could] cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(4) If the waste is listed with code "T" in 401 KAR 31:040; [,]

(a) The petitioner shall [must] demonstrate that the waste:

1. Does not contain the constituent or constituents (as defined in 401 KAR 31:160) that caused the cabinet to list the waste, using the appropriate test methods prescribed in 401 KAR 31:120; or

2. Although containing one (1) or more of the hazardous constituents (as defined in 401 KAR 31:160) that caused the cabinet to list the waste, does not meet the criterion of 40 CFR 261.11(e)(3), (1990) [Section 2(1)(c) of 401 KAR 31:020] when considering the factors used by the cabinet in 40 CFR 261.11(e)(3)(i) through (xi), (1990) [Section 2(1)(c)1 through 11 of 401 KAR 31:020] under which the waste was listed as hazardous; and

(b) Based on a complete application, the cabinet shall [must] determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(c) The petitioner shall [must] demonstrate that the waste does not exhibit any of the characteristics defined in Sections 2, 3, 4 and 5 of 401 KAR 31:030 using any applicable methods prescribed therein; [and]

(d) A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(5) If the waste is listed with the code "H" in 401 KAR 31:040; [,]

(a) The petitioner shall [must] demonstrate that the waste does not meet criterion of subsection (1)(b) of 401 KAR 31:020; and

(b) Based on a complete application, the cabinet shall [must] determine, where it has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed shall [could] cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(c) The petitioner shall [must] demonstrate that the waste does not exhibit any of the characteristics defined in Sections 2, 3, 4, and 5 of 401 KAR 31:030 using any applicable methods prescribed therein; [and]

(d) A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(6) Demonstration samples shall [must] consist of enough representative samples, but in no case less than four (4) samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(7) Each petition shall [must] include, in addition to the information required by Section 1(2) of this regulation:

(a) The name and address of the laboratory facility performing the sampling or tests of the waste;

(b) The names and qualifications of the persons sampling and testing the waste;

(c) The dates of sampling and testing;

(d) The location of the generating facility;

(e) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

(f) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

(g) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in Section 2(1)(c) of 401 KAR 31:020;

(h) A description of the methodologies and equipment used to obtain the representative samples;

(i) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;

(j) A description of the tests performed (including results);

(k) The names and model numbers of the instruments used in performing the tests; and

(l) The following statement signed by the generator of the waste or his authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(8) After receiving a petition for an exclusion, the cabinet may request any additional information which the cabinet may reasonably require to evaluate the petition.

(9) An exclusion shall [will] only apply to the waste generated at the individual facility covered by the demonstration and shall [will] not apply to waste from any other facility.

(10) The cabinet may exclude only the part of the waste for which the demonstration is submitted where there is reason to believe that variability of the waste justifies a partial exclusion.

Section 3. Requirements for Excluded Wastes. Upon approval by the cabinet of a petition to exclude waste from a particular facility, the excluded waste shall thereby be listed as a solid waste and be subject to the requirements for solid waste disposal in 401 KAR Chapter 47

and the conditions as specified in the approved exclusion.

Section 4. Repeal or Modification of an Exclusion. The cabinet shall repeal or modify an exclusion granted to any generator or petitioner for a waste or to any generator or petitioner for an equivalent testing or analytical method whenever:

(1) The cabinet has obtained information, which was not available at the time the petition for exclusion was granted, which leaves the cabinet to believe that reasonable probability exists that the waste:

(a) Was erroneously [Should not have been] excluded from regulation in accordance with Section 2 of this regulation;

(b) Shall [Should] be regulated as a hazardous waste because it contains a hazardous constituent which was listed as a hazardous waste subsequent to approval of a petition to delist the waste at a particular facility; or

(c) Shall [Should] be regulated as a hazardous waste because new studies or analysis have been performed which indicate the waste meets the definition of a hazardous waste in KRS 224.005.

(2) The cabinet has obtained information, which was not available at the time the petition for an equivalent testing or analytical method was granted, which leaves the cabinet to believe that reasonable probability exists that the equivalent testing or analytical method was erroneously [should not have been] approved in accordance with Section 6 of this regulation.

(3) The cabinet has obtained information that a petition for an exclusion or an equivalent testing or analytical method was incomplete, inaccurate, or based on erroneous data or calculations.

(4) The cabinet has obtained information from any other agency of state or federal government, including the EPA, that the waste shall [should] be regulated as a hazardous waste consistent with the Resource Conservation and Recovery Act (P.L. 94-580), as amended (including P.L. 98-616, the 1984 Hazardous and Solid Waste Amendments), and pursuant to KRS Chapter 224.

(5) The cabinet has obtained information from any other agency of a state or the federal government, including the EPA, that the testing or analytical method is not equal to or superior to the corresponding method prescribed in 401 KAR Chapter 31, 34, 35, or 37 in terms of its sensitivity, accuracy, and precision.

Section 5. Requirements for Approval. In accordance with Section 3 of 401 KAR 30:020, the cabinet shall not approve a petition to exclude a waste at a particular facility unless:

(1) Exclusion of the waste is [would be] consistent with the requirements in KRS 224.864(3);

(2) Petitioning fees have been paid in accordance with 401 KAR 39:020; and

(3) All the requirements of this regulation are satisfied.

Section 6. Petitions for Equivalent Testing or Analytical Methods. (1) Any person seeking to add a testing or analytical method to 401 KAR Chapter 31, 34, 35, or 37 may petition for a regulatory amendment under this section and Section 1 of this regulation. To be successful, the person shall [must] demonstrate to the satisfaction of the cabinet [director] that the

proposed method is equal to or superior to the corresponding method prescribed in 401 KAR Chapter 31, 34, 35, or 37 in terms of its sensitivity, accuracy, and precision (i.e., reproducibility).

(2) Each petition shall [must] include, in addition to the information required by Section 1(2) of this regulation:

(a) A full description of the proposed method, including all procedural steps and equipment used in the method;

(b) A description of the types of wastes or waste matrices for which the proposed method may be used;

(c) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in 401 KAR Chapter 31, 34, 35, or 37;

(d) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(e) A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

(3) After receiving a petition for an equivalent method, the cabinet [director] may request any additional information on the proposed method which is [he may] reasonably required [require] to evaluate the method.

(4) If the cabinet [director] amends the hazardous waste regulations to permit use of a new testing method, the method shall [will] be referenced [incorporated by reference] in Section 3 of 401 KAR 30:010.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: June 13, 1991

FILED WITH LRC: June 14, 1991 at noon

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Hale

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(a) Direct and indirect costs or savings to

those affected:

1. First year: The proposed amendments to this regulation are typographical in nature, and there is 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 reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendments to this regulation are typographical in nature, and there is 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 additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendments are typographical corrections.

Alternative: 1. Less stringent: The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent: The proposed amendments make technical corrections to the regulation, and are not more stringent. The adoption of more stringent requirements are not necessary at this time.

3. Present proposal: The present proposal is in response to EPA comments on Kentucky's authorization application for HSWA Cluster I requirements. Changes have also been made in response to KRS Chapter 13A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplicating statute, governmental policy, or administrative 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: There is no additional information.

TIERING: Was tiering applied? Yes. This regulation applies to hazardous waste generators and differentiates requirements based on the type of wastes produced.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendments to this regulation are typographical and cite corrections found in 40 CFR 260.22.

2. State compliance standards. The proposed amendments to this administrative regulation are

in response to EPA comments on Kentucky's HSWA Cluster I authorization application. Changes have also been made in response to KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. These editorial changes will bring the regulation into compliance with the federal counterparts.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The changes will bring the regulation into compliance with the federal counterparts.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable. The state and federal requirements will be equivalent.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)**

401 KAR 31:110. Appendix on toxicity characteristic leaching procedure [EP toxicity test procedure].

RELATES TO: KRS 224.830 through 224.877, 40 CFR 261 Appendix II

STATUTORY AUTHORITY: KRS 13A.210, 224.017, 224.033, 224.864(3), 40 CFR 261 Appendix II

NECESSITY AND FUNCTION: KRS 224.864(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This regulation contains the appendix to this chapter concerning the toxicity characteristic leaching procedure [EP toxicity test procedure].

Section 1. Applicability. Method 1311 Toxicity Characteristic Leaching Procedure, which is contained in 40 CFR 261 Appendix II (1990), is hereby adopted without change. [This regulation contains the EP toxicity procedures.]

(1) The owner or operator of a surface impoundment, landfill, or land treatment facility which is newly regulated due to the toxicity characteristic leaching procedure shall comply with the requirements in Section 1 of 401 KAR 35:060 by September 25, 1991.

(2) Surface impoundments newly regulated due to the toxicity characteristic leaching procedure shall comply with the design requirements in Section 10 of 401 KAR 35:200 (interim status surface impoundments) or Section 2 of 401 KAR 34:200 (permitted surface impoundments) by March 29, 1994.

(3) Within thirty (30) days of the effective date of this amendment, hazardous waste generators, owners, and operators shall provide to the cabinet copies of the notification previously provided to EPA concerning TCLP. These notifications include permit applications, permit modifications, and notifications of hazardous waste activity. In addition, within thirty (30) days of the effective date of this amendment, hazardous waste generators, owners, and operators shall provide to the cabinet the completed Notification of Hazardous Waste

Activity form (DEP-7037) incorporated by reference in 401 KAR 32:010, Section 3(2).

[Section 2. Extraction Procedure (EP). (1) A representative sample of the waste to be tested (minimum size 100 grams) shall be obtained using the methods specified in 401 KAR 31:100 or any other method capable of yielding a representative sample within the meaning of 401 KAR 30:010. (For detailed guidance on conducting the various aspects of the extraction procedure (EP) see "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" incorporated by reference in Section 3 of 401 KAR 30:010.)]

[(2) (a) The sample shall be separated into its component liquid and solid phases using the method described in "separation procedure" (see subsection (9) of this section). If the solid residue (see paragraph (b) of this subsection) obtained using this method totals less than five-tenths (0.5) percent of the original weight of the waste, the residue can be discarded and the operator shall treat the liquid phase as the extract and proceed immediately to subsection (8) of this section.]

[(b) The percent solids is determined by drying the filter pad at eighty degrees Centigrade (80°C) until it reaches constant weight and then calculating the percent solids using the following equation:]

$$\text{Percent solids} = \frac{(\text{weight of pad} + \text{solid}) - (\text{tare weight of pad})}{\text{initial weight of sample}} \times 100$$

[(3) The solid material obtained from the separation procedure (see subsection (9) of this section) shall be evaluated for its particle size. If the solid material has a surface area per gram of material equal to, or greater than, 3.1cm² or passes through a 9.5 mm (approximately 0.375 inch) standard sieve, the operator shall proceed to subsection (4) of this section. If the surface area is smaller or the particle size larger than specified above, the solid material shall be prepared for extraction by crushing, cutting or grinding the material so that it passes through a 9.5 mm (approximately 0.375 inch) sieve or, if the material is in a single piece, by subjecting the material to the procedure described in Section 3 of this regulation.]

[(4) The solid material obtained in subsection (3) of this section shall be weighed and placed in an extractor with sixteen (16) times its weight of deionized water. Do not allow the material to dry prior to weighing. For purposes of this test, an acceptable extractor is one (1) which will impact sufficient agitation to the mixture to not only prevent stratification of the sample and extraction fluid but also insure that all sample surfaces are continuously brought into contact with well mixed extraction fluid.]

[(5) After the solid material and deionized water are placed in the extractor, the operator shall begin agitation and measure the pH of the solution in the extractor. If the pH is greater than five (5.0), the pH of the solution shall be decreased to 5.0 ± 0.2 by adding five-tenths (0.5) N acetic acid. If the pH is equal to or less than five (5.0) no acetic acid should be added. The pH of the solution shall be monitored, as described below, during the course

of the extraction and if the pH rises above 5.2, five-tenths (0.5) N acetic acid shall be added to bring the pH down to 5.0 ± 0.2 . However, in no event shall the aggregate amount of acid added to the solution exceed four (4) ml of acid per gram of solid. The mixture shall be agitated for twenty-four (24) hours and maintained at 20° – 40° C (approximately 68° – 104° Fahrenheit) during this time. It is recommended that the operator monitor and adjust the pH during the course of the extraction with a device such as the Type 45-A pH Controller manufactured by Chemtrix, Inc., Hillsboro, Oregon 97123 or its equivalent, in conjunction with a metering pump and reservoir of five-tenths (0.5) N acetic acid. If such a system is not available, the following manual procedure shall be employed:]

[(a) A pH meter shall be calibrated in accordance with the manufacturer's specifications.]

[(b) The pH of the solution shall be checked and, if necessary, five-tenths (0.5) N acetic acid shall be manually added to the extractor until the pH reaches 5.0 ± 0.2 . The pH of the solution shall be adjusted at fifteen (15), thirty (30) and sixty (60) minute intervals, moving to the next longer interval if the pH does not have to be adjusted more than five-tenths (0.5) N pH units.]

[(c) The adjustment procedure shall be continued for at least six (6) hours.]

[(d) If at the end of the twenty-four (24) hours extraction period, the pH of the solution is not below 5.2 and the maximum amount of acid (four (4) ml per gram of solids) has not been added, the pH shall be adjusted to 5.0 ± 0.2 and the extraction continued for an additional four (4) hours, during which the pH shall be adjusted at one (1) hour intervals.]

[(6) At the end of the twenty-four (24) hours extraction period, deionized water shall be added to the extractor in an amount determined by the following equation:

$$V = (20)(W) - 16(W) - A$$

Where:

V = ml deionized water to be added

W = weight in grams of solid charged to extractor

A = ml of 0.5 N acetic acid added during extraction]

[(7) The material in the extractor shall be separated into its component liquid and solid phases as described under the separation procedure (see subsection (9) of this section).]

[(8) The liquids resulting from subsections (2) and (7) of this section shall be combined. This combined liquid (or the waste itself if it has less than one-half ($1/2$) percent solids, as noted in subsection (2) of this section) is the extract and shall be analyzed for the presence of any of the contaminants specified in Table I of 401 KAR 31:030, Section 5, using the analytical procedures designated in subsection (9) of this section.]

[(9) Separation procedure. (a) Equipment. A filter holder, designed for filtration media having a nominal pore size of 0.45 micrometers and capable of applying a 5.3 kg/cm² (75 psi) hydrostatic pressure to the solution being filtered, shall be used. For mixtures containing nonabsorptive solids, where separation can be effected without imposing a 5.3 kg/cm² pressure differential, vacuum filters employing a 0.45 micrometers filter media can be used. (For further guidance on filtration equipment or

procedures see "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" incorporated by reference, in Section 3 of 401 KAR 30:010.)]

[(b) Procedure. (Note: This procedure is intended to result in separation of the "free" liquid portion of the waste from any solid matter having a particle size 0.45 micrometers. If the sample will not filter, various other separation techniques can be used to aid in the filtration. As described above, pressure filtration is employed to speed up the filtration process. This does not alter the nature of the separation. If liquid does not separate during filtration, the waste can be centrifuged. If separation occurs during centrifugation, the liquid portion (centrifugate) is filtered through the 0.45 micrometers filter prior to becoming mixed with the liquid portion of the waste obtained from the initial filtration. Any material that will not pass through the filter after centrifugation is considered a solid and is extracted.)]

[1. Following manufacturer's directions, the filter unit shall be assembled with a filter bed consisting of a 0.45 micrometer filter membrane. For difficult or slow to filter mixtures a prefilter bed consisting of the following prefilters in increasing pore size (0.65 micrometer membrane, fine glass fiber prefilter, and coarse glass fiber prefilter) can be used.]

[2. The waste shall be poured into the filtration unit.]

[3. The reservoir shall be slowly pressurized until liquid begins to flow from the filtrate outlet at which point the pressure in the filter shall be immediately lowered to ten (10) to fifteen (15) psig. Filtration shall be continued until liquid flow ceases.]

[4. The pressure should be increased stepwise in ten (10) psi increments to seventy-five (75) psig and filtration continued until flow ceases or the pressurizing gas begins to exit from the filtrate outlet.]

[5. The filter unit shall be depressurized, the solid material removed and weighed and then transferred to the extraction apparatus, or, in the case of final filtration prior to analysis, discarded. Do not allow the material retained on the filter pad to dry prior to weighing.]

[6. The liquid phase shall be stored at 4° C for subsequent use in subsection (8) of this section.]

[Section 3. Structural Integrity Procedure.

(1) Equipment. A structural integrity tester having a 3.18 cm (approximately 1.25 in.) diameter hammer weighing 0.33 kg (approximately 0.73 lbs.) and having a free fall of 15.24 cm (approximately six (6) in.) shall be used. This device is available from Associated Design and Manufacturing Company, Alexandria, VA 22314, as Part No. 125, or it may be fabricated to meet the specifications shown in Figure 1.]

[(2) Procedure. (Note: This procedure is intended to result in separation of the "free" liquid portion of particle size greater than 0.45 micrometers. If the sample will not filter, various other separation techniques can be used to aid in the filtration. As described above, pressure filtration is employed to speed up the filtration process. This does not alter the nature of the separation. If liquid does not separate during filtration, the waste can be centrifuged. If separation occurs during

centrifugation, the liquid portion (centrifugate) is filtered through the 0.45 micrometer filter prior to becoming mixed with the liquid portion of the waste obtained from the initial filtration. Any material that will not pass through the filter after centrifugation is considered a solid and is extracted.]]

[(a) The sample holder shall be filled with the material to be tested. If the sample of waste is a large monolithic block, a portion shall be cut from the block having the dimensions of a 3.3 cm (approximately 1.3 in.) diameter x 7.1 cm (approximately 2.8 in.) cylinder. For a fixated waste, samples may be cast in the form of a 3.3 cm (approximately 1.3 in.) diameter x 7.1 (approximately 2.8 in.) cylinder for purposes of conducting this test. In such cases, the waste may be allowed to cure for thirty (30) days prior to further testing.]

[(b) The sample holder shall be placed into the structural integrity tester, then the hammer shall be raised to its maximum height and dropped. This shall be repeated fifteen (15) times.]

[(c) The material shall be removed from the sample holder, weighed, and transferred to the extraction apparatus for extraction.]

[(3) Analytical procedures for analyzing extract contaminants. The test methods for analyzing the extract are as follows:]

[(a) For arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, endrin, lindane, methoxychlor, toxaphene, 2, 4-D(2,4-dichlorophenoxyacetic acid) or 2,4,5-TP (2,4,5-trichlorophenoxypropionic acid): "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (incorporated by reference in Section 3 of 401 KAR 30:010).]

[(b) For all analyses, the methods of standard addition shall be used for quantification of species concentration.]

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: June 13, 1991

FILED WITH LRC: June 14, 1991 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1991, at 10 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below, by July 22, 1991, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on July 25, 1991. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Hale

(1) Type and number of entities affected: This

regulation affects generators of hazardous waste. There presently are 434 full quantity generators, 534 small quantity generators, and 1104 limited quantity generators. It also affects treatment, storage, and disposal facilities. There are 100 such facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The toxicity characteristic (TC) requirements replace the extraction procedure toxicity analysis (EP) with a new extraction procedure, toxicity characteristic leaching procedure (TCLP). TCLP adds 25 new organic constituents to the 8 metals and 6 pesticides on the EP list of regulated constituents. A TCLP analysis will cost approximately \$5,000, whereas the EP analysis costs approximately \$3,000. By adding new wastes to the universe of regulated wastes, this regulation will affect generators and treatment, storage, and disposal facilities already operating under RCRA as well as waste handlers not previously regulated. First year costs will vary based on the status of the facility or generator. New hazardous waste handlers will experience costs in complying with full hazardous waste regulations. This cost was previously not experienced as the waste was not considered hazardous.

2. Continuing costs or savings: First year costs will continue as different types of generators and facilities are transitioned into the requirements. Permit fees as well as costs associated with storage and handling of hazardous waste will be experienced.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The TCLP requirements subject new wastes to regulatory control under RCRA. It does not introduce new requirements for the management of hazardous waste. These HSWA regulations became effective at the federal level September 25, 1990. There are no additional or different costs associated with the Kentucky regulations.

(b) Reporting and paperwork requirements: The regulated community will be required to notify the cabinet by either a permit modification, permit application, or notification. These newly regulated wastes will be subject to full recordkeeping and reporting requirements associated with the hazardous waste program.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional costs will be experienced by the cabinet as more wastes will be considered hazardous and will enlarge the scope of the hazardous waste program.

2. Continuing costs or savings: First year costs will continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The cabinet will experience increased permitting and generator notification activity.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendments adopt without change the March 29, 1990, and June 29, 1990, Federal Register

amendments to Appendix II of 40 CFR 261.

Alternative: 1. Less stringent: The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent: More stringent requirements were not adopted because these regulations adequately protect human health and the environment.

3. Present proposal: The present proposal replaces the extraction procedure toxicity test with the toxicity characteristic leaching procedure. The new test adds 25 organic chemicals to the list of toxic constituents now regulated under the EP toxicity test.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which conflict, overlap or duplicate this administrative 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: There is no additional information.

TIERING: Was tiering applied? Yes. This administrative regulation is tiered by applying to generators of hazardous waste, and hazardous waste treatment, storage, and disposal facilities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendments adopt the March 29, 1990 and June 29, 1990 Federal Register amendments to Appendix II of 40 CFR 261.

2. State compliance standards. The proposed amendment replaces the extraction procedure toxicity test with the toxicity characteristic leaching procedure. The new test adds 25 organic chemicals to the list of toxic constituents now regulated under the EP toxicity test.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate replaces the extraction procedure toxicity test with the toxicity characteristic leaching procedure. Kentucky has adopted this requirement identically.

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 amendment is identical to federal regulations at 40 CFR 261 Appendix II as published in the March 29, 1990, and June 29, 1990, Federal Register.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment is identical to federal regulations, and does not impose stricter standards.

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

401 KAR 32:010. General provisions for generators.

RELATES TO: KRS 224.071, 224.830 through 224.877, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.864

NECESSITY AND FUNCTION: KRS 224.864 requires the Natural Resources and Environmental Protection Cabinet to promulgate regulations to establish standards for the generation of hazardous waste. This chapter establishes standards for the generators of hazardous waste. This regulations establishes the applicable general provisions for generators.

Section 1. Purpose, Scope, and Applicability.
(1) These regulations establish standards for generators of hazardous waste.

(2) A generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following [sections of this regulation with respect to that waste]: Section 2 of this regulation for determining whether or not he has a hazardous waste; Section 3 of this regulation for obtaining an identification number; 401 KAR 32:030, Section 5, for accumulation of hazardous waste; 401 KAR 32:040, Section 1(3) and (4), for recordkeeping; 401 KAR 32:040, Section 4, for additional reporting; and, if applicable, 401 KAR 32:050, Section 10 [2], for farmers.

(3) Any person who imports hazardous waste from outside the United States into Kentucky shall [must] comply with the standards applicable to generators established in this chapter.

(4) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of 401 KAR 32:050, Section 10 [2] is not required to comply with other standards in this chapter or 401 KAR Chapters 34, 35, 37, and 38 with respect to such pesticides.

(5) A person who generates a hazardous waste as defined by 401 KAR Chapter 31 is subject to the compliance requirements and penalties prescribed in KRS Chapter 224 if he does not comply with the requirements of this chapter.

(6) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall [must] comply with the generator standards established in this chapter.

(7) A small quantity generator (i.e., one who generates between 100 and 1,000 kg/mo of hazardous waste) shall [must] comply with the generator standards established in this chapter.

(8) A limited quantity generator (i.e., one who generates no more than 100 kilograms of hazardous waste a month or less than one (1) kilogram of acute hazardous waste per month) shall [must] comply with the requirements of 401 KAR 31:010, Section 5.

Section 2. Hazardous Waste Determination. A person who generates a waste, as defined in 401 KAR 31:010, Section 2, shall [must] determine if that waste is a hazardous waste using the

following method:

(1) He shall [should] first determine if the waste is excluded from regulation under 401 KAR 31:010, Section 4.

(2) If not, he shall [must] then determine if the waste is listed as a hazardous waste in 401 KAR 31:040.

(3) If the waste is not listed as a hazardous waste in 401 KAR 31:040 he shall [must] determine whether the waste is identified in 401 KAR 31:030, by either:

(a) Testing the waste according to the methods set forth in 401 KAR 31:030, or according to an equivalent method approved by the cabinet [secretary]; or

(b) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(4) If the waste is determined to be hazardous, the generator shall [must] refer to 401 KAR Chapters 34, 35, and 37 for possible exclusions or restrictions pertaining to management of his specific waste.

Section 3. Registration and Identification Number. (1) A generator shall [must] not treat, store, dispose, transport, or offer for transportation, hazardous waste without having registered with the cabinet by submitting a complete registration form and without having received an EPA identification number. Generators shall register initially by submitting a complete Notification of Hazardous Waste Activity form, DEP-7037, which is incorporated by reference in subsection (2) of this section [annually]. After October 26, 1988 [the date of promulgation of this regulation], generators shall submit an initial registration on a schedule determined by the cabinet. Subsequent annual registrations shall be submitted to the cabinet on the Annual Registration of Hazardous Waste Activity form, DEP-7050, at least thirty (30) days before the expiration date shown on the generator's registration. This form is incorporated by reference in subsection (2) of this section. Registration shall be filed within ninety (90) days after promulgation or revision of regulations under 401 KAR Chapter 31 identifying by its characteristics or listing any substance as a hazardous waste. The registration shall include:

(a) Known or anticipated types, potential sources, general characteristics, and weights or volumes of hazardous wastes generated annually;

(b) The place of generation and the name and address of a contact agent; and

(c) If the waste is a special waste, generators shall, either individually or collectively as a categorical group, within ninety (90) days after promulgation or revision of regulations under 401 KAR Chapter 31, file a report, according to procedures previously approved by the cabinet, which details, by geographic area, the known or anticipated types, potential sources, general characteristics, and weights or volumes of special wastes generated annually. Not more than one (1) registration shall be required to be filed with respect to the same substance.

(2) A generator who has not received an EPA identification number may obtain one (1) by registering with the cabinet as described in subsection (1) of this section [above], using forms provided by the cabinet and incorporated

by reference. The Notification of Hazardous Waste Activity form, DEP 7037, and Annual Registration of Hazardous Waste Activity form, DEP 7050, became effective November 1990, and are available for copying and inspection from the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601. The normal business hours of the division are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. Upon receiving the request and reviewing the information the cabinet shall [will] assign an EPA identification number to the generator.

(3) A generator shall [must] not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(4) Hazardous waste generation and on-site management of hazardous waste shall [must] be consistent with registration. Any changes in waste streams, on-site management methods, or other information submitted on the registration form requires the generator to submit a modified registration form. A modified Notification of Hazardous Waste Activity [registration] form, DEP-7037, shall be submitted if a waste stream is added or the name of the contact person or registrant is changed. The registrant shall timely file a modified registration form with the cabinet. A required modification shall be considered timely filed if it is received by the cabinet not later than thirty (30) days following the change requiring the submittal of the modification. The Notification of Hazardous Waste Activity form, DEP-7037, is incorporated by reference in subsection (2) of this section.

(5) Hazardous waste generators that no longer generate hazardous waste on site, close their facility, or go out of business shall notify the cabinet in writing within thirty (30) days.

CARL H. BRADLEY, Secretary

FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: June 13, 1991

FILED WITH LRC: June 14, 1991 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1991, at 10 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below, by July 22, 1991, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on July 25, 1991. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Hale

(1) Type and number of entities affected: This regulation affects generators of hazardous waste. There presently are 434 full quantity generators, 534 small quantity generators, and

1104 limited quantity generators.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendments to this regulation are typographical in nature and there is 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: Hazardous waste generators that no longer generate hazardous waste will be required to notify the cabinet within thirty (30) days. The notification requirement is not new. The thirty (30) day provision has been added to assure efficient management of the registration process.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendments to this regulation are typographical in nature and there is 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 additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The agency should experience a decrease in paperwork in response to the clarification that hazardous waste generators will notify the cabinet once they no longer generate hazardous waste. It will assure efficient management of the registration process.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendments are typographical corrections and clarifications.

Alternative: 1. Less stringent: The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent: The adoption of more stringent requirements is not necessary at this time.

3. Present proposal: Editorial changes are being made in response to EPA comments on Kentucky's authorization application for HSWA Cluster I requirements. Changes have also been made in response to in-house needs and KRS Chapter 13A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting, overlapping, or duplicating statutes, governmental policy, or administrative regulations.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

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

(6) Any additional information or comments: There are no additional comments.

TIERING: Was tiering applied? Yes. This regulation applies to hazardous waste generators.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Editorial changes in the proposed amendments to this regulation are being made in response to EPA comments on Kentucky's HSWA I authorization application.

2. State compliance standards. The proposed amendments to this administrative regulation are in response to EPA comments on Kentucky's HSWA I authorization application. Changes have also been made in response to in-house needs and KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. EPA has mandated that certain editorial changes be made to this regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed amendments do not impose stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter requirements.

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

401 KAR 32:100. Appendix on hazardous waste manifest and instructions.

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

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 wastes. This chapter establishes standards applicable to generators of hazardous waste. This regulation establishes a uniform hazardous waste manifest and the Kentucky instructions for each form.

Section 1. Applicability. This regulation prescribes the manifest forms and the instructions which are required by the cabinet in accordance with the provisions of 401 KAR 32:020 and 401 KAR 32:050. When a generator or a hazardous waste site or facility prints copies of these forms, the following two (2) sentences may be printed on the top of the first page [of the manifest form]:

THE INFORMATION IN THE SHADED AREAS - D, F, H, I, AND K - IS REQUIRED BY KENTUCKY LAW.
IN THE EVENT OF A SPILL INSIDE KENTUCKY, CALL (502) 564-2380 WITHIN TWO (2) HOURS OF THE SPILL.

When a generator or a hazardous waste site or facility prints copies of these forms, the following sentence may be printed on the top of the continuation sheet(s):

THE INFORMATION IN THE SHADED AREAS - O, Q, R AND T - IS REQUIRED BY KENTUCKY LAW.

Section 2. Manifest Form. The "Uniform Hazardous Waste Manifest" EPA form 8700-22 dated September 1988, is hereby incorporated by reference. The form is available for copying and inspection from the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601. The normal business hours of the division are from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday. [The first page of the manifest form shall be as contained in Appendix A of this regulation.]

Section 3. Kentucky Instructions for First Page of the Manifest Form. Read all instructions before completing this form.

This form has been designed for use on a twelve (12) pitch (elite) typewriter; a firm point pen may also be used - press down hard.

KENTUCKY REGULATIONS REQUIRE GENERATORS AND TRANSPORTERS OF HAZARDOUS WASTE AND OWNERS OR OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES TO USE THIS FIRST PAGE OF THE FORM AND, IF NECESSARY, THE CONTINUATION SHEET[(S)].

KENTUCKY REGULATIONS ALSO REQUIRE GENERATORS AND TRANSPORTERS OF HAZARDOUS WASTE AND OWNERS OR OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES TO COMPLETE THE FOLLOWING INFORMATION:

GENERATORS

Item 1. Generator's U.S. EPA ID Number - Manifest Document Number. Enter the generator's U.S. EPA twelve digit identification number and the unique serially increasing, five (5) digit number assigned to this Manifest (e.g., 00001) by the generator.

Item 2. Page 1 of _____. Enter the total number of pages used to complete this Manifest, i.e., the first page plus the number of Continuation Sheets, if any.

Item 3. Generator's Name and Mailing Address. Enter the name and mailing address of the generator. The address shall [should] be the location that shall [will] manage the returned Manifest forms.

Item 4. Generator's Phone Number. Enter a telephone number where an authorized agent of the generator may be reached in the event of an emergency.

Item 5. Transporter 1 Company Name. Enter the company name of the first transporter who shall [will] transport the waste.

Item 6. U.S. EPA ID Number. Enter the U.S. EPA twelve (12) digit identification number of the first transporter identified in Item 5.

Item D. Transporter's Phone. Enter the telephone number of the transporter identified in Item 5.

Item 7. Transporter 2 Company Name. If applicable, enter the company name of the second transporter who shall [will] transport the waste. If more than two transporters are used to transport the waste, use a Continuation Sheet[(s)] (EPA form 8700-22A) and list the transporters in the order they shall [will] be transporting the waste.

Item 8. U.S. EPA ID Number. If applicable, enter the U.S. EPA twelve (12) digit identification number of the second transporter identified in Item 7.

Item F. Transporter's Phone. Enter the telephone number of the transporter identified in Item 7.

NOTE: If more than two (2) transporters are used, enter each additional transporter's company name and U.S. EPA twelve (12) digit identification number in Items 24-27 on the Continuation Sheet. Each Continuation Sheet has space to record two (2) additional transporters. Every transporter used between the generator and the designated facility shall [must] be listed.

Item 9. Designated Facility Name and Site Address. Enter the company name and site address of the facility designated to receive the waste listed on this Manifest. The address shall [must] be the site address, which may differ from the company mailing address.

Item 10. U.S. EPA ID Number. Enter the U.S. EPA twelve (12) digit identification number of the designated facility identified in Item 9.

Item H. Facility's Phone. Enter the telephone number of the facility identified in Item 9.

Item 11. U.S. DOT Description Including Proper Shipping Name, Hazard Class, and ID Number (UN/NA). Enter the U.S. DOT Proper Shipping Name, Hazard Class, and ID Number (UN/NA) for each waste as identified in 49 CFR Parts 171 through 177 (1990).

NOTE: If additional space is needed for waste descriptions, enter these additional descriptions in Item 28 on the Continuation Sheet.

Item 12. Containers (No. and Type). Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

Table I - Types of Containers

DM = Metal drums, barrels, kegs
DW = Wooden drums, barrels, kegs
DF = Fiberboard or plastic drums, barrels, kegs
TP = Tanks portable
TT = Cargo tanks (tank trucks)
TC = Tank cars
DT = Dump truck
CY = Cylinders
CM = Metal boxes, cartons, cases (including roll-offs)
CW = Wooden boxes, cartons, cases
CF = Fiber or plastic boxes, cartons, cases
BA = Burlap, cloth, paper or plastic bags

Item 13. Total Quantity. Enter the total quantity of waste described on each line.

Item 14. Unit (Wt./Vol.). Enter the appropriate abbreviation from Table II (below) for the unit of measure.

Table II - Units of Measure

G = Gallons (liquids only)
P = Pounds
T = Tons (2000 lbs)
Y = Cubic yards
L = Liters (liquids only)
K = Kilograms
M = Metric tons (1000 kg)
N = Cubic meters

Item I. Waste Number. Enter the EPA hazardous waste number for each waste.

Item K. Handling Codes for Waste Listed Above. Enter the appropriate handling code[(s)] for each [the] waste[s] listed in Item 11. Table III contains the handling codes.

Table III - Handling Codes for Treatment, Storage, and Disposal Methods
(Enter the handling code[(s)] listed below that most closely represents the technique[(s)] used at the facility to treat, store, or dispose of each quantity of hazardous waste received.)

- | | |
|------------------------------------|--|
| 1. Storage | |
| S01 Container (barrel, drum, etc.) | S03 Waste pile |
| S02 Tank | S04 Surface impoundment |
| | S05 Other (specify) |
| 2. Treatment | |
| (a) Thermal Treatment | |
| T06 Liquid injection incinerator | T11 Molten salt destructor |
| T07 Rotary kiln incinerator | T12 Pyrolysis |
| T08 Fluidized bed incinerator | T13 Wet air oxidation |
| T09 Multiple hearth incinerator | T14 Calcination |
| T10 Infrared furnace incinerator | T15 Microwave discharge |
| | T16 Cement kiln |
| | T17 Lime kiln |
| | T18 Other (specify) |
| (b) Chemical Treatment | |
| T19 Absorption mound | T27 Cyanide destruction |
| T20 Absorption field | T28 Degradation |
| T21 Chemical fixation | T29 Detoxification |
| T22 Chemical oxidation | T30 Ion exchange |
| T23 Chemical precipitation | T31 Neutralization |
| T24 Chemical reduction | T32 Ozonation |
| T25 Chlorination | T33 Photolysis |
| T26 Chlorinolysis | T34 Other (specify) |
| (c) Physical Treatment | |
| (1) Separation of components | |
| T35 Centrifugation | T42 Flotation |
| T36 Clarification | T43 Foaming |
| T37 Coagulation | T44 Sedimentation |
| T38 Decanting | T45 Thickening |
| T39 Encapsulation | T46 Ultrafiltration |
| T40 Filtration | T47 Other (specify) |
| T41 Flocculation | |
| (2) Removal of Specific Components | |
| T48 Absorption-molecular sieve | T58 High gradient magnetic separation |
| T49 Activated carbon | T59 Leaching |
| T50 Blending | T60 Liquid ion exchange |
| T51 Catalysis | T61 Liquid-liquid extraction |
| T52 Crystallization | T62 Reverse osmosis |
| T53 Dialysis | T63 Solvent recovery |
| T54 Distillation | T64 Stripping |
| T55 Electrodialysis | T65 Sand filter |
| T56 Electrolysis | T66 Other (specify) |
| T57 Evaporation | |
| (d) Biological treatment | |
| T67 Activated sludge | T73 Spray irrigation |
| T68 Aerobic lagoon | T74 Thickening filter |
| T69 Aerobic tank | T75 Trickling filter |
| T70 Anaerobic lagoon | T76 Waste stabilization pond |
| T71 Composting | T77 Other (specify) |
| T72 Septic tank | |
| 3. Disposal | |
| D80 Underground injection | D84 Surface impoundment (to be closed as a landfill) |
| D81 Landfill | D85 Other (specify) |
| D82 Land treatment | |
| D83 Ocean disposal | |

Item 15. Special Handling Instructions and Additional Information. Generators may use this space to indicate special transportation, treatment, storage, or disposal information or Bill of Lading information. New, additional, or different information shall not be provided in this space. [States may not require additional, new, or different information in this space.] For international shipments, generators shall [must] enter in this space the point of departure (City and State) for those shipments destined for treatment, storage, or disposal outside the jurisdiction of the United States.

Item 16. Generator's Certification. The generator shall [must] read, sign (by hand), and date the certification statement. If a mode other than highway is used, the word "highway" shall [should] be lined out and the appropriate mode (rail, water, or air) inserted in the space below. If another mode in addition to the highway mode is used, enter the appropriate additional mode (e.g., and rail) in the space below. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under KRS Chapter 224 are also certifying that they have complied with the waste minimization requirements.

Generators may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator certifications.

Primary exporters shipping hazardous wastes to a facility located outside of the United States shall [must] add to the end of the first sentence of the certification the following words "and conforms to the terms of the EPA acknowledgment of consent to the shipment."

NOTE: All of the above information except the handwritten signature required in Item 16 may be preprinted.

TRANSPORTERS

Item 17. Transporter 1 Acknowledgment of Receipt of Materials. Enter the name of the person accepting the waste on behalf of the first transporter. That person shall [must] acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Item 18. Transporter 2 Acknowledgment of Receipt of Materials. Enter, if applicable, the name of the person accepting the waste on behalf of the second transporter. That person shall [must] acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

NOTE: International Shipments - Transporter Responsibilities.

Exports - Transporters shall [must] sign and enter the date the waste left the United States in Item 15 on the first page of the manifest form.

Imports - Shipments of hazardous waste regulated by RCRA and transported into the United States from another country shall, [must] upon entry, be accompanied by the U.S. EPA Uniform Hazardous Waste Manifest. Transporters who transport hazardous waste into the United States from another country are responsible for completing the Manifest (Section 1(3) of 401 KAR 32:010).

OWNERS AND OPERATORS OF
TREATMENT, STORAGE, OR
DISPOSAL FACILITIES

Item 19. Discrepancy Indication Space. The authorized representative of the designated (or alternate) facility's owner or operator shall [must] note in this space any significant discrepancy between the waste described on the Manifest and waste actually received at the facility.

Owners and operators of facilities located in Kentucky who cannot resolve significant discrepancies within fifteen (15) days of receiving the waste shall [must] submit to the Cabinet (Division of Waste Management, 18 Reilly Road, Frankfort, Ky. 40601) a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (Section 3 of 401 KAR 34:050 and Section 3 of 401 KAR 35:050).

[Owners and operators of facilities located outside of Kentucky who cannot resolve significant discrepancies must submit to their Regional Administrator (if the U.S. EPA administers the hazardous waste management program), or to their State agency (if the State administers the hazardous waste management program), a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it.]

Item 20. Facility Owner or Operator: Certification of Receipt of Hazardous Materials Covered by This Manifest Except as Noted in Item 19. Print or type the name of the person accepting the waste on behalf of the owner or operator of the facility. That person shall [must] acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

SHADED AREAS

Kentucky requires generators to complete Items D, F, H, I and K as part of Kentucky's manifest reporting requirements.

Section 4. Continuation Sheet. When all the required information cannot be entered on the first page of the manifest form, the generator shall use one (1) or more continuation sheet[s]. The Uniform Hazardous Waste Manifest Continuation Sheet, EPA form 8700-22A dated September 1988, is hereby incorporated by reference. The form is available for copying and inspection from the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601. The normal business hours of the division are from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday. [The continuation sheet(s) of the manifest form shall be as contained in Appendix B of this regulation.]

Section 5. Instructions for the Continuation Sheet. Read all instructions before completing this form.

This form has been designed for use on a twelve (12) pitch (elite) typewriter; a firm point pen may also be used - press down hard.

The form shall [must] be used as a continuation sheet to the first page of the manifest if:

- More than two transporters are to be used to transport the waste;
- More space is required for the U.S. DOT

description and related information in Item 11 of the first page of the manifest form.

[Kentucky regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the Uniform Hazardous Waste Manifest (first page) and, if necessary, this Continuation Sheet.]

GENERATORS

Item 21. Generator's U.S. EPA ID Number - Manifest Document Number. Enter the generator's U.S. EPA twelve (12) digit identification number and the unique five (5) digit number assigned to this Manifest (e.g., 00001) as it appears in Item 1 on the first page of the Manifest.

Item 22. Page _____. Enter the page number of this Continuation Sheet.

Item 23. Generator's Name. Enter the generator's name as it appears in Item 3 on the first page of the Manifest.

Item 24. Transporter _____ Company Name. If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they shall [will] transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Each Continuation Sheet shall [will] record the names of two (2) additional transporters.

Item 25. U.S. EPA ID Number. Enter the U.S. EPA twelve (12) digit identification number of the transporter described in Item 24.

Item 26. Transporter's Phone. Enter the telephone number of the transporter identified in Item 24.

Item 26. Transporter _____ Company Name. If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they shall [will] transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet shall [will] record the names of two (2) additional transporters.

Item 27. U.S. EPA ID Number. Enter the U.S. EPA twelve (12) digit identification number of the transporter described in Item 26.

Item 28. Transporter's Phone. Enter the telephone number of the transporter identified in Item 26.

Item 28. U.S. DOT Description including Proper Shipping Name, Hazard Class, and ID Number (UN/NA). Refer to Item 11.

Item 29. Containers (No. and Type). Refer to Item 12.

Item 30. Total Quantity. Refer to Item 13.

Item 31. Unit (Wt./Vol.). Refer to Item 14.

Item R. Waste Number. Enter the EPA hazardous waste number for each waste.

Item T. Handling Codes for Waste Listed Above. Enter the appropriate handling code[s] for the wastes listed in Item 28. Table III under Item K contains the handling codes.

Item 32. Special Handling Instructions. Generators may use this space to indicate special transportation, treatment, storage, or disposal information or Bill of Lading information. [States are not authorized to require] Additional, new, or different information shall not be provided in this space.

TRANSPORTERS

Item 33. Transporter _____ Acknowledgment of Receipt of Materials. Enter the same number of the Transporter as identified in Item 24. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 24. That person shall [must] acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Item 34. Transporter _____ Acknowledgment of Receipt of Materials. Enter the same number as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person shall [must] acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

OWNERS AND OPERATORS OF TREATMENT,
STORAGE, OR DISPOSAL FACILITIES

Item 35. Discrepancy Indication Space. Refer to Item 19.

SHADED AREAS

Kentucky does require generators to complete Items O, Q, R, and T as part of Kentucky's manifest reporting requirements.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: June 13, 1991

FILED WITH LRC: June 14, 1991 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1991, at 10 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below, by July 22, 1991, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on July 25, 1991. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment affects generators and transporters of hazardous waste. There are approximately 434 full quantity generators, and 1104 limited quantity generators. There are approximately 350 transporters.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment updates the hazardous waste manifest. There is no direct or indirect costs or savings to the regulated

community.

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 recordkeeping or reporting 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 additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment adopts the November 8, 1988 Federal Register amendments to the appendix to 40 CFR 262.

Alternative: 1. Less stringent: The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent: The cabinet chose not to adopt more stringent standards than the federal government because the federal requirements adequately protect human health and the environment.

3. Present proposal: The present proposal incorporates by reference the hazardous waste manifest as published in the November 8, 1988 Federal Register. Changes have also been made based on KRS Chapter 13A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulation, or government policy in conflict with the proposed amendment.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

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

(6) Any additional information or comments: There are no additional comments.

TIERING: Was tiering applied? Yes. This regulation applies to generators or transporters of hazardous waste.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendments adopt the November 8, 1988 Federal Register amendments to the Appendix to 40 CFR 262.

2. State compliance standards. The proposed amendments to this regulation incorporate by reference the Hazardous Waste Manifest form as published in the November 8, 1988 Federal

Register. Changes have also been made based on KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires the use of a hazardous waste manifest and the form to be used is provided under 40 CFR 262 appendix which is incorporated by reference.

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 amendment is identical to 40 CFR 262 Appendix as published in the November 8, 1988 Federal Register.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment is identical to federal regulations and does not impose a stricter standard.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)**

401 KAR 34:230. Landfills.

RELATES TO: KRS 224.033, 224.060, 224.071, 224.830 through 224.877, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.866

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 minimum standards for hazardous waste landfills.

Section 1. Applicability. This regulation applies to owners and operators of facilities that dispose of hazardous waste in landfills, except as Section 1 of 401 KAR 34:010 provides otherwise.

Section 2. Design and Operating Requirements. (1) Any landfill that is not covered by subsection (3) of this section or Section 10(1) of 401 KAR 35:230 shall [must] have a liner system for all portions of the landfill (except for portions in existence prior to November 8, 1984). The liner system shall [must] have:

(a) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at anytime during the active life [live] (including the closure period) of the landfill. The liner shall [must] be constructed of materials that prevent wastes from passing into the liner during the active life of the facility. The liner shall [must] be:

1. Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact

with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

2. Placed upon a foundation or base capable of providing support to the liner and resistant to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift. At a minimum, synthetic liners shall be placed upon a one (1) foot thick soil liner of 1×10^{-7} cm/sec permeability; and

3. Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(b) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The cabinet shall [will] specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed thirty (30) cm (approximately one (1) foot). The leachate collection and removal system shall [must] be:

1. Constructed of materials that are:

a. Chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

b. Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

2. Designed and operated to function without clogging through the scheduled closure of the landfill.

(2) The owner or operator shall [will] be exempted from the requirements of subsection (1) of this section if the cabinet finds, based on a demonstration by the owner or operator, that alternative design and operating practices, together with location characteristics, shall [will] prevent the migration of any hazardous constituents (see Section 4 of 401 KAR 34:060) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the cabinet shall [will] consider:

(a) The nature and quantity of the wastes;

(b) The proposed alternate design and operation;

(c) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and groundwater or surface water; and

(d) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(3) The owner or operator of each new landfill, each new landfill unit at an existing facility, each replacement of an existing landfill unit, and each lateral expansion of an existing landfill unit, shall [must] install two (2) or more liners and a leachate collection system above and between liners. The liners and leachate collection system[s] shall [must] protect human health and the environment. The requirement for the installation of two (2) or more liners in this subsection may be satisfied by the installation of a top liner designed, operated and constructed of materials to prevent the migration of any constituent into the [such] liner during the period the [such] facility remains in operation (including any postclosure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through the [such]

liner during the [such] period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy the [such] requirement if it is constructed of at least a three (3) foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

(4) Subsection (3) of this section shall [will] not apply if the owner or operator demonstrates to the cabinet, and the cabinet finds for such landfill, that alternative design and operating practices, together with location characteristics, shall [will] prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the [such] liners and leachate collection systems.

(5) The double liner requirement set forth in subsection (3) of this section may be waived by the cabinet for any monofill, if:

(a) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and the [such] wastes do not contain constituents which would render the wastes hazardous for reasons other than the [EP] toxicity characteristic[s] in Section 5 of 401 KAR 31:030, with EPA hazardous waste numbers D004 through D017; and

(b)1.a. The monofill has at least one (1) liner for which there is no evidence that the [such] liner is leaking;

b. The monofill is located more than one-fourth (1/4) mile from an underground source of drinking water (as that term is defined in Section 1 of 401 KAR 30:010); and

c. The monofill is in compliance with generally applicable ground water monitoring requirements for facilities with permits under KRS 224.855 and 224.866; or

2. The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there shall [will] be no migration of any hazardous constituent into ground water or surface water at any future time.

(6) The owner or operator shall [must] design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a twenty-five (25) year storm.

(7) The owner or operator shall [must] design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a twenty-four (24) hour, twenty-five (25) year storm.

(8) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems shall [must] be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(9) If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator shall [must] cover or otherwise manage the landfill to control wind dispersal.

(10) A new landfill shall not be constructed in a floodway, the 100-year flood plain or in an area of seasonal high water table in accordance with Section 9(2) of 401 KAR 34:020.

(11) Existing landfills within the 100-year flood plain shall be protected from inundation by waters of the 100-year flood in accordance with Section 9(2) of 401 KAR 34:020.

(12) The cabinet shall [will] specify in the

permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

Section 3. Double-lined Landfills: Groundwater Protection Requirements. The owner or operator of a double-lined landfill shall be [is] subject to the requirements of 401 KAR 34:060.

Section 4. Monitoring and Inspection. (1) During construction or installation, liners (except in the case of existing portions of landfills exempt from Section 2(1) of this regulation) and cover systems (e.g., membranes, sheets, or coatings) shall [must] be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(a) Synthetic liners and covers shall [must] be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(b) Soil-based and admixed liners and covers shall [must] be inspected for imperfections including lenses, cracks, channels, root holes, or other structural nonuniformities that may cause an increase in the permeability of the liner or cover.

(2) While a landfill is in operation, it shall [must] be inspected weekly and after storms to detect evidence of any of the following:

(a) Deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(b) Proper functioning of wind dispersal control systems, where present; and

(c) The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

Section 5. Surveying and Recordkeeping. The owner or operator of a landfill shall [must] maintain the following items in the operating record required under Section 4 of 401 KAR 34:050:

(1) On a map, the exact location and dimensions, including depth, of each cell with respect to permanently surveyed benchmarks;

(2) The contents of each cell and the approximate location of each hazardous waste type within each cell; and

(3) Any other information specified by the cabinet in the permit.

Section 6. Closure and Postclosure Care. (1) At final closure of the landfill or upon closure of any cell, the owner or operator shall [must] cover the landfill or cell with a final cover designed and constructed to:

(a) Provide long-term minimization of migration of liquids through the closed landfill;

(b) Function with minimum maintenance;

(c) Promote drainage and minimize erosion or abrasion of the cover;

(d) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(e) Have a permeability less than or equal to 1×10^{-7} centimeters per second.

(2) After final closure, the owner or operator shall [must] comply with all postclosure requirements contained in Sections 8 through 11 of 401 KAR 34:070, including maintenance and monitoring throughout the postclosure care period (specified in the permit under Section 8 of 401 KAR 34:070). The owner or operator shall

[must]:

(a) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(b) Continue to operate the leachate collection and removal system until leachate is no longer detected;

(c) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of this regulation;

(d) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(e) Protect and maintain surveyed benchmarks used in complying with Section 5 of this regulation.

(3) In the closure and postclosure plans, the owner or operator shall [must] address the following objectives and indicate how they shall [will] be achieved:

(a) Control of pollutant migration from the facility via ground water, surface water and air;

(b) Control of surface water infiltration, including prevention of pooling; and

(c) Prevention of erosion.

(4) the owner or operator shall [must] consider at least the following factors in addressing the closure and postclosure care objectives of subsection (3) of this section.

(a) Type and amount of hazardous waste and hazardous waste constituents in the landfill;

(b) The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(c) Site location, topography and surrounding land use, with respect to the potential effects of pollutant migration (e.g., proximity to ground water, surface water, and drinking water sources);

(d) Climate, including amount, frequency and pH of precipitation;

(e) Characteristics of the cover including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope and type of vegetation on the cover; and

(f) Geological and soil profiles, and surface and subsurface hydrology of the site.

(5) In addition to the requirements of Section 8 of 401 KAR 34:070, during the postclosure care period, the owner or operator of a hazardous waste landfill shall [must]:

(a) Maintain and monitor the gas collection and control system (if there is one present in the landfill) to control the vertical and horizontal escape of gases; and

(b) Restrict access to the landfill as appropriate for its postclosure use.

Section 7. Special Requirements for Ignitable or Reactive Waste. Except as provided in subsection (2) of this section, and in Section 11 of this regulation, ignitable or reactive waste shall [must] not be placed in a landfill, unless the waste is treated, rendered, or mixed before placement in a landfill so that:

(1) The resulting waste or mixture no longer meets the definition of ignitable or reactive waste under Section 2 or 4 of 401 KAR 31:030; and

(2) Section 8 of 401 KAR 34:020 is complied with.

Section 8. Special Requirements for Incompatible Wastes. Incompatible wastes, or incompatible wastes and materials, (see 401 KAR

34:330 for examples) shall [must] not be placed in the same landfill cell.

Section 9. Special Requirements for Bulk and Containerized Liquids. (1) Bulk or noncontainerized liquid waste or waste containing free liquids shall [must] not be placed in a landfill.

(2) After May 8, 1985, liquid waste or waste containing free liquids whether or not absorbents have been added, shall [which is mixed with an absorbent solid may] not be placed in landfills.

(3) Containers holding free liquids shall [must] not be placed in a landfill unless:

(a) All freestanding liquid:

1. Has been removed by decanting, or other methods; or

2. Has been otherwise eliminated; or

(b) The container is very small, such as an ampule; or

(c) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(d) The container is a lab pack as defined in Section 11 of this regulation and is disposed of in accordance with Section 11 of this regulation.

(4) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test shall [must] be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," (EPA Publication No. SW-846) which is referenced [incorporated by reference] in Section 3 of 401 KAR 30:010.

Section 10. Special Requirements for Containers. Unless they are very small, such as an ampule, containers shall [must] be either:

(1) At least ninety (90) percent full when placed in the landfill; or

(2) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

Section 11. Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs). Small containers of hazardous waste in overpacked drums (lab packs) may be placed in a landfill if the following requirements are met:

(1) Hazardous waste shall [must] be packaged in nonleaking inside containers. The inside containers shall [must] be of a design and constructed of a material that shall [will] not react dangerously with, be decomposed by, or be ignited by the contained waste. Inside containers shall [must] be tightly and securely sealed. The inside containers shall [must] be of the size and type specified in the Department of Transportation (DOT) hazardous materials regulations (49 CFR Parts 173, 178, and 179, 1990), if those regulations specify a particular inside container for the waste.

(2) The inside containers shall [must] be overpacked in an open head DOT-specification metal shipping container (49 CFR Parts 178 and 179, 1990) of no more than 416-liter (approximately 110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of absorbent material to completely absorb all of the liquid contents of the inside containers. The metal outer container shall [must] be full after packing with inside containers and absorbent material.

(3) The absorbent material used shall [must] not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers in accordance with Section 8(2) of 401 KAR 34:020.

(4) Incompatible wastes, as defined in 401 KAR 30:010, shall [must] not be placed in the same outside container.

(5) Reactive wastes, other than cyanide-bearing or sulfide-bearing waste as defined in Section 4 of 401 KAR 31:030 shall [must] be treated or rendered nonreactive prior to packaging in accordance with subsections (1) through (4) of this section. Cyanide-bearing and sulfide-bearing reactive waste may be packed in accordance with subsections (1) through (4) of this section upon approval of the cabinet without first being treated or rendered nonreactive.

Section 12. Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026, and F027.

(1) Hazardous waste numbers F020, F021, F022, F023, F026, and F027 (chlorinated dioxins, chlorinated dibenzofurans, and chlorinated phenols) shall [must] not be placed in a landfill unless the owner or operator operates the landfill in accordance with a management plan for these wastes that is approved by the cabinet pursuant to the standards set out in this section, and in accordance with all other applicable requirements of this chapter. The factors to be considered are:

(a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(b) The attenuative properties of underlying and surrounding soils or other materials;

(c) The mobilizing properties of other materials codisposed with these wastes; and

(d) The effectiveness of additional treatment, design, or monitoring requirements.

(2) The cabinet may determine that additional design, operating, and monitoring requirements are necessary for landfills managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

CARL H. BRADLEY, Secretary

FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: June 13, 1991

FILED WITH LRC: June 14, 1991 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1991, at 10 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below, by July 22, 1991, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Hale. Written comments must be

received by Mr. Hale no later than 4:30 p.m. on July 25, 1991. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Hale

(1) Type and number of entities affected: This regulation affects owners and operators of hazardous waste landfills.

(a) Direct and indirect costs or savings to those affected:

1. First year: The toxicity characteristic (TC) requirements replace the extraction procedure toxicity analysis (EP) with a new extraction procedure, toxicity characteristic leaching procedure (TCLP). TCLP adds 25 new organic constituents to the 8 metals and 6 pesticides on the EP list of regulated constituents. A TCLP analysis will cost approximately \$5,000, whereas the EP analysis costs approximately \$3,000. By adding new wastes to the universe of regulated wastes, this regulation will affect generators and treatment, storage, and disposal facilities already operating under RCRA as well as waste handlers not previously regulated. First year costs will vary based on the status of the facility or generator. New hazardous waste handlers will experience costs in complying with full hazardous waste regulations. This cost was previously not experienced as the waste was not considered hazardous.

2. Continuing costs or savings: First year costs will continue as different types of generators and facilities are transitioned into the requirements. Permit fees as well as costs associated with storage and handling of hazardous waste will be experienced.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The TCLP requirements subject new wastes to regulatory control under RCRA. It does not introduce new requirements for the management of hazardous waste. These HSWA regulations became effective at the federal level September 25, 1990. There are no additional or different costs associated with the Kentucky regulations.

(b) Reporting and paperwork requirements: The regulated community will be required to notify the cabinet by either a permit modification, permit application, or notification. These newly regulated wastes will be subject to full recordkeeping and reporting requirements associated with the hazardous waste program.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional costs will be experienced by the cabinet as more wastes will be considered hazardous and will enlarge the scope of the hazardous waste program.

2. Continuing costs or savings: First year costs will continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The cabinet will experience increased permitting and generator notification activity.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment adopts verbatim changes to 40 CFR 264.301(e)(1) as published in the March 29, 1990, Federal Register.

Alternative: 1. Less stringent: The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent: More stringent requirements were not adopted because these regulations adequately protect human health and the environment.

3. Present proposal: The present proposal includes changes based on EPA's comments to Kentucky's application for authorization for HSWA I. The amendments also include changes published in the March 29, 1990, Federal Register concerning the toxicity characteristic leaching procedure, and changes mandated by KRS Chapter 13A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which conflict, overlap or duplicate this administrative 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: There is no additional information.

TIERING: Was tiering applied? Yes. This administrative regulation is tiered to apply to hazardous waste landfills.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendments adopt the March 29, 1990 Federal Register amendments to 40 CFR 264.301(e)(1).

2. State compliance standards. The proposed amendments to the administrative regulation include changes based on EPA's comments to Kentucky's application for authorization for HSWA I. The amendments also include changes published in the March 29, 1990, Federal Register concerning the toxicity characteristic leaching procedure, and changes mandated by KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate replaces the extraction procedure toxicity test with the toxicity characteristic leaching procedure. Kentucky has adopted this requirement identically.

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 amendment is identical to federal regulations at 40 CFR 264.301(e)(1) as published in the March 29, 1990, Federal Register.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment is identical to federal regulations, and does not impose stricter standards.

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

401 KAR 35:200. Surface impoundments (IS).

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 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, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. KRS 224.867 requires that corrective action shall [must] be initiated prior to permit issuance, renewal or amendment; groundwater monitoring and corrective action requirements applicable to new surface impoundments are applicable to interim status surface impoundments which continue to receive waste after July 26, 1982; additional requirements necessary to protect public health and the environment may be imposed at existing surface impoundments; and air emissions at surface impoundments may be regulated, monitored or controlled. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes minimum standards for surface impoundments.

Section 1. Applicability. The requirements in this regulation apply to owners and operators of sites or facilities that use surface impoundments to treat, store or dispose of hazardous waste, except as Section 1 of 401 KAR 35:010 provides otherwise.

Section 2. General Operating Requirements. A surface impoundment shall [must] maintain enough freeboard to prevent any overtopping of the dike by overfilling, wave action, or a storm. There shall [must] be at least sixty (60) centimeters (approximately two (2) feet) of freeboard.

Section 3. Containment System. All earthen dikes shall [must] have a protective cover, such as grass, shale or rock, to minimize wind and water erosion and to preserve their structural integrity.

Section 4. Waste Analysis and Trial Tests. In addition to the waste analyses required by Section 4 of 401 KAR 35:020, whenever a surface impoundment is to be used to:

(1) Chemically treat a hazardous waste which is substantially different from waste previously treated in that impoundment; or

(2) Chemically treat hazardous waste with a substantially different process than any previously used in that impoundment, the owner or operator shall [must], before treating the different waste or using the different process:

(a) Conduct waste analyses and trial treatment tests (e.g., bench scale or pilot scale tests), or

(b) Obtain written, documented information on similar treatment of similar waste under similar

operating conditions, to show that this treatment shall [will] comply with Section 8(2) of 401 KAR 35:020.

Section 5. Inspections. The owner or operator shall [must] inspect:

(1) The freeboard level at least once each operating day to ensure compliance with Section 2 of this regulation; and

(2) The surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration or failures in the impoundment.

Section 6. Closure and Postclosure Care. (1) At closure, the owner or operator shall [must]:

(a) Remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless Section 3(4) of 401 KAR 31:010 applies; or

(b) Close the impoundment and provide postclosure care for a landfill under 401 KAR 35:070 and Section 4 of 401 KAR 35:230 including the following:

1. Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

2. Stabilize remaining wastes to a bearing capacity sufficient to support the final cover; and

3. Cover the surface impoundment with a final cover designed and constructed to:

a. Provide long-term minimization of the migration of liquids through the closed impoundment;

b. Function with minimum maintenance;

c. Promote drainage and minimize erosion or abrasion of the cover;

d. Accommodate settling and subsidence so that the cover's integrity is maintained; and

e. Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(2) In addition to the requirements of 401 KAR 35:070 and Section 4 of 401 KAR 35:230 during the postclosure care period, the owner or operator of a surface impoundment in which wastes, waste residues, or contaminated materials remain after closure in accordance with the provisions of subsection (1)(b) of this section shall [must]:

(a) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events;

(b) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of 401 KAR 35:060; and

(c) Prevent run-on and run-off from eroding or otherwise damaging the final cover.

Section 7. Special Requirements for Ignitable or Reactive Waste. Ignitable or reactive waste shall [must] not be placed in a surface impoundment unless:

(1) The waste is treated, rendered or mixed before placement in the impoundment so that: the resulting waste mixture no longer meets the definition of ignitable or reactive waste under Section 2 or 4 of 401 KAR 31:030; or

(2) The surface impoundment is used solely for emergencies.

Section 8. Special Requirements for Incompatible Wastes. Incompatible wastes or incompatible wastes and materials (see 401 KAR 35:330 for examples) shall [must] not be placed in the same surface impoundment.

Section 9. Recordkeeping. The owner or operator shall [must] record the level of liquid in the surface impoundment every day with respect to a fixed reference elevation.

Section 10. Design Requirements. (1) The owner or operator of a surface impoundment shall [must] install two (2) or more liners and a leachate collection system in accordance with Section 2(3) of 401 KAR 34:200, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

(2) The owner or operator of each unit referred to in subsection (1) of this section shall [must] notify the cabinet at least sixty (60) days prior to receiving waste. The owner or operator of each facility submitting notice shall [must] file a Part B application within six (6) months of the receipt of such notice by the cabinet.

(3) Subsection (1) of this section shall [will] not apply if the owner or operator demonstrates to the cabinet and the cabinet finds for such surface impoundment, that alternative design and operating practices, together with location characteristics, shall [will] prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(4) The double liner requirement set forth in subsection (1) of this section may be waived by the cabinet for any monofill, if:

(a) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the [EPA] toxicity characteristic in Section 5 of 401 KAR 31:030, with EPA hazardous waste numbers D004 through D017; and

(b) The owner or operator demonstrates that:

1. The monofill:

a. Has at least one (1) liner for which there is no evidence that such liner is leaking. For the purposes of this regulation the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of subsection (1) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment the owner or operator shall [must] remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator

of such impoundment shall [must] comply with appropriate postclosure requirements, including but not limited to ground water monitoring and corrective action;

b. Is located more than one-fourth (1/4) mile from an underground source of drinking water (as that term is defined in 401 KAR 30:010); and

c. Is in compliance with generally applicable ground water monitoring requirements for facilities with permits issued in accordance with 401 KAR Chapter 38; or

2. The monofill is located, designed and operated so as to assure that there shall [will] be no migration of any hazardous constituent into ground water or surface water at any future time.

3. In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of subsection (1) of this section and in good faith for compliance with subsection (1) of this section and with guidance documents governing liners and leachate collection systems under subsection (1) of this section, no liner or leachate collection system which is different from that which was so installed pursuant to subsection (1) of this section shall [will] be required for such unit by the cabinet when issuing the first permit to such facility, except that the cabinet not be precluded from requiring installation of a new liner when the cabinet has reason to believe that any liner installed pursuant to the requirements of subsection (1) of this section is leaking.

CARL H. BRADLEY, Secretary

FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: June 13, 1991

FILED WITH LRC: June 14, 1991 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1991, at 10 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below, by July 22, 1991, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on July 25, 1991. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Hale

(1) Type and number of entities affected: This regulation affects owners and operators of hazardous waste surface impoundments with interim status.

(a) Direct and indirect costs or savings to those affected:

1. First year: The toxicity characteristic (TC) requirements replace the extraction procedure toxicity analysis (EP) with a new

extraction procedure, toxicity characteristic leaching procedure (TCLP). TCLP adds 25 new organic constituents to the 8 metals and 6 pesticides on the EP list of regulated constituents. A TCLP analysis will cost approximately \$5,000, whereas the EP analysis costs approximately \$3,000. By adding new wastes to the universe of regulated wastes, this regulation will affect generators and treatment, storage, and disposal facilities already operating under RCRA as well as waste handlers not previously regulated. First year costs will vary based on the status of the facility or generator. New hazardous waste handlers will experience costs in complying with full hazardous waste regulations. This cost was previously not experienced as the waste was not considered hazardous.

2. Continuing costs or savings: First year costs will continue as different types of generators and facilities are transitioned into the requirements. Permit fees as well as costs associated with storage and handling of hazardous waste will be experienced.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The TCLP requirements subject new wastes to regulatory control under RCRA. It does not introduce new requirements for the management of hazardous waste. These HSWA regulations became effective at the federal level September 25, 1990. There are no additional or different costs associated with the Kentucky regulations.

(b) Reporting and paperwork requirements: The regulated community will be required to notify the cabinet by either a permit modification, permit application, or notification. These newly regulated wastes will be subject to full recordkeeping and reporting requirements associated with the hazardous waste program.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional costs will be experienced by the cabinet as more wastes will be considered hazardous and will enlarge the scope of the hazardous waste program.

2. Continuing costs or savings: First year costs will continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The cabinet will experience increased permitting and generator notification activity.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendments adopt verbatim federal regulation 40 CFR 265.221(d)(1) as published in the March 29, 1990, Federal Register.

Alternative: 1. Less stringent: The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent: More stringent requirements were not adopted because these regulations adequately protect human health and the environment.

3. Present proposal: The present proposal includes changes based on requirements specified in KRS Chapter 13A, and Federal Register

amendments to 40 CFR 265.221(d)(1) published March 29, 1990, concerning the toxicity characteristic leaching procedure.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which conflict, overlap or duplicate this administrative 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: There is no additional information.

TIERING: Was tiering applied? Yes. This regulation is tiered to apply to interim status surface impoundments.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendment to this regulation adopts the March 29, 1990 Federal Register amendments to 40 CFR 265.221(d)(1).

2. State compliance standards. The proposed amendments to this administrative regulation include changes based on requirements specified in KRS Chapter 13A and the Federal Register amendments to 40 CFR 265.221(d)(1) published March 29, 1990, concerning the toxicity characteristic leaching procedure (TCLP).

3. Minimum or uniform standards contained in the federal mandate. The federal mandate replaces the extraction procedure toxicity test with the toxicity characteristic leaching procedure. Kentucky has adopted this requirement identically.

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 amendment is identical to federal regulations at 40 CFR 265.221(d)(1) as published in the March 29, 1990, Federal Register.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment is identical to federal regulations, and does not impose stricter standards.

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

401 KAR 35:220. Land treatment (IS).

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.866

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 minimum standards for land treatment.

Section 1. Applicability. The requirements in this regulation apply to owners and operators of hazardous waste land treatment facilities, except as Section 1 of 401 KAR 35:010 provides otherwise.

Section 2. General Operating Requirements. (1) Hazardous waste shall [must] not be placed in or on a land treatment facility unless the waste can be made less hazardous or nonhazardous by degradation, transformation or immobilization processes occurring in or on the soil.

(2) The owner or operator shall [must] design, construct, operate and maintain a run-on control system capable of preventing flow onto the active portions of the facility during peak discharge from at least a twenty-five (25) year storm.

(3) The owner or operator shall [must] design, construct, operate and maintain a run-off management system capable of collecting and controlling a water volume at least equivalent to a twenty-four (24) hour, twenty-five (25) year storm.

(4) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems shall [must] be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(5) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator shall [must] manage the unit to control wind dispersal.

Section 3. Waste Analysis. In addition to the waste analyses required by Section 4 of 401 KAR 35:020, before placing a hazardous waste in or on a land treatment facility, the owner or operator shall [must]:

(1) Determine the concentrations in the waste of any substances which equal or exceed the maximum concentrations contained in Table 1 of 401 KAR 31:030, Section 5(3), that cause a waste to exhibit the [EP] toxicity characteristic;

(2) For any waste listed in 401 KAR 31:040, determine the concentrations of any substances which caused the waste to be listed as a hazardous waste; and

(3) If food chain crops are grown, determine the concentrations in the waste of each of the following constituents: arsenic, cadmium, lead, and mercury, unless the owner or operator has written, documented data that show that the constituent is not present.

Section 4. Food Chain Crops. (1) An owner or operator of a hazardous waste land treatment facility on which food chain crops are being grown, or have been grown and shall [will] be grown in the future, shall [must] notify the cabinet within sixty (60) days after January 7, 1981.

(2)(a) Food chain crops shall [must] not be grown on the treated area of a hazardous waste land treatment facility unless the owner or operator can demonstrate, based on field testing, that any arsenic, lead, mercury or other constituents identified under Section 3(2) of this regulation:

1. Shall [Will] not be transferred to the food portion of the crop by plant uptake or direct contact, and shall [will] not otherwise be ingested by food chain animals (e.g., by grazing); or

2. Shall [Will] not occur in greater concentrations in the crops grown on the land treatment facility than in the same crops grown on untreated soils under similar conditions in the same region.

(b) The information necessary to make the demonstration required by paragraph (a) of this subsection shall [must] be kept at the land treatment facility and shall [must], at a minimum:

1. Be based on tests for the specific waste and application rates being used at the land treatment facility; and

2. Include descriptions of crop and soil characteristics, sample selection criteria, sample size determination, analytical methods and statistical procedures.

(3) Food chain crops shall [must] not be grown on a land treatment facility receiving waste that contains cadmium unless all requirements of either paragraph (a) of this subsection or all requirements of paragraph (b) of this subsection are met.

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

2. The annual application of cadmium from waste does not exceed five-tenths (0.5) kilograms per hectare (kg/ha) on land used for production of tobacco, leafy vegetables or root crops grown for human consumption. For other food chain crops, the annual cadmium application rate does not exceed:

Table 1

Time Period	Annual Cd applicable rate (kg/ha)
Present to June 30, 1984	2.0
July 1, 1984-December 31, 1986.....	1.25
Beginning Jan. 1, 1987	0.5

3. The cumulative application of cadmium from waste does not exceed the levels in either subparagraph 3a of this paragraph or subparagraph 3b of this paragraph.

a.

Table 2

Soil Cation Exchange Capacity (meq/100g)	Maximum Cumulative Application (kg/ha)	
	Background Soil pH Less than 6.5	Background Soil pH Greater than 6.5
Less than 5	5	5
5-15	5	10
Greater than 15	5	20

b. For soils with a background pH of less than six and five-tenths (6.5), the cumulative cadmium application rate does not exceed the levels in Table 3 provided that the pH of the

waste and soil mixture is adjusted and maintained at six and five-tenths (6.5) or greater whenever food chain crops are grown.

Table 3

Soil Cation Exchange Capacity (meq/100g)	Maximum Cumulative Application (kg/ha)
Less than 5	5
5-15	10
Greater than 15	20

(b)1. The only food chain crop produced is animal feed.

2. The pH of the waste and soil mixture is six and five-tenths (6.5) or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food chain crops are grown;

3. There is a facility operating plan which demonstrates how the animal feed shall [will] be distributed to preclude ingestion by humans. The facility operating plan describes the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses.

4. Future property owners are notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food chain crops shall [must] not be grown except in compliance with this paragraph.

Section 5. Unsaturated Zone (Zone of Aeration) Monitoring. (1) The owner or operator shall [must] have in writing, and shall [must] implement, an unsaturated zone monitoring plan which is designed to:

(a) Detect the vertical migration of hazardous waste and hazardous waste constituents under the active portion of the land treatment facility; and

(b) Provide information on the background concentrations of the hazardous waste and hazardous waste constituents in similar but untreated soils nearby; this background monitoring shall [must] be conducted before or in conjunction with the monitoring required under paragraph (a) of this subsection.

(2) The unsaturated zone monitoring plan shall [must] include, at a minimum:

(a) Soil monitoring using soil cores; and

(b) Soil-pore water monitoring using devices such as lysimeters.

(3) To comply with subsection (1)(a) of this section, the owner or operator shall [must] demonstrate in his unsaturated zone monitoring plan that:

(a) The depth at which soil and soil-pore water samples are to be taken is below the depth to which the waste is incorporated into the soil;

(b) The number of soil and soil-pore water samples to be taken is based on the variability of:

1. The hazardous waste constituents (as identified in Section 3(1) and (2) of this regulation) in the waste and in the soil; and

2. The soil type[(s)]; and

(c) The frequency and timing of soil and soil-pore water sampling is based on the frequency, time and rate of waste application, proximity to groundwater and soil permeability.

(4) The owner or operator shall [must] keep at

the facility his unsaturated zone monitoring plan, and the rationale used in developing this plan.

(5) The owner or operator shall [must] analyze the soil and soil-pore water samples for the hazardous waste constituents that were found in the waste during the waste analysis under Section 3(1) and (2) of this regulation.

Section 6. Recordkeeping. The owner or operator shall [must] include hazardous waste application dates and rates in the operating record required under Section 4 of 401 KAR 35:050.

Section 7. Closure and Postclosure. (1) In the closure plan under Section 3 of 401 KAR 35:070 and the postclosure plan under Section 9 of 401 KAR 35:070, the owner or operator shall [must] address the following objectives and indicate how they shall [will] be achieved:

(a) Control of the migration of hazardous waste and hazardous waste constituents from the treated area into the groundwater;

(b) Control of the release of contaminated run-off from the land treatment facility into surface water;

(c) Control of the release of airborne particulate contaminants caused by wind erosion; and

(d) Compliance with Section 4 of this regulation concerning the growth of food chain crops.

(2) The owner or operator shall [must] consider at least the following factors in addressing the closure and postclosure care objectives of subsection (1) of this section:

(a) Type and amount of hazardous waste and hazardous waste constituents applied to the land treatment facility;

(b) The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(c) Site location, topography and surrounding land use with respect to the potential effects of pollutant migration (e.g., proximity to groundwater, surface water and drinking water sources);

(d) Climate, including amount, frequency and pH of precipitation;

(e) Geological and soil profiles and surfaces and subsurface hydrology of the site and soil characteristics including cation exchange capacity, total organic carbon and pH;

(f) Unsaturated zone monitoring information obtained under Section 5 of this regulation; and

(g) Type, concentration and depth of migration of hazardous waste constituents in the soil as compared to their background concentrations.

(3) The owner or operator shall [must] consider at least the following methods in addressing the closure and postclosure care objectives of subsection (1) of this section:

(a) Removal of contaminated soils;

(b) Placement of a final cover considering:

1. Functions of the cover (e.g., infiltration control, erosion and run-off control and wind erosion control); and

2. Characteristics of the cover including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope and type of vegetation on the cover; and

(c) Monitoring of groundwater.

(4) In addition to the requirements of 401 KAR 35:070, during the closure period the owner or

operator of a land treatment facility shall [must]:

(a) Continue unsaturated zone monitoring in a manner and frequency specified in the closure plan;

(b) Maintain the run-on control system required under Section 2(2) of this regulation;

(c) Maintain the run-off management system required under Section 2(3) of this regulation; and

(d) Control wind dispersal of particulate matter which may be subject to wind dispersal.

(5) For the purpose of complying with Section 6 of 401 KAR 35:070, when closure is completed the owner or operator may submit to the cabinet certification both by the owner or operator and by an independent qualified soil scientist, in lieu of an independent professional engineer who is registered in Kentucky, that the facility has been closed in accordance with the specifications in the approved closure plan.

(6) In addition to the requirements of Section 8 of 401 KAR 35:070, during the postclosure care period the owner or operator of a land treatment facility shall [must]:

(a) Continue soil-core monitoring by collecting and analyzing samples in a manner and frequency specified in the postclosure plan;

(b) Restrict access to the land treatment facility as appropriate for its postclosure use;

(c) Assure that growth of food chain crops complies with Section 4 of this regulation; and

(d) Control wind dispersal of hazardous waste.

Section 8. Special Requirements for Ignitable or Reactive Waste. Ignitable or reactive waste shall [must] not be land treated unless the waste is immediately incorporated into the soil so that:

(1) The resulting waste, mixture or dissolution of material no longer meets the definition of ignitable or reactive waste under Section 2 or 4 of 401 KAR 31:030; and

(2) Section 8(2) of 401 KAR 35:020 is complied with.

Section 9. Special Requirements for Incompatible Wastes. Incompatible wastes, or incompatible wastes and materials (see 401 KAR 35:330 for examples), shall [must] not be placed in the same land treatment area.

CARL H. BRADLEY, Secretary

FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: June 13, 1991

FILED WITH LRC: June 14, 1991 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1991, at 10 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below, by July 22, 1991, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr Hale. Written comments must be

received by Mr. Hale no later than 4:30 p.m. on July 25, 1991. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Hale

(1) Type and number of entities affected: This regulation applies to owners and operators of interim status hazardous waste land treatment facilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: The toxicity characteristic (TC) requirements replace the extraction procedure toxicity analysis (EP) with a new extraction procedure, toxicity characteristic leaching procedure (TCLP). TCLP adds 25 new organic constituents to the 8 metals and 6 pesticides on the EP list of regulated constituents. A TCLP analysis will cost approximately \$5,000, whereas the EP analysis costs approximately \$3,000. By adding new wastes to the universe of regulated wastes, this regulation will affect generators and treatment, storage, and disposal facilities already operating under RCRA as well as waste handlers not previously regulated. First year costs will vary based on the status of the facility or generator. New hazardous waste handlers will experience costs in complying with full hazardous waste regulations. This cost was previously not experienced as the waste was not considered hazardous.

2. Continuing costs or savings: First year costs will continue as different types of generators and facilities are transitioned into the requirements. Permit fees as well as costs associated with storage and handling of hazardous waste will be experienced.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The TCLP requirements subject new wastes to regulatory control under RCRA. It does not introduce new requirements for the management of hazardous waste. These HSWA regulations became effective at the federal level September 25, 1990. There are no additional or different costs associated with the Kentucky regulations.

(b) Reporting and paperwork requirements: The regulated community will be required to notify the cabinet by either a permit modification, permit application, or notification. These newly regulated wastes will be subject to full recordkeeping and reporting requirements associated with the hazardous waste program.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional costs will be experienced by the cabinet as more wastes will be considered hazardous and will enlarge the scope of the hazardous waste program.

2. Continuing costs or savings: First year costs will continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The cabinet will experience increased permitting and generator notification activity.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of

this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendments to this regulation adopt the March 29, 1990, Federal Register amendments to 40 CFR 265.273(a).

Alternative: 1. Less stringent: The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent: More stringent requirements were not adopted because these regulations adequately protect human health and the environment.

3. Present proposal: The present proposal includes changes based on KRS Chapter 13A, and the Federal Register published March 29, 1990, concerning the toxicity characteristic leaching procedure (TCLP).

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which conflict, overlap or duplicate this administrative 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: There is no additional information.

TIERING: Was tiering applied? Yes. This regulation is tiered to provide requirements for interim status hazardous waste land treatment facilities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendments to this regulation adopt the March 29, 1990 Federal Register amendments to 40 CFR 265.273(a).

2. State compliance standards. The proposed amendments to this administrative regulation include changes based on KRS Chapter 13A, and the Federal Register published March 29, 1990, concerning the toxicity characteristic leaching procedure (TCLP) test.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate replaces the extraction procedure toxicity test with the toxicity characteristic leaching procedure. Kentucky has adopted this requirement identically.

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 amendment is identical to federal regulations at 40 CFR 265.273(a) as published in the March 29, 1990, Federal Register.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment is identical to federal regulations, and does not impose stricter standards.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)**

401 KAR 35:240. Incinerators (IS).

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.866

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 minimum standards for incinerators.

Section 1. Applicability. (1) The requirements in this regulation apply to owners and operators of sites or facilities that incinerate hazardous waste, except as Section 1 of 401 KAR 35:010 provides otherwise. The following facility owners or operators are considered to incinerate hazardous waste:

(a) Owners or operators of hazardous waste incinerators as defined in 401 KAR 30:010; and

(b) Owners or operators who burn hazardous wastes in boilers or in industrial furnaces in order to destroy them, or who burn hazardous waste in boilers or in industrial furnaces for any recycling purpose and elect to be regulated under this regulation.

(2) Owners and operators of incinerators burning hazardous waste are exempt from all of the requirements of this regulation, except Section 5 of this regulation, provided that the owner or operator has documented, in writing that the waste shall [would] not reasonably be expected to contain any of the hazardous constituents listed in 401 KAR 31:170, and the [such] documentation is retained at the facility, if the waste to be burned is:

(a) Listed as a hazardous waste in 401 KAR 31:040 solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or

(b) Listed as a hazardous waste in 401 KAR 31:040 solely because it is reactive (Hazard Code R) for characteristics other than those listed in Section 4(1)(d) and (e) of 401 KAR 31:030, and shall [will] not be burned when other hazardous wastes are present in the combustion zone; or

(c) A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under 401 KAR 31:030; or

(d) A hazardous waste solely because it possesses the reactivity characteristics described by Section 4(1)(a), (b), (c), (f), (g), or (h) of 401 KAR 31:030, and shall [will] not be burned when other hazardous wastes are present in the combustion zone.

Section 2. Waste Analysis. In addition to the waste analyses required by Section 4 of 401 KAR

35:020, the owner or operator shall [must] sufficiently analyze any waste which he has not previously burned in his incinerator to enable him to establish steady state (normal) operating conditions (including waste and auxiliary fuel feed and air flow) and to determine the type of pollutants which might be omitted. At a minimum, the analysis shall [must] determine:

- (1) Heating value of the waste;
- (2) Halogen content and sulfur content in the waste; and
- (3) Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

Section 3. General Operating Requirements. During start-up and shutdown of an incinerator, the owner or operator shall [must] not feed hazardous waste unless the incinerator is at steady state (normal) conditions of operation, including steady state operating temperature and air flow.

Section 4. Monitoring and Inspections. The owner or operator shall [must] conduct, at a minimum, the following monitoring and inspections when incinerating hazardous waste:

(1) Existing instruments which relate to combustion and emission control shall [must] be monitored at least every fifteen (15) minutes. Appropriate corrections to maintain steady state combustion conditions shall [must] be made immediately either automatically or by the operator. Instruments which relate to combustion and emission control would normally include those measuring waste feed, auxiliary fuel feed, air flow, incinerator temperature, scrubber flow, scrubber pH and relevant level controls.

(2) The complete incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) shall [must] be inspected at least daily for leaks, spills and fugitive emissions, and all emergency shutdown controls and system alarms shall [must] be checked to assure proper operation.

Section 5. Closure. At closure, the owner or operator shall [must] remove all hazardous waste and hazardous waste residues (including but not limited to ash, scrubber waters, and scrubber sludges) from the incinerator.

Section 6. Interim Status Incinerators Burning Particular Hazardous Wastes. (1) Owners or operators of incinerators subject to this regulation may burn EPA Hazardous Wastes Numbers F020, F021, F023, F026, or F027 (chlorinated dioxins, dibenzofurans, and phenols) if they receive a certification from the cabinet that they can meet the performance standards of 401 KAR 34:240 when they burn these wastes.

(2) The following standards and procedures shall [will] be used in determining whether to certify an incinerator:

(a) The owner or operator shall [will] submit an application to the cabinet containing applicable information in 401 KAR 38:190 and Section 3 of 401 KAR 38:060 demonstrating that the incinerator can meet the performance standards in 401 KAR 34:240 when they burn these wastes.

(b) The cabinet shall [will] issue a tentative decision as to whether the incinerator can meet the performance standards in 401 KAR 34:240.

Notification of this tentative decision shall [will] be provided by newspaper advertisement and radio broadcast in the jurisdiction where the incinerator is located. The cabinet shall [will] accept comment on the tentative decision for sixty (60) days. The cabinet also may hold a public hearing upon request or at the cabinet's discretion.

(c) After the close of the public comment period, the cabinet shall [director will] issue a decision whether or not to certify the incinerator.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: June 13, 1991

FILED WITH LRC: June 14, 1991 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1991, at 10 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below, by July 22, 1991, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on July 25, 1991. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Hale

(1) Type and number of entities affected: The proposed regulation affects incinerators with interim status. There are presently three such facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendments to this regulation are typographical in nature and there is 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 reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendments to this regulation are typographical in nature and there is 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 additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendments are typographical corrections.

Alternative: 1. Less stringent: The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent: The proposed amendments make technical corrections to the regulation and are not more stringent. The adoption of more stringent requirements is not necessary at this time.

3. Present proposal: The present proposal is in response to EPA comments on Kentucky's authorization application for HSWA Cluster I requirements. Changes have also been made in response to KRS Chapter 13A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting, overlapping, or duplicating statutes, governmental policy, or administrative 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: There are no additional comments.

TIERING: Was tiering applied? Yes. This regulation applies only to hazardous waste incinerators with interim status.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendments to this regulation are typographical and cite corrections found in 40 CFR 265.352.

2. State compliance standards. The proposed amendments to this regulation are in response to EPA comments on Kentucky's HSWA I authorization application. Changes have also been made in response to KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)**

401 KAR 37:100. Appendix on treatment standards.

RELATES TO: KRS 224.033, 224.060, 224.071, 224.830 through 224.877, 224.994, 40 CFR PART 261 Appendix II

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.862, 224.866, 224.867

NECESSITY AND FUNCTION: KRS 224.866 requires that the cabinet may prohibit the land disposal of any hazardous wastes. KRS 224.866 requires that the cabinet allow land disposal of hazardous wastes when the disposal methods have been determined by the cabinet to be protective of human health and the environment for as long as the waste remains hazardous. This chapter establishes land disposal restrictions and treatment standards for hazardous wastes. This regulation contains the appendix to this chapter concerning treatment standards.

Section 1. Toxicity Characteristic Leaching Procedure (TCLP). The toxicity characteristic leaching procedure is published in Appendix II of 40 CFR Part 261 (1990) and adopted without change in 401 KAR 31:110. [Appendix I of 40 CFR Part 268 (51 FR 40643-40652 dated November 7, 1986 and 52 FR 21010-21018 dated June 4, 1987) on the method used to determine whether a solvent waste or a dioxin containing waste requires treatment or when a treated waste meets the applicable treatment standards and the corrections thereto are herein adopted by reference and are included in Section 3(5) of 401 KAR 30:010.]

Section 2. Treatment Standards (as Concentrations in the Treatment Residual Extract). Table 1 in this section provides cabinet guidance on treatment methods that have been shown to achieve the levels for the respective wastes included in Table 1 (Constituent Concentrations in Waste Extract) of Section 3 of 401 KAR 37:040. This section is provided to assist generators and owners and operators in their selection of appropriate treatment methods, but does not impose regulatory standards.

TABLE 1
TREATMENT STANDARDS (AS CONCENTRATIONS IN THE TREATMENT RESIDUAL EXTRACT)

(Note: The technologies shown are the basis of the treatment standards.
They are not required to be used in meeting the treatment standards.)

Waste Treatability Groups for F001-F005 Spent Solvent Wastes (mg/l)				
Constituents of F001-F005 Spent Solvent Wastes	Wastewater	Technology Basis ¹	Wastewater Generated by Pharmaceutical Plant ²	All Other ³
Acetone	0.05	SS	-	0.59
n-Butyl alcohol	5.00	SS	-	5.00
Carbon disulfide	1.05	SS	-	4.81
Carbon tetrachloride	0.05	B	-	0.96
Chlorobenzene	0.15	B&AC	-	0.05
Cresols (cresylic acid)	2.82	AC	-	0.75
Cyclohexanone	0.125	SS	-	0.75
1,2-Dichlorobenzene	0.65	B&AC	-	0.125
Ethyl acetate	0.05	SS	-	0.75
Ethylbenzene	0.05	B	-	0.053
Ethyl ether	0.05	SS	-	0.75
Isobutanol	5.00	SS	-	5.00
Methanol	0.25	SS	-	0.75
Methylene chloride	0.20	B	12.7	0.96
Methyl ethyl ketone	0.05	SS	-	0.75
Methyl isobutyl ketone	0.05	SS	-	0.33
Nitrobenzene	0.66	SS&AC	-	0.125
Pyridine	1.12	B&AC	-	0.33
Tetrachloroethylene	0.079	B	-	0.05
Toluene	1.12	B&AC	-	0.33
1,1,1-Trichloroethane	1.05	SS	-	0.41
1,1,2-Trichloro-1,2,2-Trifluoroethane	1.05	SS	-	0.96
Trichloroethylene	0.062	B&AC	-	0.091
Trichlorofluoromethane	0.05	B	-	0.96
Xylene	0.05	AC	-	0.15

¹In some instances other technologies achieved somewhat lower treatment values but waste characterization data were insufficient to identify separate treatability groups. Refer to the BDAT background document (NTIS order number PB87120259) for a detailed explanation of the determination of the treatment standards.

SS = steam stripping.

B = biological treatment.

AC = activated carbon.

²Wastewaters generated by pharmaceutical plants shall [must] be treated to the standards given for all other wastewaters except in the case of methylene chloride.

³The treatment standards in this treatability group are based on incineration.

CARL H. BRADLEY, Secretary

FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: June 13, 1991

FILED WITH LRC: June 14, 1991 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1991, at 10 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below, by July 22, 1991, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on July 25, 1991. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Hale

(1) Type and number of entities affected: This regulation affects generators of hazardous waste. There presently are 434 full quantity generators, 534 small quantity generators, and 1104 limited quantity generators. It also affects treatment, storage, and disposal facilities. There are 100 such facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The toxicity characteristic (TC) requirements replace the extraction procedure toxicity analysis (EP) with a new extraction procedure, toxicity characteristic leaching procedure (TCLP). TCLP adds 25 new organic constituents to the 8 metals and 6 pesticides on the EP list of regulated constituents. A TCLP analysis will cost approximately \$5,000, whereas the EP analysis costs approximately \$3,000. By adding new wastes to the universe of regulated wastes, this regulation will affect generators and treatment, storage, and disposal facilities already operating under RCRA as well as waste handlers not previously regulated. First year costs will vary based on the status of the facility or generator. New hazardous waste handlers will

experience costs in complying with full hazardous waste regulations. This cost was previously not experienced as the waste was not considered hazardous.

2. Continuing costs or savings: First year costs will continue as different types of generators and facilities are transitioned into the requirements. Permit fees as well as costs associated with storage and handling of hazardous waste will be experienced.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The TCLP requirements subject new wastes to regulatory control under RCRA. It does not introduce new requirements for the management of hazardous waste. These HSWA regulations became effective at the federal level September 25, 1990. There are no additional or different costs associated with the Kentucky regulations.

(b) Reporting and paperwork requirements: The regulated community will be required to notify the cabinet by either a permit modification, permit application, or notification. These newly regulated wastes will be subject to full recordkeeping and reporting requirements associated with the hazardous waste program.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional costs will be experienced by the cabinet as more wastes will be considered hazardous and will enlarge the scope of the hazardous waste program.

2. Continuing costs or savings: First year costs will continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The cabinet will experience increased permitting and generator notification activity.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment adopts the March 29, 1990, Federal Register amendments to 40 CFR 268 Appendix I. This regulation moves the actual publishing of the TCLP test to 401 KAR 31:110 where it has been adopted without change.

Alternative: 1. Less stringent: The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent: More stringent requirements were not adopted because these regulations adequately protect human health and the environment.

3. Present proposal: The present proposal includes amendments based on EPA comments to Kentucky's HSWA I authorization application (mostly typographical), a Federal Register published March 29, 1990, concerning the toxicity characteristic leaching procedure (TCLP) and changes required by KRS Chapter 13A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which conflict, overlap or duplicate this administrative 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: There is no additional information.

TIERING: Was tiering applied? Yes. The proposed amendments are tiered to apply to waste generators, and owners and operators of hazardous waste facilities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendments to this regulation adopt the March 29, 1990 Federal Register amendments to 40 CFR 268 Appendix I.

2. State compliance standards. The proposed amendments to this regulation include changes based on EPA's comments to Kentucky's HSWA I authorization application and the March 29, 1990, Federal Register concerning the toxicity characteristic leaching procedure (TCLP) test. Changes have also been made in response to KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate replaces the extraction procedure toxicity test with the toxicity characteristic leaching procedure. Kentucky has adopted this requirement identically.

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 amendment is identical to federal regulations at 40 CFR 268 Appendix I as published in the March 29, 1990, Federal Register.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment is identical to federal regulations, and does not impose stricter standards.

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

401 KAR 48:050. Siting requirements for solid waste landfills.

RELATES TO: KRS 224.005 through 224.110, 224.830 through 224.888, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.842

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt rules and regulations for the management, processing or disposal of wastes. KRS 224.842 requires that persons engaging in the storage, treatment, recycling and disposal of waste obtain a permit. This chapter establishes the minimum technical standards for solid waste sites or facilities. This regulation sets forth the siting requirements for [new] construction/demolition debris, contained, and residual landfills.

Section 1. Buffer Zones. Wastes shall not be placed:

(1) Within 250 feet of an intermittent or perennial stream unless a 401 water quality

certification has been issued pursuant to 401 KAR 5:029 through 401 KAR 5:031.

(2) Within the zone of collapse of deep-mine workings or within the critical angle of draw of such workings;

(3) Within 250 feet of a feature of karst terrain;

(4) Within 250 feet of the property line;

(5) Within 250 feet of a residence;

(6) Within fifty (50) feet of a gas, sewer or water line; and

(7) Within 250 feet of a unplugged well except monitoring wells.

Section 2. Seasonal High Groundwater Table.

(1) The lowest component of the bottom liner of new units of a landfill shall be at least four (4) feet above the seasonal high groundwater table.

(2) Wastes that leach heavy metals in concentrations exceeding the primary drinking water standards when analyzed using the [extraction procedure] toxicity characteristic leaching procedure test shall be placed no closer than five (5) feet above the seasonal high groundwater level.

Section 3. Flood Plains. (1) No person shall be issued a permit to construct a new contained landfill in the 100-year flood plain.

(2) Waste disposed in residual or construction/demolition debris landfills shall not be placed within the 100 year flood plain of the waters of the Commonwealth unless the applicant complies with Section 2 of 401 KAR 47:030 of the Environmental Performance Standards concerning base flow restriction, temporary water storage capacity reduction, and waste washout. Where available, empirical data shall be used to determine the frequency of flood exposure. Where data are not available, the frequency of flood exposure shall be established by the unit hydrograph technique.

Section 4. Airport Location Criteria. No new contained landfill shall be located within 10,000 feet of any airport runway used by turbojet aircraft or within 5,000 feet of any airport runway used by only piston-type aircraft and no landfill shall pose a bird hazard to aircraft.

Section 5. Fault Areas. Waste cells of a solid waste landfill shall not be located within 200 feet of a fault that has had displacement in holocene time.

Section 6. Site Suitability. Landfills shall not be permitted in any area unless the applicant can demonstrate to the satisfaction of the cabinet that:

(1) The uppermost aquifer is capable of being monitored in a manner that detects the presence of any constituent listed in Section 10 of 401 KAR 48:300; and

(2) Corrective action of the uppermost aquifer is capable of being performed in accordance with 401 KAR 48:300.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner

APPROVED BY AGENCY: June 13, 1991

FILED WITH LRC: June 14, 1991 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July

25, 1991, at 10 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below, by July 22, 1991, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on July 25, 1991. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Hale

(1) Type and number of entities affected: This regulation affects owners and operators of construction/demolition debris landfills, contained landfills, and residual landfills.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment replaces the EP test with the toxicity characteristic leaching procedure. This test adds new organic constituents to the eight metals and six pesticides on the EP list of regulated constituents. Additional costs will occur if the wastes leach heavy metals when analyzed due to the requirement that these wastes shall be placed no closer than five feet above the seasonal high groundwater level.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The TCLP costs slightly more than the EP test because the test reveals more constituents.

(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 additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendments correct a typographical error and replaces the EP test with the TCLP.

Alternative: 1. Less stringent: Less stringent standards will jeopardize the cabinet's ability to protect public health and the environment.

2. More stringent: More stringent standards are not necessary, and may affect local governments ability to manage solid waste.

3. Present proposal: The present proposal corrects a typographical error, and replaces the EP test with the TCLP.

(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 amendments.

(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 conflicting provision.

(6) Any additional information or comments: There are no additional comments.

TIERING: Was tiering applied? Yes. This regulation applies to construction/demolition, contained, and residual landfills. The regulations of 401 KAR Chapters 47 and 48 use multiple tiering systems. Permit-by-rule in 401 KAR 47:150, and registered permit-by-rule in 401 KAR 47:110 give certain practices and management activities a method of avoiding full permits. Emergency permits and research, development and demonstration permits in 401 KAR 47:150 provide permitting mechanisms for certain situations. The three types of solid waste landfill (contained, residual and construction/demolition debris) and the three classes of landfarming provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendment to this regulation is in response to a Federal Register published March 29, 1990, which replaces the extraction procedure toxicity test with the toxicity characteristic leaching procedure.

2. State compliance standards. Kentucky, in response to federal regulations published March 29, 1990, in the Federal Register, is replacing the extraction procedure test with the toxicity characteristic leaching procedure. Although this is a test to determine if a waste is hazardous, it directly impacts the solid waste program in Kentucky.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET
Office of the Secretary
(Proposed Amendment)

500 KAR 8:010. Certification of operators.

RELATES TO: KRS 15A.070, 186.565
STATUTORY AUTHORITY: KRS 15A.160

NECESSITY AND FUNCTION: KRS 186.565 provides that the state shall supply each county with one (1) breath analysis and simulating unit. KRS 15A.070 authorizes the Secretary of Justice to establish, supervise, and coordinate training programs for law enforcement personnel. This regulation establishes the certification of breath analysis operators.

Section 1. (1)(a) To become certified to operate a breath alcohol analysis instrument, the person shall successfully complete the training program of the Department of Criminal Justice Training or the Department of State Police.

(b) The Department of State Police shall not provide training on operation of breath alcohol analysis instruments to any law enforcement officers other than its own employees.

(2) Successful completion shall mean receiving a passing score on a standardized written examination as provided by the department providing the training and the satisfactory completion of a standardized practical proficiency examination administered by a certified instructor or an intoxilyzer service technician employed by the department providing the training.

(3) The examinations shall be included in a minimum of forty (40) hours of instruction which shall also include the demonstration of physiological effects of alcohol in the human body, general instrumentation theory, and operation of approved instruments which measure alcohol concentration.

Section 2. (1) Operator certification shall be valid for a period of two (2) years from the date of issuance.

(2) Certification shall be terminated if it is not renewed with a two (2) year period or the operator ceases to be employed by a criminal justice agency.

(3) An operator whose certification has been revoked pursuant to this section shall be eligible for recertification pursuant to Section 4 of this regulation for six (6) months following revocation.

Section 3. The employer of a certified operator shall notify the Department of Criminal Justice Training which issued the certificate in writing within two (2) weeks of the change in the event of change of employment to a different criminal justice agency or termination of employment with a criminal justice agency.

Section 4. To obtain recertification, a certified operator shall review standards and procedures for a minimum of four (4) hours of recertification instruction.

Section 5. (1) The following are grounds for revocation of certification to operate a breath analysis instrument:

(a) Misuse of the instrument by the operator in violation of law;

(b) Refusal or failure to perform procedures in an acceptable manner;

(c) Failure to testify at an administrative revocation hearing held pursuant to KRS 186.570 without just cause; and

(d) Dismissal of an operator from his employment with a criminal justice agency.

(2) Revocation will be held only following a

hearing conducted by the Commissioner of the Department of Criminal Justice Training which issued the certificate, or his designee, following written notice to the certified operator of the basis for revocation.

Section 6. A person who has received training from the Department of Criminal Justice Training, the Department of State Police, or the Lexington-Fayette Urban County Government Division of Police in breath analysis instrument operation before January 1, 1991, shall be exempt from the requirements of Section 1 of this regulation. Each person who has not received this training more recently than January 1, 1989, shall comply with Section 4 of this regulation.

W. MICHAEL TROOP, Secretary

APPROVED BY AGENCY: May 29, 1991

FILED WITH LRC: May 29, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, July 25, 1991 at 10 a.m. at 403 Wapping Street, Bush Building, Second Floor, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 20, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Christopher W. Johnson, Justice Cabinet, 403 Wapping Street, Bush Building, 2nd Floor, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Chris Johnson

(1) Type and number of entities affected: Approximately 900 state police officers.

(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: KSP Academy already maintains records reflecting this training.

(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 paperwork.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative provider of training, DOCJT is over-burdened.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Regulation only pertains to one class of affected people: Kentucky State Police Officers.

CORRECTIONS CABINET (Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of 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 revised on June 14, 1991 and are incorporated by reference [on March 15, 1991] and hereinafter shall [should] be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

- 1.1 Legal Assistance for Corrections Staff
- 1.2 News Media
- 1.4 The operation of Contracted Adult Correctional Facilities
- 1.6 Extraordinary Occurrence Reports
- 1.9 Institutional Duty Officer
- 1.11 Population Counts and Reporting Procedures
- 1.12 Operation of Motor Vehicles by Corrections Cabinet Employees
- 2.1 Inmate Canteen
- 2.2 Warden's Fund
- 2.10 Surplus Property
- 3.1 Code of Ethics
- 3.12 Institutional Staff Housing
- 4.2 Staff Training and Development
- 4.3 Firearms and Chemical Agents Training
- 6.1 Open Records Law
- 7.2 Asbestos Abatement
- 8.4 Emergency Preparedness
- 9.1 Use of Force
- 9.4 Transportation of Inmates to Funerals or Bedside Visits
- 9.6 Contraband
- 9.7 Storage, Issue and Use of Weapons Including Chemical Agents
- 9.8 Search Policy

- 9.9 Transportation of Inmates
- 9.10 Security Inspections
- 9.11 Tool Control
- 9.18 Informants
- 9.19 Found Lost or Abandoned Property
- 10.2 Special Management Inmates
- 10.3 Safekeepers
- 10.4 Special Needs Inmates
- 11.2 Nutritional Adequacy of the Diet for Inmates
- 11.3 Special Diet Procedures
- 13.1 Pharmacy Policy and Formulary
- 13.2 Health Maintenance Services
- 13.3 Medical Alert System
- 13.4 Health Program Audits
- 13.5 Acquired Immune Deficiency Syndrome [(Amended 3/15/91)]
- 13.6 Sex Offender Treatment Program
- 14.2 Personal Hygiene Items
- 14.3 Marriage of Inmates
- ~~14-04-01~~ Legal Services Program (Amended 6/14/91)
- [14.4]
- 14.6 Inmate Grievance Procedures
- 15.1 Hair and Grooming Standards
- 15.2 Offenses and Penalties
- 15.3 Meritorious Good Time
- 15.5 Restoration of Forfeited Good Time
- 15.6 Adjustment Procedures and Programs
- 16.1 General Inmate Visiting Procedure
- 16.2 Inmate Correspondence
- 16.3 Telephone Calls
- 16.4 Inmate Packages
- 17.1 Inmate Personal Property
- 17.2 Assessment Center Operations
- 17.3 Controlled Intake of Inmates
- 18.4 Classification of the Inmate
- 18.5 Custody/Security Guidelines [(Amended 3/15/91)]
- 18.6 Classification Document [(Amended 3/15/91)]
- 18.7 Transfers [(Amended 3/15/91)]
- 18.8 Guidelines for Transfers Between Institutions [(Amended 3/15/91)]
- 18.9 Out-of-state Transfers
- 18.10 Parole Progress Reports
- 18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
- 18.12 Referral Procedure for Inmates
- 18.13 Adjudicated Guilty But Mentally Ill
- 18.15 Population Categories
- 19.1 Protective Custody
- 19.1 Government Services Projects
- 19.2 Community Services Projects
- 20.6 Vocational Study Release
- 22.1 Privilege Trips
- 25.1 Gratuities
- 25.2 Public Official Notification of Release of an Inmate
- 25.3 Prerelease Program
- 25.4 Inmate Furloughs
- 25.6 Community Center Program [(Amended 3/15/91)]
- 25.7 Expedient Release
- 25.8 Extended Furloughs
- 25.10 Administrative Release of Inmates [(Added 3/15/91)]
- 27-01-01 Probation and Parole Procedures
- 27-02-01 Duties of Probation and Parole Officers
- 27-03-01 Workload Formula Supervisor/Staff Ratio
- 27-05-01 Testimony, Court Demeanor and Availability of Legal Services
- 27-06-01 Availability of Supervision Services
- 27-06-02 Equal Access to Services

27-07-01 Cooperation with Law Enforcement Agencies
 27-08-01 Use of Force [(Amended 3/15/91)]
 27-09-01 Kentucky Community Resources Directory
 27-10-01 Advanced Supervision
 27-11-01 Intensive Supervision
 27-12-01 Supervision: Case Classification
 27-12-02 Risk/Needs Assessment
 27-12-03 Initial Interview
 27-12-04 Conditions of Regular Supervision/Request for Modification
 27-12-05 Releasee's Report
 27-12-06 Grievance Procedures for Offenders
 27-12-07 Employment, Education/Vocational Referral
 27-12-08 Supervision Plan
 27-12-09 Casebook
 27-12-10 Guidelines for Monitoring Supervision Fee
 27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
 27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)
 27-12-13 Community Service Work
 27-12-14 Client Travel Restrictions
 27-13-02 Alcohol Detection
 27-14-01 Interstate Compact Transfers
 27-14-02 Interstate Compact Out-of-state Probation and Parole Violation
 27-15-01 Supervision Report; Violations, Unusual Incidents
 27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence
 27-17-01 Absconder Procedures
 27-18-01 Probation and Parole Issuance of Detainer/Warrant
 27-19-01 Preliminary Revocation Hearing [(Amended 3/15/91)]
 27-20-01 Division of Probation and Parole Controlled Intake Program
 27-20-02 Prisoner Intake Notification [(Amended 3/15/91)]
 27-20-03 Prisoner Status Change
 27-21-01 Apprehension and Transportation of Probation and Parole Violators
 27-22-01 Fugitive Unit - Apprehensions
 27-22-02 Fugitive Unit - Transportation of Fugitives
 27-23-01 In-state Transfer
 27-24-01 Closing Supervision Report
 27-24-02 Reinstatement of Clients to Active Supervision
 27-25-01 Application for Final Discharge from Parole
 27-26-01 Assistance to Former Clients and Dischargees
 27-27-01 Restoration of Civil Rights
 27-28-01 Firearms/Explosives: Application for Relief from Disability
 27-29-01 Parole Review Dates Modification
 28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
 28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
 28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
 28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case

Material and Submission Schedules)
 28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
 28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
 28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
 28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
 28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports [(Amended 3/15/91)]
 28-02-01 Expedient Release Program
 28-03-01 Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
 28-04-01 Furlough Verifications
 28-05-01 Out-of-state Investigations

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: June 14, 1991

FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for June 22, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 3,000 employees of the Corrections Cabinet, 7,776 inmates, 12,628 parolees and probationers, 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 6:050. Luther Lockett Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of 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 revised on June 14, 1991 and are incorporated by reference [on February 15, 1990] and hereinafter shall [should] be referred to as Luther Lockett Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

LLCC 01-08-01 Institutional Legal Assistance
LLCC 01-09-01 Public Information and News Media Access
LLCC 01-12-01 Duty Officer Responsibilities (Amended 6/14/91)
LLCC 02-01-02 Fiscal Management: Accounting Procedures
LLCC 02-01-03 Fiscal Management: Agency Funds
LLCC 02-01-04 Fiscal Management: Insurance
LLCC 02-03-01 Fiscal Management: Audits
LLCC 02-06-01 Property Inventory
LLCC 02-07-01 Screening Disbursements from Inmate Personal Accounting
LLCC 08-01-01 Offender Records
LLCC 08-04-01 Storage of Expunged Records
LLCC 08-05-01 Psychological and Psychiatric Reports
LLCC 10-03-09 Duties and Responsibilities of Building 1 and 2 Officer
LLCC 11-03-01 LLCC Population Categories
LLCC 11-07-01 Adjustment Procedures for Minor Rule Violations
LLCC 11-09-01 Rules and Regulations of the Unit
LLCC 11-13-01 Inmate Dress and Use of Access Areas
LLCC 11-15-01 Postparole Furloughs
LLCC 11-16-01 Restoration of Forfeited Good Time
LLCC 11-18-02 Use of Monitor Telephone
LLCC 11-19-01 Unit Shakedowns/Control of Excess Property
LLCC 11-20-01 Program Services for "Special Needs"/Mentally Ill Inmates
LLCC 12-01-01 Special Management Inmates [(Amended 2/15/90)]

LLCC 12-01-02 Disciplinary Segregation Time Calculation (WTR)
LLCC 12-04-01 Guidelines for (7E) PC Unit/General Living Conditions
LLCC 13-01-01 Dining Room Guidelines
LLCC 13-04-01 Food Service: Meals
LLCC 13-04-02 Food Service: Menu, Nutrition and Special Diets
LLCC 13-05-02 Medical Screening of Food Handlers
LLCC 13-06-01 Food Service: Inspections and Sanitation
LLCC 13-07-01 Food Service: Purchasing, Storage and Farm Products
LLCC 13-08-01 OJT Food Service Training Placement
LLCC 14-01-01 Sanitation, Living Condition Standards, and Clothing Issue
LLCC 14-05-01 Institutional Inspections
LLCC 15-01-01 Health Maintenance Services; Sick Call and Pill Call
LLCC 15-02-01 Mental Health/Psychological Services
LLCC 15-03-01 Pharmacy
LLCC 15-03-02 Use of Psychotropic Medications
LLCC 15-04-01 Dental Services
LLCC 15-05-02 Licensure and Training Standards
LLCC 15-06-02 Specialized Health Services
LLCC 15-06-03 Emergency Medical/Dental Care Services
LLCC 15-06-04 First Aid/CPR Training Program
LLCC 15-06-05 Suicide Prevention and Intervention Program
LLCC 15-07-01 Health Records
LLCC 15-08-01 Special Diets
LLCC 15-12-01 Special Needs Unit
LLCC 15-14-01 Informed Consent
LLCC 15-15-01 Medical Restraints
LLCC 15-16-01 Health Education/Special Health Programs
LLCC 15-17-01 Serious and Infectious Diseases
LLCC 16-01-01 Inmate Rights and Responsibilities
LLCC 16-02-01 Inmate Grievance Procedure
LLCC 16-03-01 Inmate Legal Services
LLCC 17-01-01 Due Process/Disciplinary Procedure [(Amended 2/15/90)]
LLCC 18-01-01 Inmate Correspondence
LLCC 18-01-02 Issuance of Legal Mail to Inmate Population
LLCC 18-02-01 Inmate Visiting (Amended 6/14/91)
LLCC 18-02-03 Extended Visit and Furloughs
LLCC 18-02-04 Meritorious Visits (Amended 6/14/91)
LLCC 18-03-01 Entry and Identification of Visitors for Inmate Visitation (Amended 6/14/91)
LLCC 18-03-03 Inmate Visiting Disciplinary Segregation Administrative Segregation (Amended 6/14/91) [(DSU/ASU)]
LLCC 20-01-01 Personal Property Control
LLCC 20-02-01 Authorized Inmate Personal Property
LLCC 20-03-01 Unauthorized Items
LLCC 20-04-02 Inmate Canteen
LLCC 20-04-03 Canteen Purchase Limits [(Added 2/15/90)]
LLCC 20-05-01 Inmate Control of Personal Funds
LLCC 20-05-02 Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
LLCC 20-06-01 Procedure for Sending Appliances to Outside Dealers for Repair
LLCC 21-02-01 Classification/Security Levels
LLCC 21-03-01 Classification Process

LLCC 22-01-01 OJT/Job Assignments
 LLCC 23-01-01 Academic School
 LLCC 26-01-01 Religious Services
 LLCC 28-01-01 Privileged Trips
 LLCC 28-03-01 Temporary Release/Community Center Release
 LLCC 28-04-01 Parole Progress Report
 LLCC 28-04-02 Parole Eligibility Dates

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: June 14, 1991

FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 22, 1991 at 9 a.m., in the Auditorium of the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and Tom Campbell, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 282 employees of the Luther Lockett Correctional Complex, 1,023 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET (Proposed Amendment)

501 KAR 6:070. Kentucky Correctional Institution for Women.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020,

439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of 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 revised on June 14, 1991 and are incorporated by reference [on May 15, 1991] and hereinafter shall be referred to as Kentucky Correctional Institution for Women Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel on weekdays between 8 a.m. to 4:30 p.m.

KCIW 01-06-01 Legal Assistance for Corrections Staff
 KCIW 01-08-01 News Media Access
 KCIW 02-01-01 Comprehensive Insurance Coverage
 KCIW 02-02-01 Fiscal Management: Audits
 KCIW 02-02-03 Fiscal Management: Checks
 KCIW 02-02-04 Institution Purchasing Procedures
 KCIW 02-03-01 Inventory Control of Nonexpendable Personal Property
 KCIW 02-03-02 Inventory and Control of Stores [(Added 05/15/91)]
 KCIW 02-04-01 Accounting Procedures [(Amended 05/15/91)]
 KCIW 02-05-01 Inmate Canteen and [/] Staff Canteen (Amended 6/14/91)
 KCIW 06-01-01 Inmate Records [(Amended 5/15/91)]
 KCIW 06-01-02 Transfers to Community Centers and the Minimum Security Unit
 KCIW 06-01-03 Storage of Expunged Records
 KCIW 10-01-01 Special Management Unit General Operation and Regulations
 KCIW 10-01-02 Special Management Unit Programs, Placement and Review
 KCIW 10-01-04 Special Security
 KCIW 11-01-01 Food Service Operation Inspections
 KCIW 11-01-02 Budgeting, Accounting, and Purchasing Procedures for Food Products
 KCIW 11-02-01 Menu Preparation/Special Diets
 KCIW 11-03-01 General Guidelines for Food Service Workers
 KCIW 11-03-02 General Guidelines for Food Service Workers
 KCIW 11-04-01 Health Regulations and General Guidelines for the Food Service Area
 KCIW 12-01-01 Control of Pests and Vermin
 KCIW 12-02-01 Laundry and Clothing Issuance [(Amended 5/15/91)]
 KCIW 12-02-03 Donated Items (Amended 6/14/91)
 KCIW 12-04-01 Sanitation and General Living Conditions
 KCIW 12-04-02 Hair Care Services [(Added 05/15/91)]
 KCIW 13-01-01 Provision of Medical and Dental Care
 KCIW 13-01-02 Preliminary Health Screening and Appraisal
 KCIW 13-01-03 Use of Pharmaceutical Products
 KCIW 13-03-01 Emergency Care
 KCIW 13-03-02 Infirmary Care and Outside Services

KCIW 13-03-03 Outside Hospital Security
(Deleted 6/14/91)]
KCIW 13-04-01 Medical Alert System
KCIW 13-04-02 Psychiatric/Psychological Services
KCIW 13-06-01 Informed Consent
KCIW 13-07-01 Detoxification and Alcohol or
Chemical Dependency Guidelines
KCIW 13-08-01 Medical Examination [Exams] for
[New] Employees (Amended 6/14/91)
KCIW 13-09-01 Suicide Prevention and
Intervention Program [(Amended
5/15/91)]
KCIW 13-11-01 Infection Control (Amended
6/14/91)
KCIW 14-01-02 Inmate Rights
KCIW 14-02-01 Access to Attorneys and
Designated Counsel Substitutes
KCIW 14-03-01 Inmates Are Not Subject to
Discrimination Based on Race,
Religion, National Origin, Sex,
Handicap, or Political Beliefs
KCIW 14-04-01 Inmate Grievance Procedure
KCIW 15-01-01 Offenses and Penalties
KCIW 15-01-02 Adjustment Committee Procedures
and Programs
KCIW 15-03-01 Inmate Rule Book
KCIW 15-04-01 Honor Program
KCIW 15-06-01 Restriction Guidelines (Amended
6/14/91)
KCIW 16-01-01 Inmate Correspondence
KCIW 16-01-03 Staff Mail
KCIW 16-02-01 Inmate Access to Telephone
KCIW 16-02-02 Intra-Institution Phone Calls
KCIW 16-03-01 Inmate Visiting Regulations
KCIW 16-03-02 Unauthorized Items for Picnic
Lunches, Food Packages and
Regular Packages
KCIW 16-04-01 Inmate Indigent Fund (Amended
6/14/91)
KCIW 16-05-01 Inmate Packages
KCIW 17-01-01 Assessment Center Operation and
Reception Programs
KCIW 17-01-02 Assessment/Classification Center
Operations, Rules and Regulations
KCIW 17-01-03 Assessment and Classification
Unit Property Guidelines
KCIW 17-02-01 Identification Department
Admissions
KCIW 17-03-01 Notifying Inmates Families of
Admission and Procedures for Mail
and Visiting
KCIW 17-05-01 Inmate Personal Property
Guidelines
KCIW 18-01-02 Institutional Housing Assignments
KCIW 18-02-01 Classification Procedures
KCIW 18-05-01 Special Needs Inmates
KCIW 18-06-01 Institutional Status Codes
KCIW 19-01-01 Inmate Work/Program Assignments
KCIW 19-03-01 Landscape and Maintenance Work
Details
KCIW 20-01-01 Education Programs
KCIW 20-01-03 Vocational Education: Curriculum
Flexible Schedule, Upgrade
Programs and Release Preparation
Program
KCIW 20-01-04 Entry - Exit Vocational School
KCIW 20-01-05 Vocational Programs: Approved,
Assessed and Contain Guidelines
for Vocational Records
KCIW 20-01-06 Vocational Education: Staffing
Patterns/Requirements
KCIW 20-01-07 Vocational Counselor
KCIW 20-01-08 Vocational Education: Community
Resources and the Integration
with Academic Progress

KCIW 20-01-09 Vocational Education: Support
Equipment
KCIW 20-01-10 Control of Flammable, Hazardous,
Toxic and Caustic Materials in
the Vocational Area
KCIW 22-01-04 Inmate Club Activities
KCIW 23-01-01 Religious Services [(Amended
5/15/91)]
KCIW 25-01-01 Parole Progress Report
KCIW 25-02-01 Temporary Release/Community Center
KCIW 25-02-02 Furloughs
KCIW 25-03-01 Escorted Leave into the Community

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: June 14, 1991

FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this
regulation has been scheduled for July 22, 1991
at 9 a.m., in the State Office Building
Auditorium. Those interested in attending this
hearing shall notify in writing: Jack Damron or
Tom Campbell, Corrections Cabinet, 5th Floor,
State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 126
employees of the Kentucky Correctional
Institution for Women, 272 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 6:080. Corrections Cabinet Manuals.

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 revised on June 14, 1991 and are incorporated by reference [on March 15, 1991] and hereinafter shall [should] be referred to as Corrections Cabinet Manuals. 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.

Offender Records Manual - None.
Stock Procedure Manual - None.
Food Services Manual - None.
Classification Manual - None [Yes].
Diet Manual (Added 6/14/91)

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: June 14, 1991

FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 22, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and Tom Campbell, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 3,000 employees of the Corrections Cabinet, 7,776 inmates, 12,628 parolees and probationers, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET (Proposed Amendment)

501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures, are revised on June 14, 1991 and are incorporated by reference [in March 15, 1991] and hereinafter shall [should] be referred to as Bell County Forestry Camp Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

BCFC 01-02-01	Organization and Assignment of Responsibility
BCFC 01-04-02	Extraordinary Occurrence Procedure
BCFC 01-05-01	Procedures Office: Duties and Responsibilities
BCFC 01-08-01	Public Information and Inmate Access to News Media
BCFC 01-09-01	Staff Participation in Professional Organization and Conferences; Provision for Leave and Reimbursement for Expenses
BCFC 01-11-01	Institutional Duty Officer's Responsibilities
BCFC 02-01-02	Fiscal Management: Accounting Procedures
BCFC 02-01-03	Fiscal Management: Agency Funds
BCFC 02-01-04	Fiscal Management: Insurance
BCFC 02-01-05	Fiscal Management: Budget
BCFC 02-01-06	Fiscal Management: Audit
BCFC 02-02-01	Inmate Accounts
BCFC 02-02-02	Inmate Control of Personal Funds
BCFC 02-02-03	Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
BCFC 02-03-01	Purchase Orders
BCFC 02-04-01	Processing of Invoices
BCFC 02-05-01	BCFC Materials Receiving Procedure
BCFC 02-06-01	Property Inventory
BCFC 04-01-01	Employee Training and Development
BCFC 05-01-01	Information System
BCFC 06-01-01	Offender Records

ADMINISTRATIVE REGISTER - 156

BCFC 06-02-01	Storage of Expunged Records	BCFC 14-02-01	Legal Services Program
BCFC 06-03-01	Court Trips	BCFC 14-03-01	Inmate Grievance Procedure
BCFC 06-03-02	Receipt of Order of Appearance	BCFC 14-04-01	Inmate Participation in Authorized Research
BCFC 08-02-01	Fire Prevention	BCFC 15-01-01	<u>Due Process/Disciplinary Procedures (Added 6/14/91)</u>
BCFC 08-03-01	Fire Procedures	BCFC 16-01-01	Inmate Visiting
BCFC 08-03-02	Fire Extinguishers and Their Use	BCFC 16-02-01	Telephone Communications
BCFC 08-09-01	Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances	BCFC 16-03-01	Mail Regulations
BCFC 08-09-02	OHSa Hazard Communication Program	BCFC 16-03-02	Inmate Packages
BCFC 09-06-01	Search Policy/Disposition of Contraband	BCFC 17-01-01	Assessment/Orientation Procedure
BCFC 09-14-01	Bell County Forestry Camp - Restricted Area	BCFC 17-02-01	Inmate Reception Process
BCFC 10-01-01	<u>Special Management Inmates (Added 6/14/91)</u>	BCFC 17-03-01	Inmate Personal Property and Property Control
BCFC 11-01-01	Food Services: General Guidelines	BCFC 17-04-01	Unauthorized Items
BCFC 11-02-01	Food Service: Security	BCFC 17-05-01	Inmate Canteen
BCFC 11-03-01	Dining Room Guidelines	BCFC 18-01-01	Institutional Classification Committee
BCFC 11-04-01	Food Service: Meals	BCFC 18-02-01	Classification Document
BCFC 11-04-02	Food Service: Menu, Nutrition and Special Diets	BCFC 18-03-01	Classification Process
BCFC 11-05-02	Health Requirements of Food Handlers	BCFC 18-03-02	Classification Program Planning
BCFC 11-06-01	Food Service: Inspection and Sanitation	BCFC 18-03-03	Population Category Status
BCFC 11-07-01	Food Service: Purchasing, Storage and Farm Products	BCFC 18-04-01	Instructions for Six Month Review
BCFC 11-08-01	Staff/Visitor Meals	BCFC 18-05-01	Transfers to Other Minimum Security Institutions
BCFC 12-01-01	Sanitation, Living Conditions Standards, and Clothing Issues	BCFC 19-01-01	Job and Vocational Program Assignments
BCFC 12-01-02	Bed Areas, Assignments/Conditions Standards	BCFC 19-02-01	Government Service Details
BCFC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry	BCFC 20-01-01	Academic/Vocational School
BCFC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule	BCFC 20-01-02	Testing and Verification Procedure
BCFC 12-03-02	Barbershop Services and Equipment Control	BCFC 20-02-01	Educational Program Planning
BCFC 12-04-01	Institutional Inspections	BCFC 20-03-01	Academic and Vocational Curriculum
BCFC 12-05-01	Fire Safety and Use of Noncombustible Receptacles	BCFC 20-04-01	Educational Personnel Practices
BCFC 12-06-01	Pest Control	BCFC 21-01-01	Library Services
BCFC 13-01-01	Organization of Health Services	BCFC 22-01-01	Recreation and Inmate Activities
BCFC 13-02-01	Health Maintenance Services: Sick Call and Pill Call	BCFC 22-02-01	Inmate Clubs and Organizations
BCFC 13-03-01	Dental Policy/Sick Call	BCFC 22-02-02	Conducting Inmate Organizational Meetings and Programs
BCFC 13-04-01	Inmate Medical Screenings and Health Evaluations	BCFC 22-03-01	Privilege Trips
BCFC 13-05-01	Licensure and Training Standards	BCFC 23-01-01	Religious Service
BCFC 13-06-01	Suicide Prevention and Intervention Program	BCFC 23-02-01	Visitors for Religious Programs
BCFC 13-06-02	First Aid/CPR Training Program	BCFC 23-03-01	Marriage of Inmates
BCFC 13-06-03	Emergency Medical/Dental Care Services	BCFC 24-01-01	Social Services and Counseling Program
BCFC 13-07-01	Health Records	BCFC 24-01-02	Casework Services
BCFC 13-08-01	Special Diets	BCFC 25-01-01	Release Preparation Program
BCFC 13-09-01	Notification of Inmate, Family in the Event of Serious Illness, Surgery, or Inmate Death	BCFC 25-02-01	Temporary Release/Community Center Release
BCFC 13-10-01	Health Education/Special Health Programs	BCFC 25-02-02	Furloughs
BCFC 13-11-01	Informed Consent	BCFC 25-03-01	Parole Progress Report
BCFC 13-12-01	Mental Health/Provision of Psychiatric Services by KCPC	BCFC 25-03-02	Parole Eligibility Dates
BCFC 13-12-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center (KCPC)	BCFC 25-04-01	Inmate Discharge Procedure
BCFC 13-13-01	Identification of Special Needs Inmates	BCFC 26-01-01	Citizen Involvement and Volunteer Services Program
BCFC 13-14-01	Use of Pharmaceutical Products		
BCFC 13-15-01	Medical Restraints		
BCFC 13-16-01	Specialized Health Services		
BCFC 13-17-01	Vision Care/Optomety Services		
BCFC 14-01-01	Inmate Rights and Responsibilities		

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: June 14, 1991

FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 22, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and Tom Campbell, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected. 39 employees of the Bell County Forestry Camp and 200 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to

those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
- (b) Reporting and paperwork requirements: None
- (2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

EDUCATION AND HUMANITIES CABINET

Department of Education

Office of School Administration & Finance

(Proposed Amendment)

702 KAR 5:080. Bus drivers' qualifications; responsibilities.

RELATES TO: KRS 156.031, 156.160, 189.540

STATUTORY AUTHORITY: KRS [156.070,] 156.160, 189.540

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] 156.160 requires the State Board for Elementary and Secondary Education to adopt regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children; and KRS 189.540 requires the State Board to adopt regulations to govern the design and operation of school buses. This regulation implements those duties relative to the qualifications and responsibilities of the school bus driver.

Section 1. All local boards of education shall require annual medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and such events related to such schools. The medical examination shall include tests for hearing and vision disorders, emotional instability, and for serious medical conditions including diabetes, epilepsy, heart

disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician. The examination shall include tests for tuberculosis upon initial employment and positive reactors shall be required to have further evaluations. All medical examinations of the school bus drivers shall be reported on a form prescribed by the State Department of Education and submitted to the local superintendent. The form, TC 94-35, July 1990, and Supplement to TC 94-35, is incorporated by reference may be obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

Section 2. No person shall be employed as a school bus driver who has been convicted of driving any motor vehicle under the influence of alcohol or any illegal drug within the last five (5) years. No person shall drive a school bus unless he or she is physically or mentally able to operate a school bus safely and satisfactorily. If there is limitation of motion in joints, neck, back, arms, legs, or other bodily parts, due to injury or disease and that would limit the driver's ability to safely perform the task of safely driving a school bus, the driver shall be rejected. Any driver taking medication either by prescription or without prescription, shall not be permitted to drive if that medication would affect, in any way, the driver's ability to safely drive a school bus.

Section 3. (1) No person shall drive a school bus unless he or she has:

(a) Visual acuity of at least 20/40 (Snellan) in each eye either without glasses or by correction with glasses;

(b) Form field vision of not less than a total of 140 degrees; and

(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(2) Drivers requiring correction by glasses shall wear properly prescribed glasses at all times while driving.

Section 4. No person shall drive a school bus whose hearing is less than 7/15 in the better ear, or hearing loss is greater than forty (40) decibels if audiogram is used, for conversational tones, with or without a hearing aid. Drivers requiring a hearing aid shall wear such properly operating aids at all times while driving.

Section 5. The board, at its discretion, may require a school bus driver to pass a routine physical examination or a special type physical examination more often than annually. The school bus driver shall have a current physical fitness certificate on file in the district superintendent's office.

Section 6. A driver shall not start driving a school bus until his 18th birthday. After April 1, 1992, school bus drivers shall be twenty-one (21) years of age or older.

Section 7. (1) The school bus driver shall have a current driver's license that is valid in Kentucky. Beginning April 1, 1992, all Kentucky school bus drivers shall possess a commercial

driver's license, with the passenger endorsement for a school bus, which is valid in Kentucky.

(2) A driver applicant, prior to acceptance into the driver training program, shall be required to demonstrate driving skills judged to be acceptable by a certified driver training instructor, with acceptable performance standards as outlined in the Division of Pupil Transportation curriculum and with the score sheet to become a part of each driver's record. Skill levels shall be demonstrated in:

- (a) Vehicle knowledge;
- (b) Driver ability to perform steering, shifting, maneuvering, braking, use of mirrors, and negotiate each of the following:
 - 1. Ninety (90) degree left hand turns;
 - 2. Ninety (90) degree right hand turns;
 - 3. Straight ahead;
 - 4. Irregular surface maneuverability at speeds;
 - 5. Backing ability using mirrors only; and
 - 6. Demonstration of spatial awareness.

Section 8. (1) Minimum training requirements to become a Kentucky school bus driver shall consist of the training course developed by the Kentucky Department of Education. The training course shall consist of the following instructional units and minimum instructional times:

- (a) Laws and regulations - one (1) hour;
- (b) Driving fundamentals - one (1) hour;
- (c) Care and maintenance - one (1) hour;
- (d) Critical situations - one (1) hour;
- (e) Accidents and emergency procedures - one (1) hour;
- (f) Pupil management - one (1) hour;
- (g) First aid - one (1) hour;
- (h) Special education transportation - five-tenths (.5) hour;
- (i) Extracurricular trips - five-tenths (.5) hour; and
- (j) Vehicle operations - three (3) hours.
- (k) Vehicle control at speed - one (1) hour; and

(1) Bus route identification, driver review and instruction - two (2) hours.

(2) Upon successful completion of the core curriculum the school bus driver applicant shall complete within thirty (30) days:

- (a) Driver review I, evaluation and instruction - two (2) hours within the first five (5) days of driving; and
- (b) Driver review II, evaluation and instruction - two (2) hours not less than twenty (20) days nor more than thirty (30) days.

Section 9. (1) Certified drivers shall complete annually an eight (8) hour in-service update relevant to the curriculum prior to the beginning of the school year.

(2) Discontinuance of driver employment and subsequent reemployment shall require drivers to become requalified by a training update within a twelve (12) month period following his or her certification termination date.

(3) Drivers who are not updated and recertified within such twelve (12) month period shall be required to be retrained through the beginning training program.

Section 10. Substitute school bus drivers shall meet the same requirements as regular school bus drivers.

Section 11. In case of an emergency that would make it necessary for the driver to leave the bus while pupils are on board, the driver shall stop the motor, shift the bus to low gear, set the parking brake, remove the ignition key, and place one (1) of the older responsible pupils in charge during the driver's absence.

Section 12. The driver shall operate the school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances.

Section 13. The driver shall supervise the seating of the pupils on the bus. The driver shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle.

Section 14. The driver shall not, at any time, permit pupils to stand in the stepwell or landing area or where the pupil would likely fall out of the bus if the rear emergency door was opened, or where the driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

Section 15. The driver shall report to the superintendent any overcrowded conditions on the bus.

Section 16. The driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school principal or his designate. The driver shall not permit an assigned pupil to leave the bus at a stop other than where the pupil regularly leaves the bus unless presented with a written permission signed by the principal or his designate.

Section 17. The driver shall not transport adult employees of the board or any person not employed by the board unless he receives written permission from the district superintendent.

Section 18. The driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus. The driver shall not knowingly permit any fireworks or any other explosive materials of any type to be transported.

Section 19. The driver shall not knowingly permit any live animals, fowls, or reptiles to be transported on the bus. The driver shall not knowingly permit any preserved specimen to be transported that would likely frighten any pupil or cause a commotion on the bus.

Section 20. The driver shall not permit the transportation of any object that would likely block the bus aisle or exits in case of a collision.

Section 21. The driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 22. The driver shall activate the flashing amber signal lights a sufficient distance from a bus stop to warn motorists of the intended stop. Once the bus comes to a

complete stop, the driver shall activate the stop arm and red flashing signal lights.

Section 23. For safety reasons, the driver shall not permit fueling of the bus while pupils are on board the bus.

Section 24. If a pupil's conduct on the bus is such that it endangers the lives and morals of the other people on the bus and makes it unsafe for the bus to continue on its route, and when requested by the driver to desist from such conduct and the pupil does not comply, it shall be the duty of the driver to order the pupil to leave the bus. Should the order be ignored, the driver shall eject the pupil from the bus or send for assistance, whichever the circumstance dictates. Ejecting a pupil from the bus shall be done only in the most extreme circumstances. When ejection from the bus is required, the driver shall notify the principal of the school where the pupil attends, the district superintendent or some other school authority of the action taken as soon as possible.

Section 25. The school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level. The stop shall be made not less than fifteen (15) feet nor more than fifty (50) feet from the nearest track. After making the stop, the driver shall open the service door and driver side window and carefully look in each direction and listen for approaching trains before proceeding. When the driver has ascertained that it is safe for the bus to cross the railroad tracks, he shall close the bus entrance door, shift the bus gears into the range that will provide adequate power and proceed immediately to cross the railroad tracks. In cases of severe weather or restricted visibility, the driver shall request assistance from the oldest pupils on the bus in determining whether or not it is safe for the bus to cross the railroad tracks. Under these circumstances, the stop signal arm and flashing warning lights shall be used only if these pupils get off the bus before it is driven across the tracks and board the bus after it has crossed the tracks.

Section 26. The driver shall have the authority to assign a pupil to a specific seat on the school bus.

Section 27. The driver shall make a pretrip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of pupils.

Section 28. The school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on any section of highways over which the bus travels. The bus shall not be operated upon any highway at speeds in excess of fifty-five (55) miles per hour. The driver shall not drive the school bus on any roadway at any time at a speed where the conditions of the roadway, weather conditions, or other extenuating circumstances would likely make it unsafe.

Section 29. The driver shall wear the driver's seat belt at all times that the bus is operated.

Section 30. The stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 31. The driver shall not use tobacco products while operating the school bus, nor knowingly permit pupils to use tobacco products when on the school bus.

Section 32. The driver shall signal pupils who must cross a roadway to board or leave the bus when the driver has determined that any visible approaching traffic creating a substantive risk of harm has come to a complete stop and is not attempting to start up or pass the bus.

Section 33. A driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug as provided in Section 2 of this regulation. Drivers found under the influence of alcohol or any illegal drugs while on duty or with remaining driving responsibilities that same day shall be dismissed from employment. A driver shall report to the superintendent or his designate immediately any revocation of license or conviction for driving under the influence.

Section 34. The driver of a school bus shall be on the bus at all times students are loading or unloading.

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).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: May 22, 1991

FILED WITH LRC: June 7, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 24, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 19, 1991, 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: Roy Prince

- (1) Type and number of entities affected:
 - (a) Direct and indirect costs or savings to those affected: None
 - 1. First year:
 - 2. Continuing costs or savings:
 - 3. Additional factors increasing or decreasing costs (note any effects upon competition):
- (b) Reporting and paperwork requirements: Less paperwork, since this action will eliminate one form.
 - (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: Negligible
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: Use of two different medical examination reporting forms increases the workload for local school authorities and creates confusion.
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments: TIERING: Was tiering applied? No. Applies equally to all school districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 3:410. Preschool education program for four year old children

RELATES TO: 156.160, 157.3175

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.3175

NECESSITY AND FUNCTION: KRS 156.160 authorizes the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which school districts shall [must] meet in student, program, service and operational performance; and KRS 157.3175 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 as of the child's initial day of attendance in preschool. Once free lunch eligibility has been approved, the child remains eligible for enrollment in the preschool program for the remainder of the school year.

(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) The following definitions apply to this regulation:

(a) "Developmentally appropriate preschool program" means a program as defined by KRS 157.3175(2).

(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 KRS 157.3175(5).

(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 shall be based on the preschool grant allocation system established in 702 KAR 3:250. [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 an active [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) Identification [Recruitment] of all eligible children regardless of race, sex, creed, color, national origin or handicapping condition; [and]

(c) Written documentation to demonstrate that emphasis has been given to recruiting those eligible children not currently served by any preschool program; and

(d) [(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

regulations, 34 CFR Part 99.

(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 shall [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 responsible 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 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 provide 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; and

(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 of this regulation;

(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, involving children as feasible in the planning and preparation of snacks and meals, and providing appropriate supervision during meals to develop language, understanding 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 as follows:

(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 the 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 may [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 current 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 following interim qualifications until superseded [set forth in the Interim Early childhood Personnel Policy (May 1990), pursuant to 704 KAR 20:165, or as determined] by the Education Professional Standards Board. This interim approval shall [will] be issued in accordance with the following criteria:

1. Level I approved preschool instructional personnel include:

a. Personnel with a baccalaureate or higher degree in child development, [or] early childhood education, or early childhood special education;

b. Personnel with kindergarten certification;

c. Personnel with special education certification valid for primary grades; and

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 shall [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 shall [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);

(iii) Completion of a vocational child care worker training program; or

(iv) 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 noncertified staff in the preschool class. The lead teacher is also responsible for at least the following parental activities, described in Section 5(5) 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 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.]

(2) [(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.

(3) [(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.

(4) [(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 on the subject area.

(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.

Section 9. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

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).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: May 22, 1991

FILED WITH LRC: June 7, 1991 at 10 a.m.+

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 24, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 19, 1991, 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: Betty Steffy, Jeanette Nunnally

(1) Type and number of entities affected: 176 local school districts

(a) Direct and indirect costs or savings to those affected:

1. First year: Enables continued eligibility of child, based on data from first day of attendance, in order to receive state reimbursement. Grant allocation system deleted to combine with preschool handicap in one preschool allocation regulation.

2. Continuing costs or savings: Above

3. Additional factors increasing or decreasing costs (note any effects upon competition): No change in at-risk. Avoids additional paperwork for the preschool handicap program.

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Enables KDE to operate preschool at-risk and handicap grant awards jointly, to provide more efficient state and local services.

2. Continuing costs or savings: Above

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: New preschool grant allocation regulation (703 KAR 3:---).

(a) Necessity of proposed regulation if in conflict: Section 1(5-8) deleted from 704 KAR 3:410 and put in preschool grant allocation regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Above

(6) Any additional information or comments:

TIERING: Was tiering applied? No

LABOR CABINET

Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:015. General industry standards.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Consistent with this authority the following regulations contain those standards to be enforced by the Division

of Occupational Safety and Health Compliance. The Occupational Safety and Health Standards Board hereby adopts the following regulations applicable to general industry. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011).

Section 1. Batteries. Changing and charging storage batteries (for automotive-type battery charging installations, in-vehicle charging of batteries, and battery jump starting of vehicles).

(1) Facilities shall be provided for flushing electrolyte from the eyes and skin with water when changing or charging storage batteries. An adequate water supply shall be within the work area.

(2) No battery shall be charged or discharged within a closed or unvented container. The batteries shall be charged:

(a) In the open; or

(b) In a mechanically-ventilated space; or

(c) In a space providing at least twenty (20) cubic feet per ampere of charging capacity.

(3) A face shield or goggles shall be provided and available at each charging unit. The use of the face shield or goggles shall be required for connection and disconnection of vehicle or charger leads to the battery terminals and for the addition or pouring of electrolyte.

(4) Employees shall wear face shields or goggles during installation and removal of batteries from vehicles, while connecting and disconnecting battery charger or jumper cable leads, and while handling electrolyte.

(5) Employees shall be instructed to:

(a) Turn off the battery charger to connect or disconnect the battery;

(b) Wash acid spills immediately; and

(c) Flush electrolyte from eyes and skin with water for ten (10) minutes.

Section 2. Safety and Testing of Supply Lines in Excess of 600 Volts. (1) Definitions.

(a) Disconnected means disconnected from any electrical source of supply;

(b) Guarded: protected by personnel, covered, fenced, or enclosed by means of suitable castings, barrier, rails, screens, mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects. (Note: Wires, which are insulated but not otherwise protected, are not considered as guarded);

(c) Hold cards (also called "hold tags"): a card or tag-type device, usually having a predominant color of white or red which warns against or which cautions against the operation of a particular switch, device, circuit, tool, machine, etc.;

(d) Near: a distance no closer than that shown in the table in subsection (3)(c) of this section;

(e) Qualified person: a person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.

(2) Purpose.

(a) The intent and purpose of this regulation is to provide and establish safety procedures

for testing equipment to protect electrical workers from hazards resulting from exposure to high voltage;

(b) This regulation shall apply to nonutility electrical workers who are engaged in electrical construction and/or maintenance of electrical conductors and equipment rated at 600 volts and above.

(3) Energized conductors and equipment.

(a) Only qualified employees shall work on or near high voltage conductors or equipment;

(b) Personal protective equipment shall be provided by the employer and used by the employee when working on or near energized, ungrounded high voltage conductors or equipment;

(c) No employee shall approach or take any conductive object, without an approved insulating handle, within the minimum distance specified in the table below, unless the energized part is insulated or guarded from the employee, or the employee is effectively insulated from the live parts. Rubber gloves (sleeves if necessary) rated for the voltage involved shall be considered effective insulation of the employee from the energized part.

Minimum Clear Distance From Live Parts

Voltage Phase to Phase (Kilovolts)	Distance Phase to Employee
0.6 to 34.5	2'
34.5 to 46	2 1/2'
46 to 69	3'
69 to 115	3' 4"
115 to 138	3' 6"
138 to 169	3' 8"

(4) Deenergized conductor or equipment.

(a) Existing conditions shall be determined before starting work on electrical conductor and/or equipment;

(b) Before any work is performed, all electrical switches, breakers and associated disconnecting devices shall be opened, made inoperable and hold tagged out by the person in charge. Employees shall be trained and thoroughly instructed in the tagging procedure. One (1) qualified person, for example: foreman, general foreman or first class electrician, of each crew shall be responsible for attaching hold tags and/or hold cards to the disconnecting means. When more than one (1) crew is involved in the work, multiple hold tags or hold cards shall be placed in the handle of the disconnecting equipment. The use of such tags must be respected. Equipment or items so tagged must not be activated or used without full and proper authority of a responsible person whose signature appears on the tag;

(c) Conductors shall be short circuited and grounded wherever possible;

(d) Capacitors may be components of apparatus of the disconnected electrical system. Before employees are allowed to work, the capacitors shall be discharged, short circuited and grounded;

(e) When deenergizing conductors and equipment and the means of disconnecting from the energy source is not visible open, a voltage test shall be made before starting work. An operational check shall be made of the voltage tester prior to and following the voltage test to determine

reliability of the testing device. The test device must be handled and used while wearing or using approved protective equipment during the test;

(f) All conductors and equipment shall be treated as energized until tested, short circuited and effectively grounded except when the circuit involved is isolated from all possible sources of energizing voltage from another circuit, induced voltage or back feed;

(g) The voltage condition of deenergized conductors and/or equipment shall be determined with testing equipment designed for the applicable voltage;

(h) Upon completion of work on deenergized conductors and equipment, the person responsible shall ascertain that all employees under his jurisdiction are clear and that all protective short circuit and grounding lines are removed. The qualified person(s) shall then remove his hold tag(s). Only at this time shall conductors and equipment be reenergized.

Section 3. Safety Belts, Lanyards and Life Lines. (1) Employees working from open-sided unguarded floors, pipe racks, and ledges, platforms, walkways, machinery, stockshelves, or similar unguarded working surfaces which are elevated ten (10) feet or more above a lower level shall be secured by safety belts and lanyards, life lines where necessary, or shall be protected by safety nets.

(2) Lanyards shall have a nominal breaking strength of 5,400 lbs. The combination of safety belts and lanyards, life lines where necessary, shall be designed to permit a fall of not more than five (5) feet.

(3) All safety belt and lanyard hardware, except rivets, shall be capable of withstanding a tensile loading of 4,000 lbs. without cracking, breaking or taking a permanent deformation.

(4) Life lines, where necessary, shall be secured above the point of operation to an anchorage of structural member capable of supporting a minimum dead weight of 5,400 lbs.

(5) This standard shall not preempt any applicable standard now in effect.

Section 4. Off-highway Motor Vehicles and Equipment. (1) General requirements.

(a) Heavy machinery, equipment, or parts thereof, which are suspended or held aloft by use of slings, hoists, or jacks shall be substantially blocked or cribbed to prevent falling or shifting before employees are permitted to work under or between them. Bulldozers and scraper blades, end-loader buckets, dump bodies, and similar equipment, shall be either fully lowered or blocked when being repaired or when not in use. All controls shall be in a neutral position, with the motors stopped and brakes set, unless work being performed requires otherwise.

(b) Whenever the equipment is parked, the parking brake shall be set. Equipment parked on inclines shall have the wheels chocked and the parking brake set.

(c) All cab glass shall be safety glass, or equivalent, that introduces no visible distortion affecting the safe operation of any machine covered by this subpart.

(d) All equipment covered by this subpart shall comply with the requirements of §29 CFR 1910.180(j)(1) when working or being moved in

the vicinity of power lines or energized transmitters.

(2) Motor vehicles.

(a) Coverage. Motor vehicles as covered by this part are those vehicles that operate within an off-highway job site. The requirements of this section do not apply to equipment for which rules are prescribed in subsection (3) of this section.

(b) General requirements. All vehicles shall have a service brake system, an emergency brake system, and a parking brake system. These systems may use common components, and shall be maintained in operable condition.

(c) Whenever visibility conditions warrant additional light, all vehicles, or combinations of vehicles, in use shall be equipped with at least two (2) headlights and two (2) taillights in operable condition.

(d) All vehicles, or combination of vehicles, shall have brake lights in operable condition regardless of light conditions.

(e) All vehicles shall be equipped with an adequate audible warning device at the operator's station and in an operable condition.

(f) No employer shall use any motor vehicle equipment having an obstructed view to the rear unless:

1. The vehicle has a reverse signal alarm audible above the surrounding noise level; or
2. The vehicle is backed up only when an observer signals that it is safe to do so.

(g) All vehicles with cabs shall be equipped with windshields and powered wipers. Cracked and broken glass shall be replaced. Vehicles operating in areas or under conditions that cause fogging or frosting of the windshields shall be equipped with operable defogging or defrosting devices.

(h) All haulage vehicles, whose pay load is loaded by means of cranes, power shovels, loaders, or similar equipment, shall have a cab shield and/or canopy adequate to protect the operator from shifting or falling materials.

(i) Tools and material shall be secured to prevent movement when transported in the same compartment with employees.

(j) Vehicles used to transport employees shall have seats firmly secured and adequate for the number of employees to be carried.

(k) The employer will provide and insure the use of seat belts and anchorages meeting the requirements of 49 CFR Part 571 (Department of Transportation, Federal Motor Vehicle Safety Standards).

(l) Trucks with dump bodies shall be equipped with positive means of support, permanently attached, and capable of being locked in position to prevent accidental lowering of the body while maintenance or inspection work is being done.

(m) Operating levers controlling hoisting or dumping devices on haulage bodies shall be equipped with a latch or other device which will prevent accidental starting or tripping of the mechanism.

(n) Trip handles for tailgates of dump trucks shall be so arranged that, in dumping, the operator will be in the clear.

(o) Each employer shall assure that the following parts, equipment, and accessories are in safe operating condition and free of apparent damage that could cause failure while in use: service brakes, including trailer brake connections; parking system (hand brake);

emergency stopping system (brakes); tires; horn; steering mechanism; coupling devices; seat belts; operating controls; and safety devices. All defects shall be corrected before the vehicle is placed in service. These requirements also apply to equipment such as lights, reflectors, windshield wipers, defrosters, fire extinguishers, etc., where such equipment is necessary.

(3) Material handling equipment.

(a) Equipment; general. These rules apply to the following types of equipment: scrapers, loaders, crawler or wheel tractors, bulldozers, off-highway trucks, graders, agricultural and industrial tractors, and similar equipment. The promulgation of specific rules for compactors and rubber-tired "skid-steer" equipment is reserved pending consideration of standards currently being developed.

(b) Seating and seat belts. Each employer shall insure safe seating with seat belts on all equipment covered by this section, and shall meet the requirement of J386, Society of Automotive Engineers Handbook, 1986, Seat Belts for Construction Equipment. Seat belts for agricultural and light industrial tractors shall meet the seat belt requirements of Society of Automotive Engineers J1194, Society of Automotive Engineers Handbook, 1986, Operator Protection for Agricultural and Light Industrial Tractors.

(c) Seat belts need not be provided for equipment which is designed only for stand-up operation.

(d) Seat belts need not be provided for equipment which does not have rollover protective structure (ROPS) or adequate canopy protection.

(e) Brakes. All equipment mentioned in subsection (a) of this section shall have a service braking system capable of stopping and holding the equipment fully loaded, as specified in Society of Automotive Engineers SAE J237, Loader Dozer, Society of Automotive Engineers Handbook, 1986, J236, Graders, Society of Automotive Engineers Handbook, 1986, and J319b, Scrapers, Society of Automotive Engineers Handbook, 1986. Brake systems for self-propelled rubber-tired off-highway equipment manufactured after January 1, 1987 shall meet the applicable minimum performance criteria set forth in the following Society of Automotive Engineers Recommended Practices:

Self-propelled Scrapers	SAE J319B, Society of Automotive Engineers Handbook, 1986.
Self-propelled Graders	SAE J236, Society of Automotive Engineers Handbook, 1986.
Trucks and Wagons	SAE J166, Society of Automotive Engineers Handbook, 1986.
Front-end Loaders and Dozers	SAE J237, Society of Automotive Engineers Handbook, 1986.

(f) Rollover protective structures for off-highway trucks. The promulgation of standards for rollover protective structures for off-highway trucks is reserved pending further study and development.

(g) Audible alarms.

1. All bidirectional machines, such as rollers, compactors, front-end loaders,

bulldozers, and similar equipment, shall be equipped with a horn, distinguishable from the surrounding noise level, which shall be operated as needed when the machine is moving in either direction. The horn shall be maintained in an operative condition.

2. No employer shall permit material handling equipment or compacting equipment which has an obstructed view to the rear to be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level or an employee signals that it is safe to do so.

(h) Scissor points. Scissor points on all front-end loaders, which constitute a hazard to the operator during normal operation, shall be guarded.

Section 5. Rollover Protective Structures; Overhead Protection. (1) Rollover protective structure (ROPS) for material handling equipment.

(a) Coverage. This section applies to the following types of material handling equipment: To all rubber-tired, self-propelled scrapers, rubber-tired front-end loaders, rubber-tired dozers, wheel-type agricultural and industrial tractors, crawler tractors, crawler-type loaders, and motor graders, with or without attachments, that are used in general industry work. This requirement does not apply to sideboom pipelaying tractors.

(b) The promulgation of specific standards for rollover protective structures for compactors and rubber-tired skid-steer equipment is reserved pending consideration of standards currently being developed.

(c) Equipment manufactured on or after January 1, 1987. Material handling machinery described in paragraph (a) of this subsection and manufactured on or after January 1, 1987, shall be equipped with rollover protective structures which meet the minimum performance standards prescribed in subsections (2) and (3) of this section as applicable.

(d) Equipment manufactured before January 1, 1987. All material handling equipment described in paragraph (a) of this subsection and manufactured or placed in service (owned or operated by the employer) prior to January 1, 1987, shall be fitted with rollover protective structures no later than January 1, 1988. Machines manufactured before July 1, 1969: Reserved pending further study, development, and review.

(e) Rollover protective structures and supporting attachment shall meet the minimum performance criteria detailed in subsections (2) and (3) of this section, as applicable or shall be designed, fabricated, and installed in a manner which will support, based on the ultimate strength of the metal, at least two (2) times the weight of the prime mover applied at the point of impact.

(f) The design objective shall be to minimize the likelihood of a complete overturn and thereby minimize the possibility of the operator being crushed as a result of a rollover or upset.

(g) The design shall provide a vertical clearance of at least fifty-two (52) inches from the work deck to the ROPS at the point of ingress or egress.

(h) Remounting. ROPS removed for any reason, shall be remounted with equal quality, or better, bolts or welding as required for the original mounting.

(i) Labeling. Each ROPS shall have the following information permanently affixed to the structure:

1. Manufacturer or fabricator's name and address;

2. ROPS model number, if any;

3. Machine make, model, or series number that the structure is designed to fit.

(j) Machines meeting certain existing governmental requirements. Any machine in use, equipped with rollover protective structures, shall be deemed in compliance with this subsection if it meets the rollover protective structure requirements of the state of California, the U.S. Army Corps of Engineers, or the Bureau of Reclamation of the U.S. Department of the Interior in effect on April 5, 1972. The requirements in effect are:

1. State of California: Construction Safety Orders, issued by the Department of Industrial Relations pursuant to Division 5, Labor Code, §6312, state of California.

2. U.S. Army Corps of Engineers: General Safety Requirements, EM-385-1-1 (March 1967).

3. Bureau of Reclamation, U.S. Department of the Interior: Safety and Health Regulations for Construction. Part II (September 1971).

(2) Minimum performance criteria for rollover protective structures for designated scrapers, loaders, dozers, graders, and crawler tractors.

(a) General. This section prescribes minimum, performance criteria for rollover protective structures (ROPS) for rubber-tired self-propelled scrapers; rubber-tired front-end loaders and rubber-tired dozers; crawler tractors, crawler-type loaders, and motor graders. The vehicle and ROPS as a system shall have the structural characteristics prescribed in paragraph (f) of this subsection for each type of machine described in this paragraph.

(b) The static laboratory test prescribed herein will determine the adequacy of the structures used to protect the operator under the following conditions:

1. For rubber-tired self-propelled scrapers, rubber-tired front-end loaders, and rubber-tired dozers: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to a maximum roll angle of 360 degrees down a slope of thirty (30) degrees maximum.

2. For motor graders: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to 360 degrees down a slope of thirty (30) degrees maximum.

3. For crawler tractors and crawler-type loaders: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to a maximum roll angle of 360 degrees down a slope of forty-five (45) degrees.

(c) Facilities and apparatus.

1. The following material is necessary:

a. Material, equipment, and tie-down means adequate to insure that the ROPS and its vehicle frame absorb the applied energy.

b. Equipment necessary to measure and apply loads to the ROPS. Adequate means to measure deflections and lengths should also be provided.

c. Recommended, but not mandatory, types of test setups are illustrated in Figure W-1 for all types of equipment to which this section applies; and in Figure W-2 for rubber-tired self-propelled scrapers; Figure W-3 for rubber-tired front-end loaders, rubber-tired dozers, and motor graders; and Figure W-4 for

crawler tractors and crawler-type loaders.

2. Table W-1 contains a listing of the required apparatus for all types of equipment described in paragraph (a) of this subsection.

TABLE W-1

Means to Measure	Accuracy
Deflection of ROPS, inches	+5% of deflection measured.
Vehicle weight, pounds	+5% of the weight measured.
Force applied to frame pounds	+5% of force measured.
Dimensions of critical zone	+0.5 inches.

(d) Vehicle conditions. The ROPS to be tested must be attached to the vehicle structure in the same manner as it will be attached during vehicle use. A totally assembled vehicle is not required. However, the vehicle structure and frame which support the ROPS must represent the actual vehicle installation. All normally detachable windows, panels, or nonstructural fittings shall be removed so that they do not contribute to the strength of the ROPS.

(e) Test procedure. The test procedure shall include the following, in the sequence indicated:

1. Energy absorbing capabilities of ROPS shall be verified when loaded laterally by incrementally applying a distributed load to the longitudinal outside top member of the ROPS, as shown in Figure W-1, W-2, or W-3, as applicable. The distributed load must be applied so as to result in approximately uniform deflection of the ROPS. The load increments should correspond with approximately five-tenths (0.5) inches ROPS deflection increment in the direction of the load application, measured at the ROPS top edge. Should the operator's seat be off-center, the load shall be applied on the off-center side. For each applied load increment, the total load (lb.) versus corresponding deflection (in.) shall be plotted, and the area under the load-deflection curve shall be calculated. This area is equal to the energy (in.-lb.) absorbed by the ROPS. For a typical load-deflection curve and calculation method, see Figure W-5. In Figure W-1, incremental loading shall be continued until the ROPS has absorbed the amount of energy and the minimum applied load specified under paragraph (f) of this subsection has been reached or surpassed. (See Figures for this section following the regulation.)

2. To cover the possibility of the vehicle coming to rest on its top, the support capability shall be verified by applying a distributed vertical load to the top of the ROPS so as to result in approximately uniform deflection (see Figure W-1). The load magnitude is specified in paragraph (f)2a of this subsection.

3. The low temperature impact strength of the material used in the ROPS shall be verified by suitable material tests or material certification (see paragraph (f)2d of this subsection).

(f) Performance requirements.

1. General performance requirements.

a. No repairs or straightening of any member shall be carried out between each prescribed test.

b. During each test, no part of the ROPS shall enter the critical zone as detailed in SAE

J397b, Society of Automotive Engineers Handbook, 1986. Deformation of the ROPS shall not allow the plane of the ground to enter this zone.

2. Specific performance requirements.

a. The energy requirement for purposes of meeting the requirements of paragraph (e)1 of this subsection is to be determined by referring to the plot of the energy versus weight of vehicle (see Figure W-6 for rubber-tired self-propelled scrapers; Figure W-7 for rubber-tired front-end loaders and rubber-tired dozers; Figure W-8 for crawler tractors and crawler-type loaders; and Figure W-9 for motor graders). For purposes of this subsection, force and weight are measured as pounds (lb.); energy (U) is measured as inch-pounds.

b. The applied load must attain at least a value which is determined by multiplying the vehicle weight by the corresponding factor shown in Figure W-10 for rubber-tired self-propelled scrapers; in Figure W-11 for rubber-tired front-end loaders and rubber-tired dozers; in Figure W-12 for crawler tractors and crawler-type loaders; and in Figure W-13 for motor graders.

c. The load magnitude for purposes of compliance with paragraph (e)2 of this subsection is equal to the vehicle weight. The test of load magnitude shall only be made after the requirements of subparagraph 2a of this paragraph are met.

d. Material used in the ROPS must have the capability of performing at zero degrees Fahrenheit, or exhibit Charpy V notch impact strength of eight (8) foot-pounds at minus twenty (20) degrees Fahrenheit. This is a standard Charpy specimen as described in American Society of Testing and Materials A 370, Methods and Definitions for Mechanical Testing of Steel Products (available at the Central Office of the Kentucky Occupational Safety and Health Program). The purpose of this requirement is to reduce the tendency of brittle fracture associated with dynamic loading, low temperature operation, and stress raisers which cannot be entirely avoided on welded structures.

(g) Definitions. For purposes of this subsection, "vehicle weight" means the manufacturer's maximum weight of the prime mover for rubber-tired self-propelled scrapers. For other types of equipment to which this subsection applies, "vehicle weight" means the manufacturer's maximum recommended weight of the vehicle plus the heaviest attachment.

(h) Source of standard. This standard is derived from, and restates, the following Society of Automotive Engineers Recommended Practices: SAE J1349, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Rubber-tired, Self-propelled Scrapers; SAE J394, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Rubber-tired Front-end Loaders and Rubber-tired Dozers; SAE J395, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Crawler Tractors and Crawler-type Loaders; and SAE J396, Society of Automotive Engineers handbook, 1986, Minimum Performance Criteria for Rollover Protective Structures for Motor Graders. These recommended practices shall be resorted to in the event that questions of interpretation arise. The recommended practices appear in the 1986 SAE

Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

(3) Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction.

(a) General.

1. The purpose of this section is to set forth requirements for frames for the protection of operators of wheel type agricultural and industrial tractors to minimize the possibility of operator injury resulting from accidental upsets during normal operation. With respect to agricultural and industrial tractors, the provisions of subsections (2) and (4) of this section for rubber-tired dozers and rubber-tired loaders may be utilized in lieu of the requirements of this section.

2. The protective frame which is the subject of this standard is a structure mounted to the tractor that extends above the operator's seat and conforms generally to Figure W-14.

3. If an overhead weather shield is attached to the protective frame, it may be in place during tests: provided, that it does not contribute to the strength of the protective frame. If such an overhead weather shield is attached, it must meet the requirements of paragraph (i) of this subsection.

4. For overhead protection requirements, see subsection (4) of this section.

5. If protective enclosures are used on wheel-type agricultural and industrial tractors, they shall meet the requirements of Society of Automotive Engineers Standard J1249, Society of Automotive Engineers Handbook, 1986, Protective Enclosures, Test Procedures, and Performance Requirements. This standard appears in the 1986 SAE Handbook and may be examined in the Central office of the Kentucky Occupational Safety and Health Program.

(b) Applicability. The requirements of this subsection apply to wheel-type agricultural tractors used in general industry work and to wheel-type industrial tractors used in general industry work. See paragraph (j) of this subsection for definitions of agricultural tractors and industrial tractors.

(c) Performance requirements.

1. Either a laboratory test or a field test is required in order to determine the performance requirements set forth in this paragraph.

2. A laboratory test may be either static or dynamic. The laboratory test must be under conditions of repeatable and controlled loading in order to permit analysis of the protective frame.

3. A field upset test, if used, shall be conducted under reasonably controlled conditions, both rearward and sideways to verify the effectiveness of the protective frame under actual dynamic conditions.

(d) Test procedures - general.

1. The tractor used shall be the tractor with the greatest weight on which the protective frame is to be used.

2. A new protective frame and mounting connections of the same design shall be used for each test procedure.

3. Instantaneous and permanent frame deformation shall be measured and recorded for each segment of the test.

4. Dimensions relative to the seat shall be determined with the seat unloaded and adjusted

to its highest and most rearward latched position provided for a seated operator.

5. If the seat is offset, the frame loading shall be on the side with the least space between the centerline of the seat and the upright.

6. The low temperature impact strength of the material used in the protective structure shall be verified by suitable material tests or material certifications in accordance with subsection (2)(f)2d of this section.

(e) Test procedure for vehicle overturn.

1. Vehicle weight. The weight of the tractor, for purposes of this subsection, includes the protective frame, all fuels, and other components required for normal use of the tractor. Ballast must be added if necessary to achieve a minimum total weight of 130 lbs. (59 kg.) per maximum power takeoff horsepower at rated engine speed. The weight of the front end must be at least thirty-three (33) lb. (15 kg.) per maximum power takeoff horsepower. In case power takeoff horsepower is unavailable, ninety-five (95) percent of net engine flywheel horsepower shall be used.

2. Agricultural tractors shall be tested at the weight set forth in subparagraph 1 of this paragraph.

3. Industrial tractors shall be tested with items of integral or mounted equipment and ballast that are sold as standard equipment or approved by the vehicle manufacturer for use with the vehicle where the protective frame is expected to provide protection for the operator with such equipment installed. The total vehicle weight and front end weight as tested shall not be less than the weights established in subparagraph 1 of this paragraph.

4. The test shall be conducted on a dry, firm soil bank as illustrated in Figure W-15. The soil in the impact area shall have an average cone index in the 0-6 inch (153 mm.) layer not less than 150 according to American Society of Agricultural Engineers Recommendation ASAE R313, Soil Cone Penetrometer (available in the Central Office of the Kentucky Occupational Safety and Health Program). The path of travel of the vehicle shall be $12^{\circ} \pm 2^{\circ}$ to the top edge of the bank.

5. The upper edge of the bank shall be equipped with an eighteen (18) inch (457 mm.) high ramp as described in Figure W-15 to assist in tipping the vehicle.

6. The front and rear wheel tread settings, where adjustable, shall be at the position nearest to halfway between the minimum and maximum settings obtainable on the vehicle. Where only two (2) settings are obtainable, the minimum setting shall be used.

7. Vehicle overturn test - sideways and rearward.

a. The tractor shall be driven under its own power along the specified path of travel at a minimum speed of ten (10) m.p.h. (16 km./hr.) or maximum vehicle speed if under ten (10) m.p.h. (16 km./hr.) up the ramp as described in subparagraph 5 of this paragraph to induce sideways overturn.

b. Rear upset shall be induced by engine power with the tractor operating in gear to obtain 3-5 m.p.h. (4.8-8 km./hr.) at maximum governed engine r.p.m. preferably by driving forward directly up a minimum slope of two (2) vertical to one (1) horizontal. The engine clutch may be used to aid in inducing the upset.

(f) Other test procedures. When the field upset test is not used to determine ROPS performance, either the static test or the dynamic test, contained in paragraph (g) or (h) of this subsection, shall be made.

(g) Static test.

1. Test conditions.

a. The laboratory mounting base shall include that part of the tractor chassis to which the protective frame is attached including the mounting parts.

b. The protective frame shall be instrumented with the necessary equipment to obtain the required load deflection data at the location and directions specified in Figures W-16, W-17, and W-18.

c. The protective frame and mounting connections shall be instrumented with the necessary recording equipment to obtain the required load-deflection data to be used in calculating FSB (see paragraph (j)3 of this subsection). The gauges shall be placed on mounting connections before the installation load is applied.

2. Test procedure.

a. The side load application shall be at the upper extremity of the frame upright at a ninety (90) degree angle to the centerline of the vehicle. This side load "L" shall be applied according to Figure W-16. "L" and "D" shall be recorded simultaneously. The test shall be stopped when:

(i) The strain energy absorbed by the frame is equal to the required input energy (E_{is}); or

(ii) Deflection of the frame exceeds the allowable deflection; or

(iii) The frame load limit occurs before the allowable deflection is reached in the side load.

b. The L-D diagram, as shown by means of a typical example in Figure W-19, shall be constructed, using the data obtained in accordance with clause a of this subparagraph.

c. The modified L_m - D_m diagram shall be constructed according to clause (ii) of this subparagraph and according to figure W-20. the strain energy absorbed by the frame (E_u) shall then be determined.

d. E_{is} , FER, and FSB shall be calculated.

e. The test procedure shall be repeated on the same frame utilizing L (rear input; see Figure W-18) and E_{ir} . Rear load application shall be uniformly distributed along a maximum projected dimension of twenty-seven (27) inches (686 mm.) and a maximum area of 160 square inches (1,032 sq. cm.) normal to the direction of load application. The load shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright.

(h) Dynamic test.

1. Test conditions.

a. The protective frame and tractor shall meet the requirements of paragraph (e)2 or 3 of this subsection, as appropriate.

b. The dynamic loading shall be produced by use of a 4,410 lb. (2,000 kg.) weight acting as a pendulum. The impact face of the weight shall be twenty-seven (27) plus, or minus one (1) inch by twenty-seven (27) plus or minus one (1) inch (686 + or - 25 mm.) and shall be constructed so that its center of gravity is within one (1) inch (25.4 mm.) of its geometric center. The weight shall be suspended from a pivot point 18-22 feet (5.5-6.7 m.) above the point of impact on the frame and shall be conveniently

and safely adjustable for height. (See Figure W-21).

c. For each phase of testing, the tractor shall be restrained from moving when the dynamic load is applied. The restraining members shall be of 0.5-0.63 inch (12.5-16 mm.) steel cable and points of attaching restraining members shall be located an appropriate distance behind the rear axle and in front of the front axle to provide a 15°-30° angle between a restraining cable and the horizontal. The restraining member shall either be in the plane in which the center gravity of the pendulum will swing or more than one (1) restraining cable shall give a resultant force in this plane. (See Figure W-22).

d. The wheel tread setting shall comply with the requirements of paragraph (e)6 of this subsection. The tires shall have no liquid ballast and shall be inflated to the maximum operating pressure recommended by the tire manufacturer. With specified tire inflation, the restraining cables shall be tightened to provide tire deflection of 6-8 percent of nominal tire section width. After the vehicle is properly restrained, a wooden beam 6 x 6 in. (15 x 15 cm.) shall be driven tightly against the appropriate wheels and clamped. For the test to the side, an additional wooden beam shall be placed as a prop against the wheel nearest the operator's station and shall be secured to the floor so that it is held tightly against the wheel rim during impact. The length of this beam shall be chosen so that when it is positioned against the wheel rim, it is at an angle of 25°-40° to the horizontal. It shall have a length 20-25 times its depth and a width two (2) to three (3) times its depth. (See Figures W-22 and W-23.)

e. Means shall be provided indicating the maximum instantaneous deflection along the line of impact. A simple friction device is illustrated in Figure W-23.

f. No repair or adjustments may be carried out during the test.

g. If any cables, props, or blocking shift or break during the test, the test shall be repeated.

2. Test procedure.

a. General. The frame shall be evaluated by imposing dynamic loading to rear followed by a load to the side on the same frame. The pendulum dropped from the height (see definition "H" in paragraph (j)3 of this subsection) imposes the dynamic load. The position of the pendulum shall be so selected that the initial point of impact on the frame shall be in line with the arc of travel of the center of gravity of the pendulum. A quick release mechanism should be used but, if used, shall not influence the attitude of the block.

b. Impact at rear. The tractor shall be properly restrained according to subparagraphs 1c and d of this paragraph. The tractor shall be positioned with respect to the pivot point of the pendulum such that the pendulum is twenty (20) degrees from the vertical prior to impact, as shown in Figure W-22. The impact shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright of a new frame.

c. Impact at side. The block and restraining shall conform to subparagraphs 1c and d of this paragraph. The point of impact shall be that structural member of the protective frame likely

to hit the ground first in a sideways accidental upset. The side impact shall be applied to the side opposite that used for rear impact.

(i) Performance requirements.

1. General.

a. The frame, overhead weather shield, fenders, or other parts in the operator area may be deformed but shall not shatter or leave sharp edges exposed to the operator, or violate dimensions as shown in Figures W-16 and W-17 as follows:

D = 2 in. (51 mm.) inside of frame upright to vertical centerline of seat.

E = 30 in. (762 mm.).

F = Not less than 0 in. and not more than 12 in. (305 mm.), measured at centerline front of seat backrest to crossbar along the line of load application as shown in Figure W-17.

G = 24 in. (610 mm.).

b. The material and design combination used in the protective structure must be such that the structure can meet all prescribed performance tests at zero degrees Fahrenheit in accordance with subsection (2)(f)2d.

2. Vehicle overturn performance requirements. The requirements of this paragraph must be met in both side and rear overturns.

3. Static test performance requirements. Design factors shall be incorporated in each design to withstand an overturn test as prescribed in this paragraph. The structural requirements will be generally met if FER is greater than one (1) and FSB is greater than K-1 in both side and rear loadings.

4. Dynamic test performance requirements. Design factors shall be incorporated in each design to withstand the overturn test prescribed in this paragraph. The structural requirements will be generally met if the dimensions in this paragraph are adhered to in both side and rear loads.

(j) Definitions applicable to this section.

1. SAE J1194, Society of Automotive Engineers Handbook, 1986, Operator Protection for Wheel-type Agricultural and Industrial Tractors (1983) defines "agricultural tractor" as a "wheel-type vehicle of more than 20 engine horsepower designed to furnish the power to pull, carry, propel, or drive implements that are designed for agricultural usage." Since this subsection applies only to general industry work, the following definition of "agricultural tractor" is adopted for purposes of this regulation: "agricultural tractor" means a wheel-type vehicle of more than twenty (20) engine horsepower, used in general industry work, which is designed to furnish the power to pull, propel, or drive implements.

2. "Industrial tractor" means that class of wheeled-type tractor of more than twenty (20) engine horsepower (other than rubber-tired loaders and dozers described in subsection (2) of this section) used in operations such as landscaping, loading, digging, grounds keeping, and highway maintenance.

3. The following symbols, terms, and explanations apply to this section:

E_{is} = Energy input to be absorbed during side loading. $E'_{is} = 723 + 0.4 W$ ft.-lb.

($E'_{is} = 100 + 0.12W'$, m.-kg.).

E_{ir} = Energy input to be absorbed during rear loading. $E'_{ir} = 0.47 W$ ft.-lb. ($E'_{ir} = 0.14$

W' , m.-kg.).

W = Tractor weight as prescribed in subsection (3)(e)1 and (e)3, in lb. (W' , kg.). L = Static load, lb. (kg.).

D = Deflection under L, in. (mm.).

L-D = Static load-deflection diagram.

L_{mDm} = Modified static load-deflection diagram (Figure W-20). To account for increase in strength due to increase in strain rate, raise L in plastic range to $L \times K$.

K = increase in yield strength induced by higher rate of loading (1.3 for hot rolled low carbon steel 1010-1030). Low carbon is preferable; however, if higher carbon or other material is used, K must be determined in the laboratory. Refer to Charles H. Norris, et al., Structural Design for Dynamic Loads (1959), p. 3.

L_{max} = Maximum observed static load.

Load Limit = Point on L-D curve where observed static load is 0.8 L_{max} (refer to Figure W-19).

E_u = Strain energy absorbed by the frame, ft.-lb. (m.-kg.) area under L_{mDm} curve.

FER = Factor of energy ratio, $FER = E_u/E_{is}$ also = E_u/E_{ir}

P_b = Maximum observed force in mounting connection under static load, L, lb. (kg.).

FSB = Design margin for mounting connection $FSB = (P_u/P_b) - 1$.

H = Vertical height of lift of 4.410 lb. (2,000 kg.) weight, in. (H' , mm.). The weight shall be pulled back so that the height of its center of gravity above the point of impact is defined as follows: $H = 4.92 + 0.00190 W$ or ($H' = 125 + 0.107 W'$) (Figure W-24).

(k) Source of standard. The standard in this section is derived from, and restates, Society of Automotive Engineers Standard J1194, Society of Automotive Engineers Handbook, 1986, Protective Frame Test Procedures and Performance Requirements. This standard shall be resorted to in the event that questions of interpretation arise. The standard appears in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

(4) Overhead protection for operators of agricultural and industrial tractors.

(a) General.

1. Purpose. When overhead protection is provided on wheel-type agricultural and industrial tractors, the overhead protection shall be designed and installed according to the requirements contained in this subsection. The provisions of subsection (2) of this section for rubber-tired dozers and rubber-tired loaders may be used in lieu of the standards contained in this subsection. The purpose of the standard is to minimize the possibility of operator injury resulting from overhead hazards such as flying and falling objects, and at the same time to minimize the possibility of operator injury from the cover itself in the event of accidental upset.

2. Applicability. This standard applies to wheel-type agricultural tractors used in general industry work and to wheel-type industrial tractors used in general industry work.

(b) Overhead protection. When overhead protection is installed on wheel-type agricultural or industrial tractors used in general industry work, it shall meet the requirements of this paragraph. The overhead protection may be constructed of a solid material. If grid or mesh is used, the largest permissible opening shall be such that the

maximum circle which can be inscribed between the elements of the grid or mesh is 1.5 in. (38 mm.) in diameter. The overhead protection shall not be installed in such a way as to become a hazard in the case of upset.

(c) Test procedures - general.

1. The requirements of subsection (3)(d), (e), and (f) of this section shall be met.

2. Static and dynamic rear load application shall be uniformly distributed along a maximum projected dimension of 27 in. (686 mm.) and a maximum area of 160 inch² (1,032 cm.²) normal to the direction of load application. The load shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright.

3. The static and dynamic side load application shall be uniformly distributed along a maximum projected dimension of 27 in. (686 mm.) and a maximum area of 160 inch² (1,032 cm.²) normal to the direction of load application. The direction of load application is the same as in subsection (3)(g) and (h) of this section. To simulate the characteristics of the structure during an upset, the center of load application may be located from a point 24 in. (610 mm.) (K) forward to 12 in. (305 mm.) (L) rearward of the front of the seat backrest to best utilize the structural strength. See Figure W-25.

(d) Drop test procedures.

1. The same frame shall be subjected to the drop test following either the static or dynamic test.

2. A solid steel sphere or material of equivalent spherical dimension weighing 100 lb. (45.4 kg.) shall be dropped once from a height 10 ft. (3,048 mm.) above the overhead cover.

3. The point of impact shall be on the overhead cover at a point within the zone of protection as shown in Figure W-26, which is furthest removed from major structural members.

(e) Crush test procedures.

1. The same frame shall be subjected to the crush test following the drop test and static or dynamic test.

2. The test load shall be applied as shown in Figure W-27 with the seat positioned as specified in subsection (3)(d)4 of this section. Loading cylinders shall be pivotally mounted at both ends. Loads applied by each cylinder shall be equal within two (2) percent, and the sum of the loads of the two (2) cylinders shall be two (2) times the tractor weight as set forth in subsection (3)(e)1 of this section. The maximum width of the beam illustrated in Figure W-27 shall be 6 in. (152 mm.).

(f) Performance requirements.

1. General. The performance requirements set forth in subsection (3)(i)2, 3, and 4 of this section shall be met.

2. Drop test performance requirements.

a. Instantaneous deformation due to impact of the sphere shall not enter the protected zone as illustrated in Figure W-25, W-26, and W-28.

b. In addition to the dimensions set forth in subsection (3)(i)1a of this section, the following dimensions apply to Figure W-28:

H = 17.5 in. (444 mm.).

J = 2 in. (50.8 mm.) measured from the outer periphery of the steering wheel.

3. Crush test performance requirements. The protected zone as described in Figure W-28 must not be violated.

(g) Source of standard. This standard is derived from, and restates, the portions of Society of Automotive Engineers Standard J167, Society of Automotive Engineers Handbook, 1986, which pertain to overhead protection requirements. The full title of the SAE standard is: Protective Frame with Overhead Protection-test Procedures and Performance Requirements. The SAE standard shall be resorted to in the event that questions of interpretation arise. The SAE standard appears in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

Section 6. Fire Apparatus and Fire Department Facilities. (1) Scope. This section applies to industrial fire departments and private, public or contractual type fire departments. This section does not apply to volunteer fire departments.

(2) Persons riding on fire apparatus. All persons riding on fire apparatus shall be secured to the vehicle by seat belts or safety harnesses at any time the vehicle is in motion.

(3) Inspection, maintenance, and repair of vehicles.

(a) All fire department vehicles shall be inspected at least weekly and within twenty-four (24) hours after any use or repair to identify and correct unsafe conditions. Any fire department vehicle found to be unsafe shall be placed out of service until repaired. After being repaired, the vehicle shall be inspected prior to being placed back in service.

(b) The inspection shall include tires, brakes, warning lights and devices, headlights and clearance lights, windshield wipers and mirrors. The apparatus shall be started and the operation of pumps and other equipment shall be verified. Safety equipment carried on fire department vehicles shall be inspected in conjunction with the vehicle inspection.

(c) The fire department shall maintain inspection, maintenance, repair, and service records for all vehicles and equipment used for emergency operations.

(4) Facility safety.

(a) All sleeping areas in fire stations shall be separated from vehicle storage areas by at least one (1) hour fire resistive assemblies or shall have operable fire suppression and/or operable smoke detection systems.

(b) Fire stations shall be provided with provisions to ventilate exhaust emissions from fire apparatus to prevent exposure to firefighters and the contamination of living and sleeping areas.

(5) Effective dates.

(a) Subsection (2) of this section shall become effective September 1, 1991.

(b) Subsection (3) of this section shall become effective January 1, 1992.

(c) Subsection (4) of this section shall become effective July 1, 1993.

OTIS REED, Jr., Chairman

APPROVED BY AGENCY: June 12, 1991

FILED WITH LRC: June 14, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 23, 1991 at 1 p.m. at the Kentucky Labor Cabinet, 1049 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall

notify this agency in writing by July 18, 1991, 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kembra Taylor, Guy Schoolfield

(1) Type and number of entities affected: Section 1(1) is amended and affects all employers in the Commonwealth in general industry settings that have automotive battery charging operations. Section 6(1), (2), (3), (4) and (5) promulgations affect all industrial fire departments, and private, public or contractual type fire departments. This section does not apply to volunteer fire departments.

(a) Direct and indirect costs or savings to those affected:

1. First year: The amendment identified in item (1) above will result in the possibility of less than \$500 per affected employer; most employers are already in compliance with the amendment. The promulgations identified in item (1) above will result in direct costs to all affected fire departments. Because of the nature of the standards contained in the promulgations, it is extremely difficult to determine the costs due to the variables.

2. Continuing costs or savings: See item 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The amendment and promulgations will have no effects on increasing or decreasing costs to competitors.

(b) Reporting and paperwork requirements: Section 1(1) amendment will not entail any paperwork or reporting requirements. Section 6(3)(c) promulgation requires inspection, maintenance, repair and service records for all vehicles and equipment used for emergency operations.

(2) Effects on the promulgating administrative body: There will be no effects on the promulgating administrative body by the amendment or promulgations.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements resulting from this amendment or promulgations.

(3) Assessment of anticipated effect on state and local revenues: The amendment and promulgations will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons

why alternatives were rejected: The amendment and promulgations concern no alternative methods being considered, because the regulations concern specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication as a result of the amendment and promulgations.

(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 Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. N/A

2. State compliance standards. N/A

3. Minimum or uniform standards contained in the federal mandate. N/A

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A. The amendment in Section 1(1) is to a regulation promulgated previously by the Kentucky Occupational Safety and Health Standards Board. There is no federal OSHA standard for automotive battery charging. The promulgations in Section 6(1), (2), (3), (4) and (5) were thought to be necessary by the Kentucky Occupational Safety and Health Standards Board, as well as those affected entities, due to fatalities and injuries in the Commonwealth on fire apparatus and fire department facilities.

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. Section 1(1) amendment affects all divisions of local government that have "Automotive Battery Charging" operations. Section 6(1), (2), (3), (4) and (5) promulgations affect all divisions of local government with "Fire Apparatus and Fire Department Facilities."

3. State the aspect or service of local government to which this administrative regulation relates. The amendment in Section 1(1) affects local government employees with exposure to "Automotive Battery Charging Operations." The promulgations in Section 6(1), (2), (3), (4) and (5) affect all local government employees with "Fire Apparatus and Fire Department Facilities."

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: The purpose of Section 1(2) amendment is to reinstate a previous provision removed from the existing standard. The purpose of Section 6(1), (2), (3), (4) and (5) promulgations is to provide safety and health regulations for firefighters.

(See Figures on following pages)

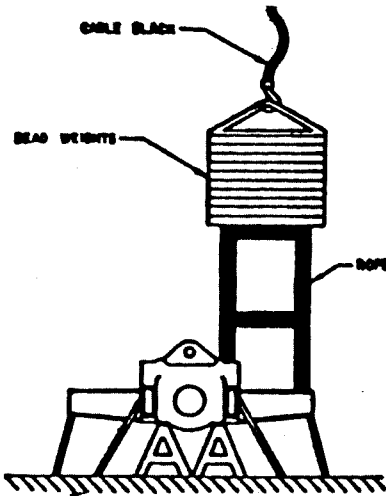


Figure W-1-Vertical loading setup
for all types of equipment described
in Subsection (2)(a) of this section.

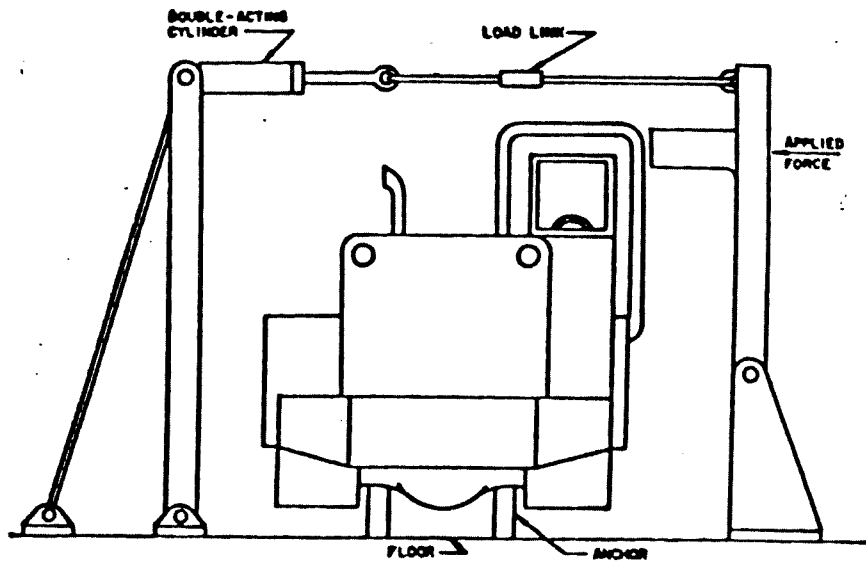


FIGURE W-2—Test setup for rubber-tired self-propelled scrapers.

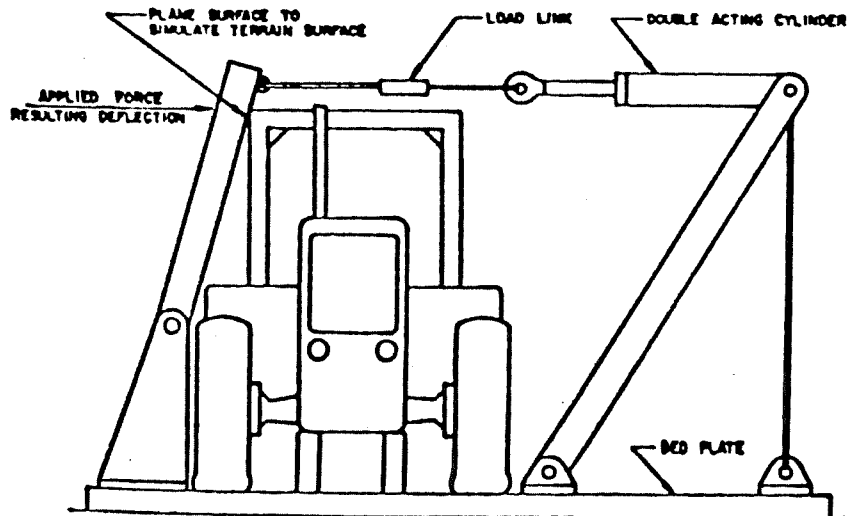


FIGURE W-3—Test setup for rubber-tired front-end loaders, rubber-tired dozers, and motor graders.

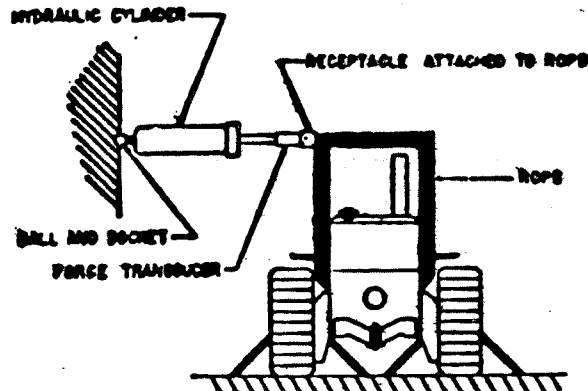
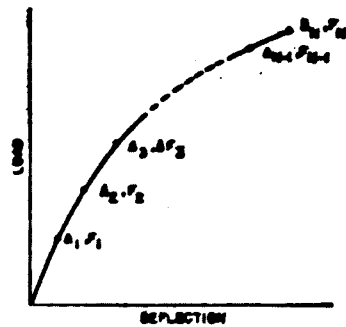


FIGURE W-4—Side-loading setup for crawler tractors and crawler loaders.



δ - TOTAL DEFLECTION
 F - FORCE APPLIED

$$\text{AREA} = \frac{\delta_1 F_1}{2} + (\delta_2 - \delta_1) \frac{F_1 + F_2}{2} + (\delta_3 - \delta_2) \frac{F_2 + F_3}{2} + \dots + (\delta_n - \delta_{n-1}) \frac{F_{n-1} + F_n}{2}$$

FIGURE W-5—Determination of energy area under force deflection curve for all types of ROPS equipment defined in Subsection (2) of this section.

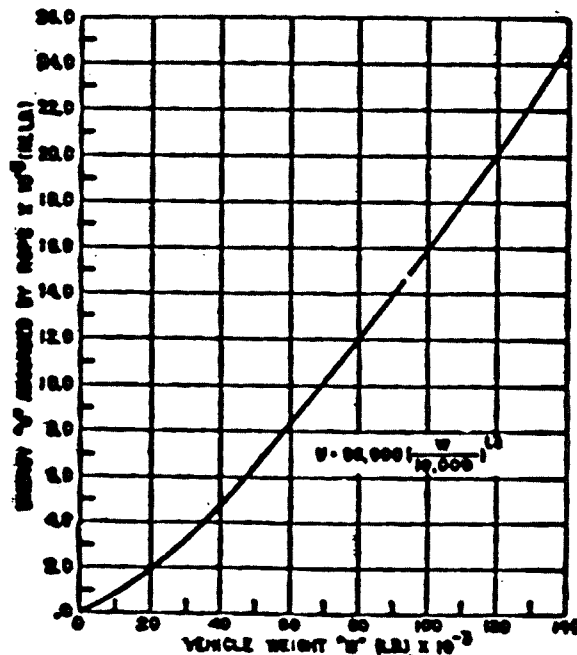


FIGURE W-6—Energy absorbed versus vehicle weight.

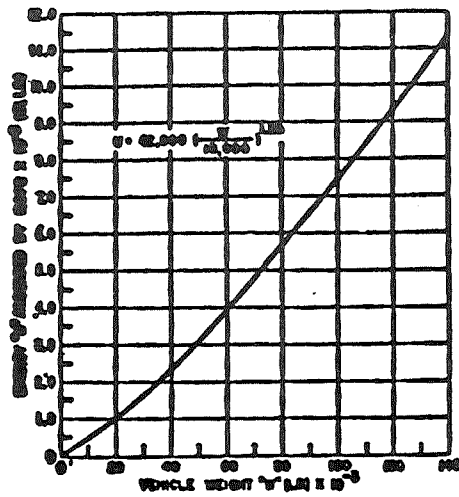


FIGURE W-7—Energy absorbed versus vehicle weight.

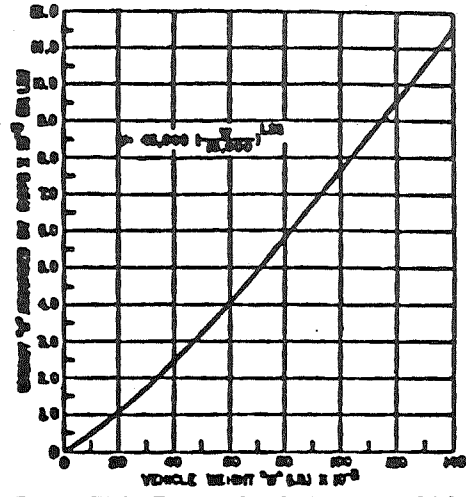


FIGURE W-8—Energy absorbed versus vehicle weight.

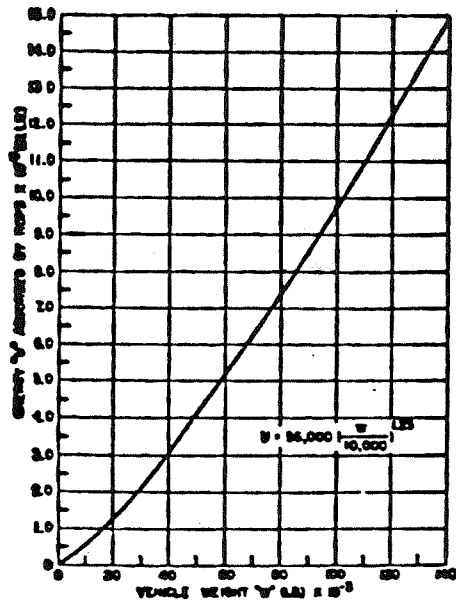


FIGURE W-9—Energy absorbed Versus Vehicle Weight.

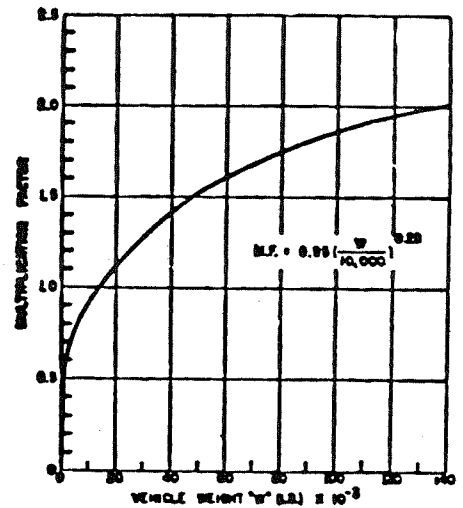


FIGURE W-10—Minimum horizontal load factor for self-propelled scrapers.

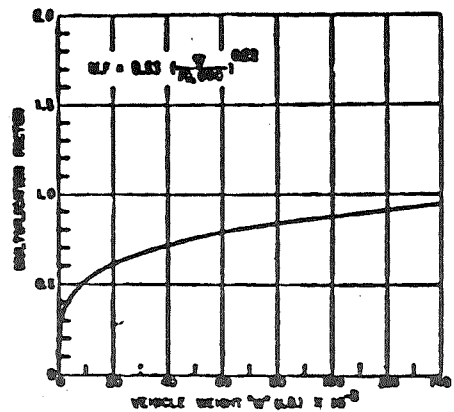


FIGURE W-11—Minimum horizontal load factor for rubber-tired loaders and dozers.

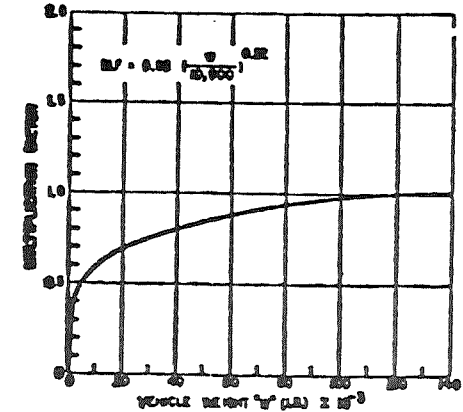


FIGURE W-12—Minimum horizontal load factor for crawler tractors and crawler-type loaders.



Figure W-18—Minimum horizontal lead factor for motor graders.

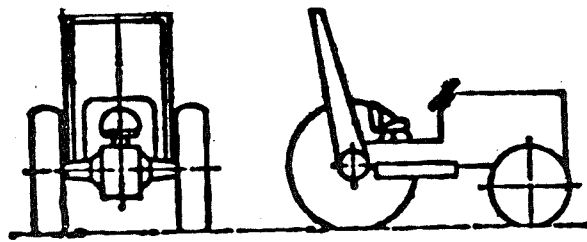


FIGURE W-14—Typical frame configuration.

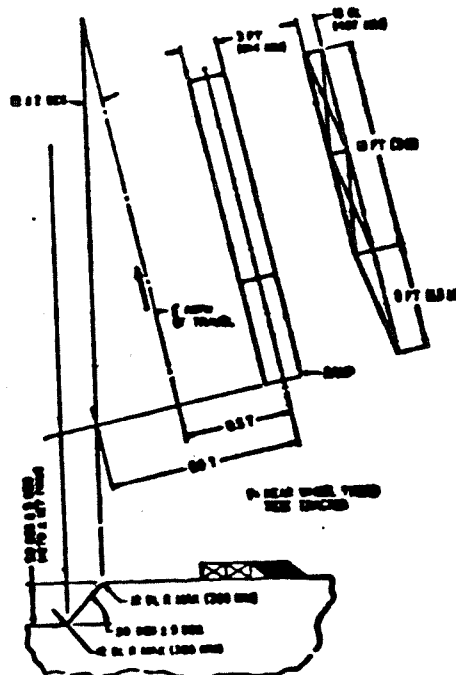


FIGURE W-12.

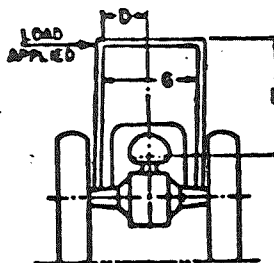


FIGURE W-16—Side load application.

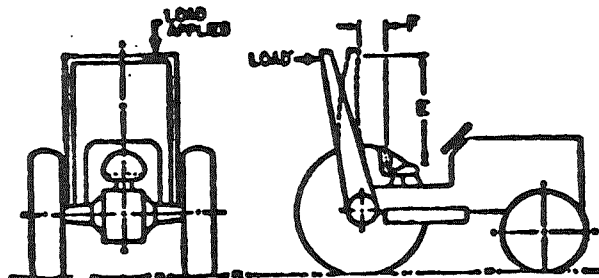


FIGURE W-17—Rear load application.

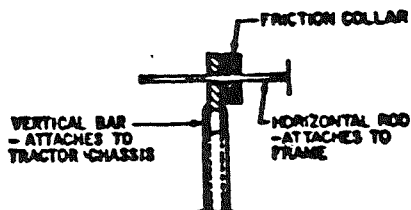


FIGURE W-18—Method of measuring instantaneous deflection.

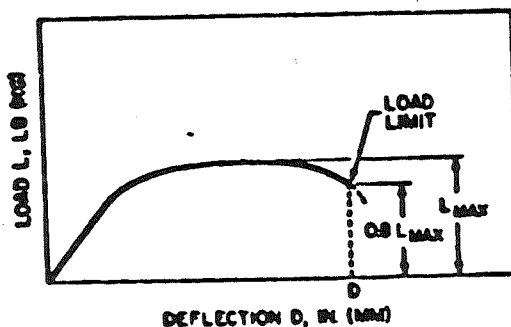


FIGURE W-19—Typical L-D diagram.

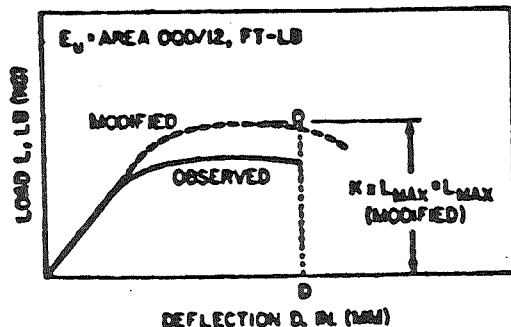


FIGURE W-20—Typical modified L_m - D_m diagram.

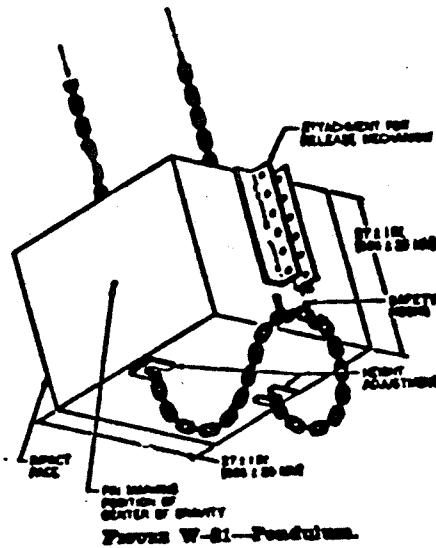


FIGURE W-21—Positioning.

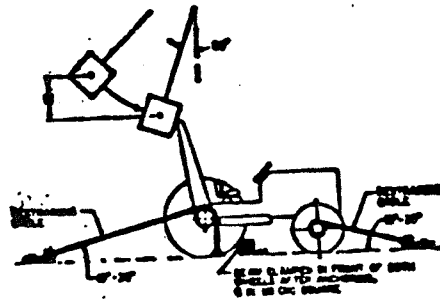


FIGURE W-22—Method of impact from front.

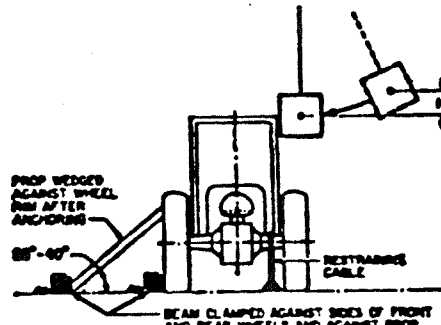
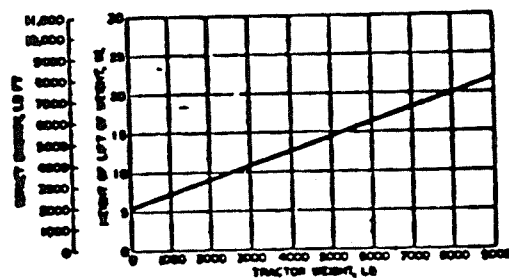


FIGURE W-23—Method of impact from side.



DEFINITION OF FORMULAE
 1.5 = 4.18 x 1000 / 1000 (1000 = 1000 LB)
 2. TRACTOR WEIGHT AS DEFINED IN PARAGRAPH 2.2 IN POUNDS (1000 LB = 1000)

FIGURE W-24—Impact energy and corresponding lift height of 4,410 lb. (2,000 kg.) weight.

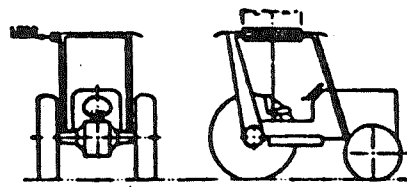


FIGURE W-25—Location for side load.

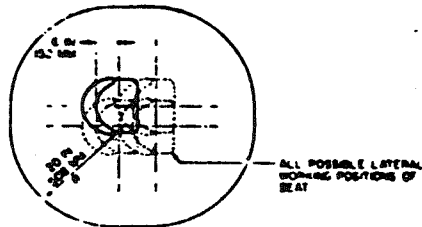


FIGURE W-26—Zone of protection for drop test.

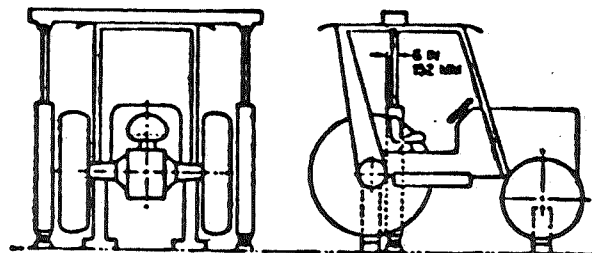


FIGURE W-27—Method of load application for crush test.

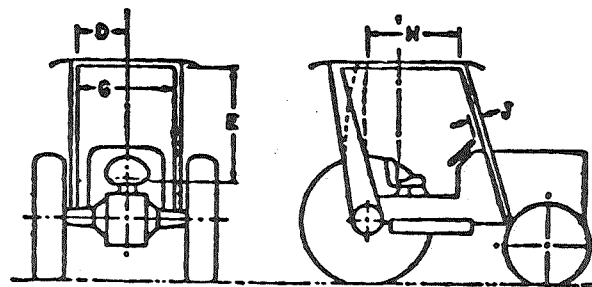


FIGURE W-28—Protected zone during crush and drop tests.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:318. Adoption of 29 CFR Part 1910.301-1910.399.

RELATES TO: KRS Chapter 338, 29 CFR 1910
 STATUTORY AUTHORITY: KRS Chapter 13A
 NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, [and] regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.301-.399 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1)(a) The additions to 29 CFR 1910.331, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(b) The revisions to 29 CFR 1910.331, as published in the Federal Register, Volume 55, Number 212, November 1, 1990, are incorporated by reference.

(2)(a) The additions to 29 CFR 1910.332, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(b) 1910.332(b)(2)(iii)(C) is amended to read as follows: "If a lock cannot be applied, tagging procedures shall provide a level of safety equivalent to that obtained by the use of a lock, as outlined in paragraph (b)(2)(iii)(D)."

(3)(a) The additions to 29 CFR 1910.333, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(b) The revisions to 29 CFR 1910.333, as published in the Federal Register, Volume 55, Number 212, November 1, 1990, are incorporated by reference.

(4) The revisions to 29 CFR 1910.334, as published in the Federal Register, Volume 55, Number 212, November 1, 1990, are incorporated by reference.

(5) [(4)] The additions to 29 CFR 1910.335, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(6) [(5)] The additions to 29 CFR 1910.384, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(7)(a) [(6)] The additions to 29 CFR 1910.399, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(b) The revisions to 29 CFR 1910.399, as

published in the Federal Register, Volume 55, Number 212, November 1, 1990, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

OTIS REED, Jr., Chairman

APPROVED BY AGENCY: June 12, 1991

FILED WITH LRC: June 14, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 23, 1991 at 1 p.m. at the Kentucky Labor Cabinet, 1049 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kembra Taylor, Guy Schoolfield

(1) Type and number of entities affected: Section 1(1)(b), (3)(b), (4) and (7)(b) amendments for corrections to the existing regulation affect all employers in the Commonwealth with operations in general industry involving "Electrical Safety-Related Work Practices."

(a) Direct and indirect costs or savings to those affected:

1. First year: The amendments identified in item (1) above will not result in any direct or indirect costs to those employers affected.

2. Continuing costs or savings: The amendments identified in item (1) above will not result in continuing costs to those employers affected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The amendments will have no effects on increasing or decreasing costs to competitors.

(b) Reporting and paperwork requirements: The amendments will not entail any paperwork or reporting requirements.

(2) Effects on the promulgating administrative body: There will be no effects on the promulgating administrative body by these amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements resulting from these amendments.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: These amendments concern no alternative methods being considered, because the regulations concern specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication as a result of this amendment.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Sections 1(1)(b), (3)(b), (4) and (7)(b) amendments require employers to adhere to regulations governing "Electrical Safety-Related Work Practices."

3. Minimum or uniform standards contained in the federal mandate. Section 1(1)(b), (3)(b), (4) and (7)(b) amendments relate to all standards contained in the Federal Registers, Volume 55, Number 151, August 6, 1990 and Volume 53, Number 212, November 1, 1990.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no changes in the adoption of amendments to the Federal Registers identified in item 3 above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These amendments impose no stricter, additional or different responsibilities or requirements than federal OSHA standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Section 1(1)(b), (3)(b), (4) and (7)(b) amendments affect all divisions in local government engaged in maintenance of equipment involving electrical work.

3. State the aspect or service of local government to which this administrative regulation relates. The amendments in Section

1(1)(b), (3)(b), (4) and (7)(b) affect all local government employees with regard to "Electrical Safety-Related Work Practices."

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: The purposes of Section 1(1)(b), (3)(b), (4) and (7)(b) amendments are to adopt federal OSHA standards relating to "Electrical Safety-Related Work Practices."

LABOR CABINET

Department of Workplace Standards Kentucky Occupational Safety and Health (Proposed Amendment)

803 KAR 2:403. Adoption of 29 CFR Part 1926.50-.59.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1926.50-.59, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with the following additions, exceptions, and deletions:

(1) 29 CFR 1926.58, "Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in the Federal Register, Volume 51, Number 119, June 20, 1986 is adopted by reference with the following amendments:

(a) 29 CFR 1926.58(e)(6)(iii) is amended to read: "The employer shall ensure that contractors provide in writing that they have a competent person meeting the requirements of paragraph (b) "competent person" and paragraphs (e)(6)(ii) and (III) before work commences."

(b) 29 CFR 1926.58(f)(3) is amended to read: "The respirators required by this exception are to be Type "C" supplied - air respirators; continuous flow or pressure - demand class."

(c) 29 CFR 1926.58(f)(5)(ii) is amended to read: "The employer shall ensure that all sampling is conducted in accordance with the ORM in Appendix A before sampling commences."

(d) 29 CFR 1926.58(f)(5)(iii) is amended to read: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all

asbestos counters meet the qualifications listed in Appendix A. This notice shall be given prior to the start of the analyses."

(e) 29 CFR 1926.58(h)(3)(i) is amended to read: "Where respiratory protection is used, the employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 - 1980, with the exception of Appendix A5, Suggested Procedures for Carrying Out Qualitative Respirator - Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator - Fitting Tests."

(f) 29 CFR 1926.58(j)(2)(1) is amended to read: "The decontamination area shall be separated from the regulated area by an air lock. Air locks shall be used to separate the clean room, shower area and equipment room. An "air lock" is an open area used to separate the clean room, shower room and equipment room from each other; and to separate the decontamination area from the work area. It is accessible through doorways protected by two overlapping polyethylene sheets."

(g) 29 CFR 1926.58(k)(1)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (k)(1)(i) of this section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"

(h) 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.

(i) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.

(j) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in the Federal Register, Volume 55, Number 237, December 10, 1990, are incorporated by reference.

(k) [(j)] Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 54, Number 243, December 20, 1989, is incorporated by reference.

(l) [(k)] Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," as published in Federal Register, Volume 55, Number 24, February 5, 1990, is incorporated by reference.

(2) 29 CFR 1926.59, "Hazard Communication," as published in Federal Register, August 24, 1987, Volume 52, Number 163, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

OTIS REED, Jr., Chairman

APPROVED BY AGENCY: June 12, 1991

FILED WITH LRC: June 14, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this

administrative regulation shall be held on July 23, 1991 at 1 p.m. at the Kentucky Labor Cabinet, 1049 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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: Mr. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kembra Taylor, Guy Schoolfield

(1) Type and number of entities affected: Section 1(1) amendment affects all employers in the Commonwealth with operations in the construction industry involving "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite."

(a) Direct and indirect costs or savings to those affected:

1. First year: The amendment identified in item (1) above will not result in any direct or indirect costs to those employers affected.

2. Continuing costs or savings: The amendment identified in item (1) above will not result in continuing costs to those employers affected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The amendment will have no effects on increasing or decreasing costs to competitors.

(b) Reporting and paperwork requirements: The amendment will not entail any paperwork or reporting requirements.

(2) Effects on the promulgating administrative body: There will be no effects on the promulgating administrative body by this amendment.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements resulting from this amendment.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: These amendments concern no alternative methods being considered, because the regulations concern specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication as a result of this amendment.

(a) Necessity of proposed regulation if in

conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(1) amendment requires employers to adhere to regulations governing "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite" operations.

3. Minimum or uniform standards contained in the federal mandate. Section 1(1) amendment relates to all standards contained in the Federal Register, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite," Volume 55, Number 237, December 10, 1990.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no changes in the adopted amendment in the Federal Register identified in item 3 above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment imposes no stricter, additional or different responsibilities or requirements than federal OSHA standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Section 1(1) amendment affects all divisions of local government that are engaged in "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite" operations.

3. State the aspect or service of local government to which this administrative regulation relates. The amendment in Section 1(1) affects all local government with operations involving "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite."

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: The purpose of Section 1(1) amendment is to adopt federal OSHA standards

relating to "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite."

PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control (Proposed Amendment)

804 KAR 1:100. General advertising practices.

RELATES TO: KRS 244.130

STATUTORY AUTHORITY: KRS 241.060

NECESSITY AND FUNCTION: KRS 244.130 permits this department to regulate the advertising of alcoholic beverages. This regulation is designed to regulate said advertising in a manner consistent with modern marketing practices and in conformance with relevant statutory provisions and legislative intent.

Section 1. No licensee shall advertise or cause to be advertised any alcoholic beverages or his place of business in any manner not in conformity [conformance] with the Kentucky Revised Statutes and regulations governing alcoholic beverages.

Section 2. A licensee [Licensees] may use [utilize] outdoor advertising, [provided,] however, [that] no advertising by a manufacturer, producer, brewer, vintner, distributor or wholesaler pursuant to this section shall contain the name or business designation (DBA) or any reference whatsoever to any retail licensee.

Section 3. [(1) Except as provided by subsection (2) of this section, no] Licensees may [shall] advertise in material directed to the home or business of the consumer in conformity with the provisions of this regulation [either by United States mail, personal delivery, or otherwise].

[(2) Subsection (1) of this section shall not prohibit advertising in newspapers, magazines or periodicals having a general circulation.]

Section 4. (1) Except as provided by subsection (2) of this section, advertising novelties shall be [are] permitted.

(2) No licensee shall require, directly or indirectly, the purchase or consumption of any alcoholic beverage as a condition for the sale, gift, or reduction in price of any advertising novelty.

(3) No malt beverage distributor shall sell, give away or furnish advertising novelties, in any manner, directly or indirectly, to a retail licensee.

Section 5. Licensees may advertise by means of radio and television.

Section 6. (1) Licensees may sponsor or cosponsor athletic leagues, tournaments, [and] contests and charitable events provided that the consumption or purchase of alcoholic beverages shall [is] not be a requirement, directly or indirectly, for participation [therein].

(2) [However,] No licensee sponsoring or cosponsoring [such] an event described in subsection (1) of this section upon a retail licensed premises shall require, directly or indirectly, the retail licensee to purchase, sell, or distribute the products of the [said]

sponsoring licensee as a condition for participation in or in connection with the event described in [subsection (1) of] this regulation [section].

Section 7. No licensee shall [advertising of alcoholic beverages by licensees of this department], in whatever media or by whatever means, [shall] use the terms "free," "complimentary" or any other terms which infer or suggest giveaways in the advertising of alcoholic beverages.

Section 8. No licensee shall advertise any product, service or activity which the licensee is prohibited by statute or regulation from selling, providing, or conducting.

LANNY COMBS, Commissioner

APPROVED BY AGENCY: June 14, 1991

FILED WITH LRC: June 14, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 24, 1991 at 9 a.m., EDT. Individuals interested in attending this hearing shall notify this agency in writing by Friday, July 19, 1991, 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: Cynthia Whitehouse, 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: All licensees who use advertising ± 5000 .

(a) Direct and indirect costs or savings to those affected: Is optional with licensee.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None. Not applicable to regulation type.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This regulation contains language changes to comply with the requirements of KRS Chapter 13A and a change in advertising suggested by two legislative subcommittees.

TIERING: Was tiering applied? No. Changes regulation which applies to all licensees which choose to advertise in manner permitted. Tiering inappropriate.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Division of Oil and Gas (Proposed Amendment)

805 KAR 1:020. Protection of fresh water zones.

RELATES TO: KRS 353.520

STATUTORY AUTHORITY: KRS Chapter 13A [13A.100], 353.540, 353.550, 353.560

NECESSITY AND FUNCTION: KRS 353.540 authorizes the Department of Mines and Minerals to administer and enforce the provisions of KRS 353.500 to 353.720. The waste of oil and gas is prohibited by KRS 353.520[, which provides that such prohibited waste includes: (1) the unreasonable damage to underground, fresh or mineral water supply, workable coal seams, or other mineral deposits in the operations for the discovery, development, production, or handling of oil and gas, (2) the unnecessary or excessive surface loss or destruction of oil or gas or their constituents, and (3) the drowning with water of any stratum or part thereof capable of providing oil or gas in paying quantities, except for secondary recovery purposes, or in hydraulic fracturing or other completion practices]. It is the purpose of this regulation to protect fresh water zones from contamination associated with the production of oil and gas. KRS 353.550 provides that the department shall have the authority to set forth the requirements for casing, operation and plugging of wells to prevent escape of oil or gas, the detrimental intrusion of water, blowouts, cave-ins, seepages and fires.

Section 1. Definitions. The definitions contained in KRS 353.510 and the following additional definitions shall apply to this regulation:

(1) "Abnormal pressure" means a reservoir pressure that exceeds the hydrostatic pressure of fresh water extending from the reservoir to the surface.

(2) "Annulus" means the space between two (2) strings of casing or between a string of casing and the bore hole wall.

(3) "Casing (casing string)" means steel tubes or pipes installed in a well.

(4) "Surface casing" means the first and largest diameter casing installed in a well and its primary uses are to make the bore hole stand up and to protect the fresh water zones.

(5) "Intermediate casing" means one or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous.

(6) "Long casing string" means the last casing installed in a well to be used for production or

injection purposes.

(7) "Zone" means a layer of strata capable of producing or receiving fluids.

Section 2. Protection of Fresh Water Zones for Drilling and/or Plugging Operations. (1) During drilling operations, one (1) of the following methods shall be used to protect fresh water zones:

(a) Method A. Casing shall be set on a casing shoulder and said casing shall have a shoe installed on the bottom of the bottom joint. Upon the completion of the drilling program, all the recoverable casing must be removed or cemented to the surface.

(b) Method B. Casing shall be set on a shoulder and cemented sufficiently to cover 100 feet including the shoe. Upon completion of the drilling, all of the recoverable casing must be removed or cemented to the surface.

(c) Method C. A top to bottom drilling mud system with a filtrate water loss of less than ten (10) cubic centimeters, as determined by American Petroleum Institute standards, in its publication "Standard Procedures for Field Testing Water Based Drilling Fluids" API RP 13B-1 ["Standard Procedure for Testing Drilling Fluids" API RP 13B], Sections 1, 2 and 3, June 1, 1990 [April, 1976], filed herein by reference. Copies may be obtained from the Department of Mines and Minerals, P. O. Box 14090 [680], Lexington, Kentucky 40512-4090 [40586]. Certification of filtrate water loss must be made by the operator.

(2) In the event a well is to be plugged, then it shall be plugged in the manner prescribed by 805 KAR 1:060 or 805 KAR 1:070 [1:080].

Section 3. Protection of Fresh Water Zones. Any well drilled in the Commonwealth of Kentucky subject to the jurisdiction of the Department of Mines and Minerals subsequent to the effective date of this regulation shall be equipped with the following fresh water protection prior to production or injection.

(1) A protective string of casing, be it surface, intermediate, or long string, shall extend thirty (30) feet below the deepest known fresh water zone. Such protective string shall have cement circulated in the annular space outside said casing of a sufficient volume of cement, calculated using approved engineering methods, to assure the return of the cement to the surface. In the event cement does not return to the surface, every reasonable attempt will be made to fill the annular spaces by introducing cement from the surface. If the intermediate casing or long casing string is:

(a) Cemented to the surface; or

(b) Cemented thirty (30) feet into the next larger string of cemented casing in conformity with prescribed procedure, the string or combination of strings shall be considered as the fresh water protection.

(2) In areas where abnormal pressures are expected or encountered, the surface and/or intermediate casing string shall be anchored in sufficient cement, at a sufficient depth to contain said pressures, and blowout prevention valves and related equipment shall be installed.

Section 4. Wells Used for Injection of Fluids.

(1) The injection of fluids shall be accomplished through a tubing and packer arrangement with the packer set immediately

above the injection zone, and the annulus between the tubing and casing shall be monitored by pressure sensitive devices. The injection pressure shall be regulated to minimize the possibility of fracturing the confining strata. Upon application, and after notice and hearing, a variance from this requirement may be granted by the director, upon a showing by an individual operator that alternate prudent engineering practices shall result in fresh water protection. The following are exempted from the requirements of this section:

(a) Injection of fluids for the purpose of well stimulation; and

(b) Injection of gas for the purpose of storage.

(2) Before injecting fluids into a well not previously permitted for injection purposes, the operator shall make application to the department for an injection permit for said well. The application for a permit to drill, deepen or convert a well for the purpose of injection of fluids shall include:

(a) A statement by the operator as to whether the well is to be used for pressure maintenance, secondary recovery, tertiary recovery, gas storage or for disposal purposes;

(b) The approximate depths of the known fresh water zones; and

(c) A plat showing:

1. The names of all lessees and lessors contiguous to the tract on which the injection shall occur;

2. The Carter Coordinate location and the elevation of the well site;

3. The geologic name and depth of the injection zone;

4. At least two (2) surface features, by bearing and distance from the proposed well site, which appear on the U.S.G.S. seven and one-half (7 1/2) minute topographic map of the area;

5. The name of said topographic map and county;

6. The location of all known fresh water wells within a radius of 1,000 feet of the proposed injection well site;

7. The location and completion and/or plugging record of all wells whether producing or plugged, within a radius of 1,000 feet of the proposed injection well site.

(3) Prior to injection into any well, the operator shall furnish the department with a certificate indicating that all requirements of this regulation have been met. The certificate shall include the following:

(a) The identification of said well by permit number, operator's name, lease name, well number, Carter Coordinate location, elevation and county;

(b) The entire casing and cementing record, any packers and other special down hole equipment, and cement bond logs, if run;

(c) The anticipated maximum bottom hole pressure (psi) and volume in barrels or cubic feet, per day;

(d) The identification of the injection zone by geological name and depth (top and bottom of zone), the number of perforations if applicable, or the interval of open hole; and

(e) Certification by the operator that the mechanical integrity of the well has been tested.

Section 5. Exemptions for Preexisting Wells.

Any injection well in existence prior to the effective date of this regulation shall be

exempt from the requirements of this regulation until such time as in the opinion of the department, said well is leaking fluids to other zones, or to the surface; provided, however, that this exemption shall not apply unless within one (1) year from the effective date of this regulation, the operator files an area plat, or plats, showing all of such operator's injection and associated production wells.

Section 6. Recordkeeping. The operator of an injection project shall monitor injection pressures and volumes at least monthly, and shall keep said records on file in his place of business for the life of the project; plus five (5) years. The director may require more frequent monitoring, if in his opinion, good reason therefor exists.

THEODORE T. COLLEY, Secretary
CARL ANKROM, Acting Commissioner
D. MICHAEL WALLEN, Director

APPROVED BY AGENCY: June 11, 1991

FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 22, 1991 at 10 a.m. in the Conference Room of the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 17, 1991, 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: Brian C. Gilpin, Kentucky Department of Mines and Minerals, P. O. Box 14090, Lexington, Kentucky 40512.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Brian C. Gilpin

(1) Type and number of entities affected: This regulation affects the oil and gas industry in Kentucky.

(a) Direct and indirect costs or savings to those affected: This regulation updates its reference of the American Petroleum Institute standards for field testing water based drilling fluids from the 1976 publication to the most recent 1990 publication. This will ensure the most up-to-date methods and techniques are used to keep the drilling fluid at the proper consistency.

1. First year: None

2. Continuing costs or savings: The operator will be required to use the most recent publication for sampling his drilling fluid, which may prevent drilling problems.

3. Additional factors increasing or decreasing costs (note any effect upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no changes.

(2) Effects on the promulgating administrative body: This regulation updates the address of the Division of Oil and Gas, which will prevent improper mailings. A misquoted regulation 805 KAR 1:080 was changed to KAR 1:070 to reflect the proper plugging regulation.

(a) Direct and indirect costs or savings: A prevention of improper mailings to the department and the correction of the misquoted regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements for the administrative agency.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods to accomplish the purpose of this proposed amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicts between this regulation and other statutes, regulations or policies.

(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:

(6) Any additional information or comments: There are no further comments or information.

TIERING: Was tiering applied? No

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Division of Oil and Gas (Proposed Amendment)

805 KAR 1:050. Surety bonds; requirements, cancellation.

RELATES TO: KRS 353.590

STATUTORY AUTHORITY: KRS Chapter 13A, [13A.100,] 353.540, 353.550

NECESSITY AND FUNCTION: Provide for methods of giving notice to operators and sureties of noncompliance. Establish requirements of release, cancellation and forfeiture of bonds.

Section 1. At any time the department causes a notice of noncompliance to be served upon an operator (principal) pursuant to KRS 353.590(7), copies of such notice shall be mailed by registered or certified mail [to the resident agent writing such bond (where the address is known) and] to the surety company at the address provided to the Kentucky Department of Insurance for receipt of notices. The surety shall be afforded the opportunity to act in behalf of the operator (principal) within the time set forth in KRS 353.590(7) in regard to the proper plugging of the well or wells and submission of required well log and completion reports [driller's logs], electric logs, if run, and plugging affidavits. Should the operator (principal) and surety fail to comply within the time provided for in KRS 353.590(7) then and in

that event only the bond shall be forfeited as provided in that section.

Section 2. An individual well bond [in the amount of \$1,000] shall be released upon the proper plugging of the well and the filing with the department of a plugging affidavit, well log and completion report [driller's log] and electric log, if run. A blanket bond [in the amount of \$5,000] shall be released upon the proper plugging of all wells of the operator (principal) covered by the bond, and the filing with the department of plugging affidavits, well logs and completion reports [driller's logs] and electric logs, if run, for such wells.

Section 3. A blanket surety bond [in the amount of \$5,000] filed pursuant to KRS 353.590(5) may be cancelled by the surety by a communication in writing delivered personally or by registered or certified mail to the office of the Division of Oil and Gas, Department of Mines and Minerals, provided such cancellation shall be effective only to relieve the surety from liability under the bond for wells [which have not been commenced or for] which permits have not been issued at the time of the receipt of the notice by the department. Liability under the bond for wells which [have been commenced or for which] permits have been issued prior to the receipt by the department of the notice shall not be affected by the cancellation.

THEODORE T. COLLEY, Secretary
CARL ANKROM, Acting Commissioner
D. MICHAEL WALLEN, Director

APPROVED BY AGENCY: June 11, 1991

FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 22, 1991 at 10 a.m. in the Conference Room of the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 1991, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Brian C. Gilpin, Kentucky Department of Mines and Minerals, P.O. Box 14090, Lexington, Kentucky 40512.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Brian C. Gilpin

(1) Type and number of entities affected: The oil and gas industry and the surety bonding companies will be affected by this regulation.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings to the oil and gas industry. This regulation now requires that only the surety company, at the address provided to the Kentucky Department of

Insurance, be notified of operator noncompliance. Previously, the resident agent writing the bond had to be notified if the address were known. The notification to the principal address is adequate and should allow ample time for the surety to contact the operator. The statutes require the department to notify the surety forty-five days prior to forfeiture of bonds.

1. First year: There are no first year costs.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: This regulation changed the wording of required records being filed from "driller's logs" to "well log and completion reports". This is the title of the forms required by the department and means the same thing as the driller's log and will not change the report filings now required by the operator to satisfy bonding requirements.

(2) Effects on the promulgating administrative body: There will be no effect on the Department of Mines and Minerals due to this regulation.

(a) Direct and indirect costs or savings: There will be no additional direct or indirect costs or savings to the administrative agency.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements for the administrative agency.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods to accomplish the purposes of this proposed amendment. The changes made to the individual and blanket bonds in this regulation are in response to the 1990 legislative changes to KRS 353.590, which increased the blanket bond from \$5,000 to \$10,000 and the individual bond from \$1,000 to an adjustable rate increasing according to the depth of the well.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicts between this regulation and other statutes, regulations or policies.

(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:

(6) Any additional information or comments: There are no further comments or information.

TIERING: Was tiering applied? No

**PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Proposed Amendment)**

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.310(2)

NECESSITY AND FUNCTION: KRS 278.310(2) provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission. This regulation prescribes requirements with respect to formal and informal proceedings before the commission.

Section 1. General Offices and Hearings. (1) The commission will be in continuous session for the performance of administrative duties.

(2) Meetings of the commission for the consideration of all matters requiring formal hearings will be held on such days, at such hours and at such places as the commission may designate.

(3) Notice of hearing will be given by the secretary to parties to proceedings before the commission, except when a hearing is not concluded on the day appointed therefor and verbal announcement is made by the presiding commissioner or hearing examiner of an adjourned date. Verbal announcements so made shall be deemed due notice of continued hearing.

Section 2. Secretary to Furnish Information.

(1) Upon request, the secretary will advise any party as to the form of a petition, complaint, answer, application or other paper desired to be filed; and he will make available from the commission's files, upon request, any document or record pertinent to any matter before the commission.

(2) The secretary may reject for filing any document which on its face does not comply with the rules and regulations of the commission.

Section 3. General Matters Pertaining to all Formal Proceedings. (1) Address of the commission. All communications should be addressed to "Public Service Commission, Frankfort, Kentucky."

(2) Case numbers and styles. Each matter coming formally before the commission will be known as a case and will receive a number and style, descriptive of the subject matter. Such number and style shall be placed on all subsequent papers in such case.

(3) Form of papers filed. All pleadings and applications filed with the commission in formal proceedings shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double spaced.

(4) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by affidavit.

(5) Amendment. At its discretion, the commission may allow any complaint, application, answer or other paper to be amended or corrected or any omission supplied therein.

(6) Witnesses and subpoenas.

(a) Upon the application of any party to a proceeding, subpoenas requiring the attendance

of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, papers or records (unless directed to issue by the commission on its own authority) will be issued only at the discretion of the commission, or any commissioner, upon application in writing, stating as nearly as possible the books, accounts, papers or records desired to be produced.

(7) Service of process. When any party has appeared by attorney, service upon such attorney will be deemed proper service upon the party.

(8) Intervention and parties. In any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by timely motion request that he be granted leave to intervene. Such motion shall include his name and address and the name and address of any party he represents and in what capacity he is employed by such party.

Each person granted leave to intervene shall be considered as making a limited intervention unless he submits to the secretary a written request for full intervention. A person making only a limited intervention shall be entitled to the full rights of a party at the hearing in which he appears and shall be served with the commission's order, but he shall not be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties. A person making a limited appearance will not be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review.

If a person granted leave to intervene desires to be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties, and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review, he shall submit in writing to the secretary a request for full intervention, which shall specify his interest in the proceeding. If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

Section 4. Hearings and Rehearings. (1) When hearings will be granted. Except as otherwise determined in specific cases, the commission will grant a hearing in the following classes of cases:

(a) When an order to satisfy a complaint or to make answer thereto has been made and the corporation or person complained of has not satisfied the complaint to the satisfaction of the commission.

(b) When application has been made in a formal proceeding.

(2) Publication of notice. Upon the filing of any application the commission may, in its discretion, give all other corporations or persons who may be affected thereby an opportunity to be heard by service upon them of a copy of the petition or by publication of the substance thereof, at the expense of the applicant, for such length of time and in such

newspaper or newspapers as the commission may designate. In such cases the form of notice will be prepared by the secretary, and a proof of the publication thereof must be filed at or before the hearing.

(3) Investigation on commission's own motion. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by the public utility, which the commission may believe is in violation of any provision of law or of any order or regulation of the commission. It may also through its own experts or employees, or otherwise, obtain such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. In order to provide opportunity for parties to discuss any of the issues in [settlement of] a proceeding [or any of the issues therein], an informal conference with the commission staff may be arranged through the executive director [secretary] of the commission either prior to, or during the course of hearings in any proceeding, at the request of any party. The commission on its own initiative may also convene an informal conference.

(5) Conduct of hearings. Hearings will be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing, filed with the secretary, the parties to any proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission will be given under oath or affirmation.

(8) Objections and exceptions. When objections are made to the admission or exclusion of evidence before the commission, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and will not be taken to rulings therein.

(9) Transcript of evidence. The commission will cause to be made a stenographic record of all public hearings, and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of the fees fixed therefor.

(10) Briefs and petitions for rehearing. All briefs and petitions for rehearing in any proceeding must be accompanied with notice, showing service upon all other parties or their attorneys, and, in addition to the filed original, ten (10) copies of each such document shall be furnished for the use of the commission.

(11) Filing of briefs. All briefs must be filed within the time fixed, and the commission may refuse to consider any brief filed thereafter. Applications for extensions of time to file briefs must be made to the commission in writing.

(12) Form of briefs. All briefs filed with the commission shall be in the form prescribed by the commission.

Section 5. Documentary Evidence. (1) If documentary evidence is offered, the commission,

in lieu of requiring the originals to be filed may, in its discretion, accept certified, or otherwise authenticated, copies of such documents or such portions of the same as may be relevant, or may require such evidence to be transcribed as a part of the record.

(2) Where relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant the party must plainly designate the matter so offered. If such immaterial matter unnecessarily encumbers the record, such book, paper or document will not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of such matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine such book, paper or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.

(3) Whenever practicable the sheets of each exhibit and the lines of each sheet shall be numbered and if the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Wherever practicable, rate comparisons and other such evidence shall be condensed into tables.

(4) Except as may be expressly permitted in particular instances, the commission will not receive in evidence or consider as a part of the record any book, paper or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of any party to a proceeding, any case in the commission's files or any document on file with the commission, at the discretion of the commission may be made a part of the record by "reference only." By reference only, the case or document made a part of the record will not be physically incorporated into the record. Upon action in the Franklin Circuit Court, excerpts from any case or part of any document may be made a part of the record before such court, at the instance of any party.

Section 6. Financial Exhibit. Whenever in these rules it is provided that a financial exhibit shall be annexed to the application, the said exhibit shall cover operations for a twelve (12) month period, said period ending not more than ninety (90) days prior to the date the application is filed. The said exhibit shall disclose the following information in the order indicated below:

(1) Amount and kinds of stock authorized.

(2) Amount and kinds of stock issued and outstanding.

(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise.

(4) Brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of indebtedness

actually secured, together with any sinking fund provisions.

(5) Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.

(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.

(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year.

(9) Detailed income statement and balance sheet.

Section 7. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential as provided herein. [Confidential information not publicly available. All material and information that is filed with, served upon, or otherwise made available to the Commission shall be available for examination by the public unless a written request has been made to designate material or information as proprietary, confidential or otherwise privileged, according to the procedure set forth in subsection (2) of this section.]

(2) Procedure for determining [petition for] confidentiality.

(a) Any person requesting confidential treatment of any material shall file a petition which:

1. Sets forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential; and

2. Attaches one (1) copy of the material which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless deleted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification. [wishing to protect material or information filed with, served upon or otherwise made available to the commission shall file with the commission a formal written petition identifying the material or information sought to be protected and setting forth the specific facts, reasons, or other grounds upon which the commission should classify that material or information as proprietary, confidential or otherwise privileged, with particular attention to the appropriate factors listed in subsection (7) of this section. Material for which confidential treatment is sought shall be identified by underscoring or by highlighting with transparent ink, or other reasonable means, only those words, numbers, lines of text and data elements on magnetic

files which, unless deleted, would cause the disclosure of confidential information. Text, pages or portions thereof which do not contain confidential information are not to be included in this identification.]

(b) The petition, one (1) copy of the material which is identified by underscoring or highlighting, and ten (10) copies of the material with those portions obscured for which confidentiality is sought, shall be filed with the commission. [person requesting confidential treatment of material or information shall also serve a copy of its petition upon all parties, if the material or information is being filed in the record of a formal proceeding.]

(c) The petition and a copy of the material, with only those portions for which confidentiality is sought obscured, shall be served on all parties. The petition shall contain a certificate of service on all parties.

(d) The burden of proof to show that the material falls within the exclusions from disclosure requirements enumerated in KRS 61.870 et seq., shall be upon the person requesting confidential treatment.

(e) Any person may respond to the petition for confidential treatment within ten (10) days after it is filed with the commission. [service thereof.]

(3) [(d)] Pending commission action on the [a written] petition, the material [or information] specifically identified shall be temporarily accorded confidential treatment.

(4) If the commission denies the petition for confidential treatment of material, the material shall not be placed in the public record for ten (10) days to allow the petitioner to seek any remedy afforded by law.

(5) Procedure for any party to request access to confidential material filed in any proceeding.

(a) No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then any party may petition the commission requesting access to the material on the grounds that it is essential to a meaningful participation in the proceeding. The petition shall include a description of efforts to enter into a protective agreement and any unwillingness to enter into a protective agreement shall be fully explained. Any party may respond to the petition within ten (10) days after it is filed with the commission. The commission shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

[(e)] In the event material or information which has been accorded confidential treatment by the commission later becomes publicly available or is treated or viewed by the source of the material or information as no longer

warranting confidential treatment, the source of the information shall so advise the commission in writing. The commission will then make this material a part of the public record of the case.]

[(3) Burden of proof and standard of review.]

[(a) The burden of proof to show by a preponderance of the evidence that any or all of the contents of material or information require confidential treatment shall rest upon the source of the material or information.]

[(b) Upon a ruling that portions of material or information contain confidential information, the source of the information shall file an edited copy with confidential material obscured for inclusion in the public record with copies to all parties of record.]

[(4) Discovery.]

[(a) The fact that the object of discovery may contain confidential information does not preclude discovery per se, but it may justify such limitations as are deemed necessary under the circumstances to protect the confidentiality of the material or information.]

[(b) All parties to formal proceedings are urged to seek mutual agreement regarding discovery of such material before raising the controversy with the commission.]

[(c) A utility may not object to discovery by the commission or its staff on the grounds of confidentiality; rather it shall file full and timely responses to discovery requests. Parties to the formal proceeding shall receive timely responses to discovery with only those portions for which confidential treatment is sought deleted in accordance with Section 2 of this regulation. Confidential material or information in the possession of the commission, its staff or consultants is not discoverable by a request to the commission, but may be the subject of a request for access pursuant to Section 5 of this regulation.]

[(6) [(5)] Procedure for request for access to .]

[(a) Any person requesting access to information deemed confidential by the commission may obtain this information only upon order of a court of competent jurisdiction as provided in KRS 61.878.]

[(b) The sources of the] confidential material. Any person denied access to material deemed confidential by the commission may obtain this information only pursuant to KRS 61.870 et seq., and other applicable law. [or information shall be served with a copy of the request for access by the commission secretary, and the source shall file any response to the request within ten (10) days after service. Thereafter, the commission will rule forthwith on whether access shall be granted to the moving party.]

[(c) Notwithstanding any prior determination of confidentiality, a source may consent, in writing, to grant access to any person. Such consent shall not constitute waiver of confidentiality and only those persons specified in the consent may have access.]

[(7) [(6)] Use of confidential material [or information] during formal proceedings. Any material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the following procedure:

[(a) The person seeking to address the confidential material shall advise the commission prior to the use of such material.

[(b) All persons other than commission

employees not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

[(c) The court reporter shall produce a sealed transcript of that portion of the record directly related to the confidential material.

[(8) Material granted confidentiality which later becomes publicly available or otherwise no longer warrants confidential treatment.

[(a) The petitioner who sought confidential protection shall inform the commission in writing at any time when any material granted confidentiality becomes publicly available.

[(b) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the petitioner who sought confidential protection, giving ten (10) days to respond.

[(c) The material shall not be placed in the public record for ten (10) days following any order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law. [The commission may rely upon confidential material during a formal proceeding and such material, if otherwise admissible, will be received in evidence. In such event, reasonable precautions will be taken to segregate confidential material in the record and otherwise protect its integrity.]

[(7) Guidelines for evaluating petitions for confidential treatment.]

[(a) In the instance where a petition is filed seeking confidential treatment of material or information claimed to be a trade secret, the commission may consider the following factors in determining whether the material for which confidentiality is requested meets the criteria set forth in KRS 61.878(1):]

[1. The extent to which the information is known outside of the claimant's business.]

[2. The extent to which it is known by employees and others involved in the claimant's business.]

[3. The extent of measures taken by the claimant to guard the secrecy of the information.]

[4. The value of the information to the claimant and to competitors.]

[5. The amount of effort or money expended by the claimant in developing the information.]

[6. The ease or difficulty with which the information could be properly acquired and duplicated by others.]

[(b) In the instance where a petition is filed seeking confidential treatment of material or information claimed to be confidential commercial information, the commission may consider the following factors in determining whether the material for which confidentiality is requested meets the criteria set forth in KRS 61.878(1):]

[1. Evidence revealing actual competition and the likelihood of substantial competitive injury.]

[2. The extent to which data of the sort in dispute is customarily disclosed to the public.]

[3. A balancing of the private competitive interests versus the public interest in disclosure.]

[(c) If the commission denies the request for confidential treatment of material submitted to

it, the material will not be placed in the public record for five (5) working days in order to allow the source of the information time to seek court action on the matter or request the return of the information in its entirety.]

[(8) Return or retention of confidential material or information. Within sixty (60) days following the entry of a final order in a formal proceeding in which no court appeal is taken, the commission shall return confidential material or information to its source, unless the commission determines in its discretion that the confidential material or information should be retained. If retained, the commission shall continue to accord confidential treatment to the material or information.]

Section 8. Applications. (1) Contents of application. All applications must be by petition in writing. The petition must set forth the full name and post office address of the applicant, and must contain fully the facts on which the application is based, with a request for the order, authorization, permission or certificate desired and a reference to the particular provision of law requiring or providing for same.

(2) Number of copies. At the time the original application is filed, ten (10) additional copies must also be filed, and where parties interested in the subject matter of the application are named therein, there shall be filed an additional copy for each named party and such other additional copies as may be required by the secretary.

(3) Articles of incorporation. If the applicant is a corporation, a certified copy of its articles of incorporation, and all amendments thereto, if any, shall be annexed to the application. If applicant's articles of incorporation and amendments thereto, if any, have already been filed with the commission in some prior proceeding, it will be sufficient if this fact is stated in the application and reference is made to the style and case number of the prior proceeding.

Section 9. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing applicant to bid on a franchise, license or permit offered by any governmental agency, the applicant shall submit with its application, the following:

(a) A copy of its articles of incorporation (see Section 8(3) of this regulation).

(b) The name of the governmental agency offering the franchise.

(c) The type of franchise offered.

(d) A statement showing the need and demand for service. Should the applicant be successful in acquiring said franchise, license or permit, it shall file a copy thereof with the commission.

(2) New construction or extension. When application is made by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property or facility, the applicant, in addition to complying with Section 8 of this regulation, shall submit the following data, either in the application or as exhibits

attached thereto:

(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity.

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission.

(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete.

(d) Three (3) maps to suitable scale (preferably not more than two (2) miles per inch) showing the location or route of the proposed new construction or extension, as well as the location to scale of any like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of such other facilities.

(e) The manner in detail in which it is proposed to finance the new construction or extension.

(f) An estimated cost of operation after the proposed facilities are completed.

(g) All other information necessary to afford the commission a complete understanding of the situation.

(3) Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. Insofar as procedure is concerned, applications for a renewal of a certificate of convenience and necessity will be treated as an original application.

Section 10. Application or Notice for Authority to Adjust Rates. (1) When the utility seeks to adjust any rate, toll, charge, or rental, so as to alter any classification, contract, practice, rule or regulation as to result in any change in any rate, toll, charge, or rental, the applicant, in addition to complying with the provisions of Section 8 of this regulation, shall submit the following data either in the application or attached thereto as exhibits:

(a) Financial exhibit (see Section 6 of this regulation).

(b) A schedule of the present rates, tolls, charges, or rentals, in effect, and the changes which it is desired to make, shown in comparative form.

(c) A description of applicant's property, including a statement of the net original cost of the property (estimated if not known) and the cost thereof to applicant.

(d) A statement in full of the reason why the adjustment is required.

(e) A statement setting forth estimates of the effect that the new rate or rates will have upon the revenues of the utility, the total amount of money resulting from the increase or decrease, the percentage of increase or decrease, and the effect upon average consumer bills.

(f) A statement certifying that the utility's annual reports, including the report for the most recent calendar year, are on file with the commission in accordance with 807 KAR 5:006, Section 3(1).

(2) In all cases involving a general increase in rates, in addition to the information required in subsection (1) of this section, complete financial data for the twelve (12) months corresponding to the test period used by the utility in its case shall be submitted at the hearing or prior thereto unless such information is contained in reports on file with the commission. Such data shall include:

(a) Total amount of interest charged to construction.

(b) An analysis of customer's bills in such detail that the revenues from the present and proposed rates can be readily determined.

(c) Details of any apportionment used.

(d) Monthly revenues and operating expenses.

Section 11. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by the utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, said application, in addition to complying with the requirements of Section 8 of this regulation, shall contain:

(a) A general description of applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant, if it is impossible to state the original cost, the facts creating such impossibility shall be stated.

(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest and whether and how to be secured.

(c) The use to be made of the proceeds of the issue of such securities, notes, bonds, stocks or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service and the discharge or refunding of obligations.

(d) The property in detail which is to be acquired, constructed, improved or extended with its cost, a detailed description of the contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the

disposition of any of the securities, notes, bonds, stocks or other evidence of indebtedness which it proposes to issue or the proceeds thereof and if any contracts have been made, copies thereof shall be annexed to the petition.

(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of such obligations including their par value, the amount for which they were actually sold, the expenses associated therewith, and the application of the proceeds from such sales. If notes are to be refunded, the petition must show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended.

(f) Such other facts as may be pertinent to the application.

(2) The following exhibits must be filed with the application:

(a) Financial exhibit (see Section 6 of this regulation).

(b) Copies of trust deeds or mortgages, if any, unless they have already been filed with the commission, in which case reference should be made, by style and case number, to the proceeding in which the trust deeds or mortgages have been filed.

(c) Maps and plans of the proposed property and constructions together with detailed estimates in such form that they can be checked over by the commission's engineering division. Estimates must be arranged according to the uniform system of accounts prescribed by the commission for the various classes of utilities.

Section 12. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of the defendant, and shall state:

(a) The full name and post office address of the complainant.

(b) The full name and post office address of the defendant.

(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired (see Section 15(1) of this regulation).

(2) Signature. The complaint shall be signed by the complainant or his attorney, if any, and if signed by such attorney, shall show his post office address. Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address. No oral or unsigned complaints will be entertained or acted upon by the commission.

(3) Number of copies required. At the time the complainant files his original complaint, he must also file copies thereof equal in number to ten (10) more than the number of persons or corporations to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of such complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this regulation. If the commission is of the opinion that the complaint

does not establish a prima facie case or does not conform to this regulation, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.

(b) If the commission is of the opinion that such complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this regulation, the commission will serve an order upon such corporations or persons complained of under the hand of its secretary and attested by its seal, accompanied by a copy of said complaint, directed to such corporation or person and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of such order, provided that the commission may, in particular cases, require the answer to be filed within a shorter time.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which he is willing to give. Upon the acceptance of this offer by the complainant and the approval of the commission, no further proceedings need be taken.

(6) Answer to complaint. If satisfaction be not made as aforesaid, the corporation or person complained of must file an answer to the complaint, with certificate of service on other parties endorsed thereon, within the time specified in the order or such extension thereof as the commission, for good cause shown, may grant. The answer must contain a specific denial of such material allegations of the complaint as controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground (see Section 15(2) of this regulation).

Section 13. Informal Complaints. (1) Informal complaints must be made in writing. Matters thus presented are, if their nature warrants, taken up by correspondence with the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

(2) No form of informal complaint is prescribed, but in substance it must contain the essential elements of a complaint, including the name and address of complainant, the correct name and post office address of the utility against whom complaint is made, a clear and concise statement of the facts involved, and the relief requested.

(3) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding is held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings will be discontinued.

Section 14. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 15. Forms. (1) In all practice before the commission the following forms shall be followed insofar as practicable:

- (a) Formal complaint.
- (b) Answer.
- (c) Application.
- (d) Notice of adjustment of rates.
- (2) Forms of formal complaint.

Before the Public Service Commission

(Insert name of complainant))	
COMPLAINANT)	
)	No. _____
vs.)	(To be inserted by the secretary)
)	
(Insert name of each defendant))	
DEFENDANT)	

COMPLAINT

The complaint of (here insert full name of each complainant) respectfully shows:

- (a) That (here state name, occupation and post office address of each complainant).
- (b) That (here insert full name, occupation and post office address of each defendant).
- (c) That (here insert fully and clearly the specific act or thing complained of, such facts as are necessary to give a full understanding of the situation, and the law, order, or rule, and the section or sections thereof, of which a violation is claimed).

WHEREFORE, complainant asks (here state specifically the relief desired).

Dated at _____, Kentucky, this _____ day of _____, 19____.

(Name of each complainant)

(Name and address of attorney, if any)

(3) Form of answer to formal complaint.

Before the Public Service Commission

(Insert name of complainant))	
COMPLAINANT)	
)	No. _____
vs.)	(To be inserted by the secretary)
)	
(Insert name of each defendant))	
DEFENDANT)	

ANSWER

The above-named defendant, for answer to the complaint in the proceeding, respectfully states:

That (here follow specific denials of such material, allegations as are controverted by the defendant and also a statement of any new matter

constituting a defense. Continue lettering each succeeding paragraph).

WHEREFORE, the defendant prays that the complaint be dismissed (or other appropriate prayer).

(Name of defendant)

(Name and address of attorney, if any)

(4) Form of application.

Before the Public Service Commission

In the matter of the)
application of (here)
insert name of each) No. _____
applicant) for (here insert) (To be inserted
desired order, authorization,) by the secretary)
permission or certificate,)
thus: "Order authorizing)
issue of stocks and bonds"))

APPLICATION

The petition of (here insert name of each applicant) respectfully shows:

(a) That applicant is engaged in the business of (here insert nature of business and territorial extent thereof).

(b) That the post office address of each applicant is _____.

(c) That (here state fully and clearly the facts required by these rules, and any additional facts which applicant desires to state).

WHEREFORE, applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order authorizing applicant to (here state specifically the action which the applicant desires the commission to take).

Dated at _____, Kentucky, this _____ day of _____, 19____.

(Name of applicant)

(Name and address of attorney, if any)

(5) Form of notice to the commission of adjustment of rates.

Before the Public Service Commission

In the matter of adjustment) No. _____
of rates of the (state name) (To be inserted by
of corporation).) the secretary)

The (here insert name of company) informs the commission that it is engaged in the business of (set out character of business) in (set out place of operation) and does hereby propose to adjust its rates, effective the _____ day of _____, 19____, in conformity with the attached schedule.

(See Section 9 of this regulation for required information.)

(Name and address of company)

(Name and address of attorney)

GEORGE EDWARD OVERBEY, JR., Chairman

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: June 12, 1991

FILED WITH LRC: June 13, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 29, 1991 at 9 a.m. in Hearing Room 1 of the Commission's Offices at 730 Schenkel Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 24, 1991, 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: Lee M. MacCracken, Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lee M. MacCracken

(1) Type and number of entities affected: The amendments to the regulation relate to petitions for confidentiality and to informal conferences and affect all utilities under Public Service Commission jurisdiction. There are currently 471 jurisdictional utilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: Section 4(4): The amendment has no direct or indirect costs or savings to those affected. Section 7: The amendment has no direct or indirect costs or savings to those affected.

2. Continuing costs or savings: Section 4(4): The amendment has no direct or indirect continuing costs or savings. Section 7: The procedure established in the amendment has no direct or indirect continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Section 4(4): The amendment has no additional factors increasing or decreasing costs to those affected. Section 7: The amendment has no additional factors increasing or decreasing costs to those affected.

(b) Reporting and paperwork requirements: Section 4(4): The amendment has no reporting or paperwork requirements. Section 7: Section 7(2)(a) requires any person requesting confidential treatment of any material to file a written petition with the commission. This is consistent with current commission practice. The amendment does not contain any reporting requirements.

(2) Effects on the promulgating administrative body: Section 4(4): The amendment merely clarifies that informal conferences may be arranged to discuss any of the issues in a proceeding, and not solely for the purpose of providing an opportunity for settlement of a proceeding. The amendment also clarifies that the commission may arrange an informal conference on its own initiative. Both of these changes codify current commission practice, and will have no effect on the agency. Section 7: The amendment to the regulation merely establishes a procedure for the commission to comply with the Open Records Act.

(a) Direct and indirect costs or savings:

1. First year: Section 4(4): The amendment will have no direct or indirect costs or savings to the agency. Section 7: The amendment will have no direct or indirect costs or savings to the agency.

2. Continuing costs or savings: Section 4(4): The amendment will not have any direct or indirect continuing costs or savings. Section 7: The amendment will not have any direct or indirect continuing costs or savings.

3. Additional factors increasing or decreasing costs: Section 4(4): The amendment does not have any additional factors increasing or decreasing costs. Section 7: The amendment does not have any additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Section 4(4): There will be no increase or decrease in the current paperwork or reporting requirements. Section 7: There will be no increase or decrease in the current paperwork or reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: Section 4(4): There will be no impact on state or local revenues. Section 7: There will be no impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Section 4(4): By deleting the reference to settlement negotiations, the amendment provides that issues other than those relating to settlement will initiate and be discussed at an informal conference. The amendment also eliminates any potential overlap with the commission's proposed regulation on settlements, 807 KAR 5:005. No alternative method has been proposed. Section 7: The amendment merely clarifies existing language and establishes a procedure to be used by the commission in order to comply with the Open Records Act. No alternative method has been proposed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Section 4(4): No conflict has been identified. In fact, one purpose of the amendment is to eliminate a potential conflict or overlap with proposed commission regulation 807 KAR 5:005, which sets out specific procedures for the convening of settlement conferences. Section 7: No conflict, overlapping or duplication has been identified.

(a) Necessity of proposed regulation if in conflict: Section 4(4): The amendment is necessary in order to eliminate conflict. Section 7: No conflict has been identified.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Section 4(4): The purpose of the amendment is to eliminate

potential conflict with proposed 807 KAR 5:005. Section 7: Not applicable.

(6) Any additional information or comments: No additional comments.

TIERING: Was tiering applied? No. Section 4(4): Tiering is not applicable as it is essential for due process reasons that all parties to a commission proceeding be afforded an equal opportunity to discuss issues with staff at an informal conference. Section 7: Tiering is not applicable, since the Open Records Act applies to all records.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Securities
(Proposed Amendment)

808 KAR 10:010. Forms for application, registration; reporting and compliance.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY AND FUNCTION: To promulgate and make available to persons affected by the Kentucky Securities Act the forms necessary for registration, reporting and general compliance.

Section 1. The following forms are incorporated herein by reference, for use by those persons affected by the Act. The requirements and instructions contained in the forms shall have the same force and effect as rules and regulations duly promulgated. Information on obtaining the forms is available through the National Association of Securities Dealers (NASD), 1735 K Street, N.W., Washington, D.C. 20006 (or any regional NASD office) or from the Department of Financial Institutions [Banking and Securities], 911 Leawood Drive, Frankfort, Kentucky 40601.

(1) Form BD; Application for Registration as Broker-Dealer.

(2) Form U-4 Application for Registration as Agent or Transfer of an Agent.

(3) Form P-7; Investment Adviser/Representative Qualification Application [Form 33-e (Rev. 10/1/82); Application for Renewal of Broker-Dealer and Agent Licenses].

(4) Form 33-e-1; Application for Renewal of Issuer Agents.

(5) Form ADV; Application for Registration of an Investment Adviser (may be obtained from Securities and Exchange Commission, Branch of BD and IA Registration, Washington, D.C. 20549).

(6) Form 33-h-1 (Rev. 10/1/82); Application for Renewal of Investment Adviser's License.

(7) Form 34; Report to be Filed by an Issuing Company Registered for the Purpose of Selling Its Own Securities.

(8) Form 35-a; Application for Registration by Notification (Nonissuer Distribution).

(9) Form U-1; Application for Registration of Securities by Notification or Coordination.

(10) Form ICURA (Investment Company Uniform Report and/or Application); Application for Annual Renewals of Investment Company Registrations.

(11) Form 37 (amended); Application for Registration of Securities by Qualification.

(12) Form 38-a; Impounding Agreement.

(13) Form U-2; Consent to Service of Process and Jurisdiction (Investment Adviser, Broker-Dealer or Issuer).

(14) Form U-2A; Resolution (Investment Adviser, Broker-Dealer or Issuer).

(15) Form BDW; Notice of Broker-Dealer withdrawal.

RONDA PAUL, Director
EDWARD B. HATCHETT, JR., Commissioner

APPROVED BY AGENCY: June 13, 1991

FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1991 at 2 p.m. in Room 125, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 17, 1991, 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: Pat Harris, Office of General Counsel, Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pat Harris

(1) Type and number of entities affected: Approximately 170 investment adviser entities, undeterminable individual applicants.

(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):

(b) Reporting and paperwork requirements: Investment advisers and applicants will be required to complete and submit forms.

(2) Effects on the promulgating administrative body: Division of Securities will be required to review and keep record of submitted forms.

(a) Direct and indirect costs or savings:

1. First year: Negligible

2. Continuing costs or savings: Negligible

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Division will be required to review and keep record of forms submitted.

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

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

(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. Amendment

applies to all investment advisers and applicants equally.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Proposed Amendment)

808 KAR 10:220. Registration exemptions - NASDAQ/NMS exemption.

RELATES TO: KRS 292.410(1)(q)

STATUTORY AUTHORITY: KRS 13A.350, 292.500(3)

NECESSITY AND FUNCTION: To protect the investing public by disallowing exemption from registration to those securities listed on the National Association of Securities Dealers Automated Quotations - National Market System (NASDAQ/NMS) if the security is an initial public offering or if the NASDAQ/NMS has waived the requirements set forth in the Memorandum of Understanding: The Uniform Model Marketplace Exemption from State Securities Exemption Requirements. [To declare that registration is not necessary in the public interest for certain business transactions pursuant to KRS 292.410(1)(q).]

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

(1) [...] The offer or sale of any security which is listed on the National Association of Securities Dealers Automated Quotations - National Market System (NASDAQ/NMS) or which has been [designated] or approved for listing when issued, provided that the security is not offered or sold pursuant to an issuer's initial public offering and provided that there has been no waiver of the requirements set forth in the Memorandum of Understanding: The Uniform Model Marketplace Exemption from State Securities Exemption Requirements, adopted April 28, 1990 by the North American Securities Administrators Association, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., and the American Stock Exchange, Inc.; or [designation upon notice of issuance on the National Association of Securities Dealers Automated Quotations - National Market System (NASDAQ/NMS).]

(2) The offer or sale of any other security of an issuer which has a security listed on the NASDAQ/NMS provided that the other security is of senior or substantially equal rank to the listed security; or [of the same issuer which is of senior or substantially equal rank];

(3) The offer or sale of any security called for by subscription rights or warrants if the security, subscription rights or warrants are listed or approved for listing on the NASDAQ/NMS [so designated or approved]; or

(4) The offer or sale of any warrant or right to purchase or subscribe to any of the foregoing.

RONDA S. PAUL, Director
EDWARD B. HATCHETT, JR., Commissioner

APPROVED BY AGENCY: June 14, 1991

FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July

22, 1991 at 3:30 p.m. in Room 125, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 17, 1991, 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: Pat Harris, Office of General Counsel, Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pat Harris

(1) Type and number of entities affected: Approximately 30-40 issuers of securities per year and investing public.

(a) Direct and indirect costs or savings to those affected:

1. First year: Minimum one-time \$60 registration fee to issuers affected.

2. Continuing costs or savings: Registration fee to new registrants.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Undeterminable savings to investing public caused by protecting it from unsound security offerings.

(b) Reporting and paperwork requirements: None - paperwork already necessary in order to file for exemption.

(2) Effects on the promulgating administrative body: Nominal

(a) Direct and indirect costs or savings: Division will collect additional registration fees.

1. First year: Division will collect one-time registration fee of minimum of \$60 per registrant.

2. Continuing costs or savings: Collection of one-time registration fees for new registrants.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Nominal

(3) Assessment of anticipated effect on state and local revenues: Undeterminable and nominal.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None available.

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

(a) Necessity of proposed regulation if in conflict:

(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 affected.

CABINET FOR HUMAN RESOURCES Department for Employment Services Division of Unemployment Insurance (Proposed Amendment)

903 KAR 5:270. Maximum weekly benefit rates.

RELATES TO: KRS 341.380

STATUTORY AUTHORITY: KRS 194.050, 341.380

NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Human Resources to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1991 [1990], and prior to July 1, 1992 [1991]. This regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

(1) The "total monthly employment" reported by subject employers for the calendar year of 1990 [1989] was 16,400,301 [15,976,767];

(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,366,692 [1,331,397];

(3) The "total wages" reported by subject employers for the calendar year of 1990 [1989] was \$27,005,770.439 [25,064,324,258];

(4) The "average weekly wage" for the calendar year of 1990 [1989] for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was \$380 [362.03];

(5) Fifty-five (55) percent of the average weekly wage of \$380 [362.03] for the calendar year of 1990 [1989] was \$209 [199.12].

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July, 1991 [1990], and prior to the first day of July, 1992 [1991], is determined to be \$199.

DARVIN ALLEN, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: May 28, 1991

FILED WITH LRC: June 11, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 22, 1991, at 9 a.m. in the Department of Employment Services Conference Room, 2nd Floor, in the Cabinet of Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by July 17, 1991, 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: Darvin Allen

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: All eligible UI recipients for the year 7/1/91 through 6/30/92.

2. Continuing costs or savings: An estimated additional \$12,395,000 paid to eligible UI recipients.

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: An additional \$12,395,000 paid from the UI Trust Fund to UI recipients.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: The number of people filing UI claims may increase or decrease.

(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 alternate methods available in accordance with statutory requirements.

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: This regulation satisfies the statutory requirements of KRS 341.380(3), which mandates that the secretary determines the maximum weekly rate prior to July 1 of each year.

TIERING: Was tiering applied? No. All claimants treated equally.

**CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)**

904 KAR 3:020. Financial [Eligibility] requirements.

RELATES TO: KRS 194.050, 7 CFR 273.1, 273.2, 273.8, 273.9, 273.11, PL 101-508

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

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

Section 1. Financial Eligibility Requirements.

(1) In accordance with regulations promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, national uniform standards of financial eligibility for the Food Stamp Program shall be [,] composed of the following [both financial and nonfinancial] criteria: [, shall be utilized. Financial criteria shall consist of]

(a) Income limitations; and

(b) Resource limitations. [Nonfinancial criteria shall consist of certain technical factors.]

(2) Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.

(3) The income eligibility standards shall be [are] derived from the Office of Management and Budget's (OMB) nonfarm income poverty guidelines.

Section 2. Countable Income. All income from any source shall be counted, except income specifically excluded in Section 3 of this regulation, including but not limited to:

(1) Wages earned by a household member, including all wages received by a striker in accordance with the provision at 904 KAR 3:035, Section 6(9) [the day prior to the strike or wages received during the month of application, whichever is higher, in accordance with 7 CFR 273.1(g)].

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

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

(4) Payments under 42 USC 1451 [Title I (Volunteers in Service to America, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973] shall be considered earned income unless specifically excluded in Section 3 of this regulation; [7 CFR 273.9(c)(10)(iii).]

(5) The earned or unearned income of an eligible [excluded] household member or nonhousehold member[s] as set forth in 904 KAR 3:035, Section 6(3) and 4 [5(3)];

(6) Assistance payments from federal or federally aided public assistance including: [such as]

(a) Supplemental security income (SSI); [or]

(b) Aid to families with dependent children (AFDC);

(c) General assistance (GA) programs; or

(d) Other assistance programs based on need;

(7) Annuities;

(8) Pensions;

(9) Retirement, veteran's or disability benefits;

(10) Worker's or unemployment compensation;

(11) Strike pay;

(12) Old-age survivors or Social Security benefits;

(13) Foster care payments for children or adults, except as excluded in Section 3(16) of this regulation;

(14) Gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least twenty (20) hours a week;

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

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

(17) The [(10)] Such portion of scholarships, educational grants, fellowships, deferred payment loans for education, and veterans

educational benefits [and the like] which are not excludable under Section 3(6) of this regulation;

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

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

(20) [(13)] That amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien as set forth in 904 KAR 3:035, Section 6(12) [in accordance with 7 CFR 273.11(h)];

(21) The portion of means tested [(14)] Assistance monies from a federal, state, or local welfare [another] program[, as specified in 7 CFR 273.11(j),] which are withheld for purposes of recouping an overpayment which resulted from the household's intentional failure to comply with that program's requirements[. These withheld monies shall be considered as income in accordance with 7 CFR 273.11(j)];

(22) [(15)] Earnings to an individual[s] who is [are] participating in on-the-job training programs under 29 USC 1501 unless the individual is [the Job Training Partnership Act. This provision does not apply to household members] under nineteen (19) years of age and [who are] under the parental control of another adult member;

(23) [(16)] Portions of Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401 [P.L. 98-64] in excess of \$2,000 per payment per individual, effective September 1, 1989; and

(24) [(17)] Payments from the Department of Housing and Urban Development [HUD or Section 8] which are paid directly to the household or utility provider as a utility subsidy.

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

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

(2) Child support income shall be considered as follows:

(a) Child support payments received by AFDC recipients which must be transferred to the Division of Child Support Enforcement [administering Title IV-D of the Social Security Act, as amended,] to maintain AFDC eligibility shall be excluded;

(b) [However,] Any portion of child support [such] monies returned to the AFDC household by the cabinet shall not be excluded;

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

(4) Money payments that are not legally obligated and otherwise payable directly to a household, but are paid to a third party for a

household expense; [are excludable as a vendor payment as defined in 7 CFR 273.9(c).]

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

(6) [As defined in 7 CFR 273.9(c),] Educational loans on which payment is deferred, grants, scholarships, fellowships, and veteran educational benefits, [and the like] to the extent that they are made available for tuition and mandatory school fees at an institution of higher education or an institution of postsecondary education as defined by 904 KAR 3:010, Section 1(23). [, including correspondence schools at that level, or a school at any level for the physically or mentally handicapped. Origination fees and insurance premiums on student loans are excludable charges. For federal education assistance programs funded under Title IV of the Higher Education Act or effective December 1, 1988, Student Assistance Programs under the Bureau of Indian Affairs, additional income exclusions include costs of books, transportation, supplies, costs for rental or purchase of equipment or materials required for all students in the same course of study, and miscellaneous personal expenses. Portions of nonfederal (state, local, or private) deferred payment educational loans are excluded based on provisions contained in 7 CFR 273.9(c)(4).]

(a) Types of financial educational assistance include:

1. Federal educational assistance not funded under 20 USC 1070;

2. Federal educational assistance funded under 20 USC 1070;

3. State, local and private assistance.

(b) Income exclusions for each type of assistance are allowed as follows:

1. Federal educational assistance not funded under 20 USC 1070:

a. Tuition;

b. Mandatory school fees;

c. Origination fees and insurance premiums charged for obtaining the assistance.

2. Federal educational assistance funded under 20 USC 1070 or effective December 1, 1988, student assistance programs funded by the Bureau of Indian Affairs:

a. Tuition;

b. Mandatory school fees;

c. Origination fees and insurance premiums charged for obtaining the assistance;

d. The costs of books, school supplies, transportation, and miscellaneous personal expenses other than room and board.

3. State, local and private financial assistance:

a. Tuition;

b. Mandatory fees;

c. Origination fees and insurance premiums charged for obtaining the assistance;

d. The costs of books, school supplies, transportation, routine supplies and dependent care.

(c) Mandatory fees include, but are not limited to:

1. Uniforms;

2. Lab fees or equipment which is required:

a. Of all students; or

b. All students within a particular curriculum.

(d) Mandatory fees shall not include routine

school supplies.

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

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

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

(10) The earned income of children who:

(a) Are members of the household;

(b) [who] Are students at least half time;

(c) [and who] Have not attained their 18th birthday; and

(d) Are under the parental control of another household member;

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

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

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

(14) [Any] Energy assistance payments made under federal laws or certified as excludable energy payments by FNS;

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

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

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

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

(19) Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261 and 25 USC 1401, [P.L. 98-64] as distribution from judgment awards and trust funds of \$2,000 or less per individual per payment, effective September 1, 1989.

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

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

(2) Households in which all members are recipients of AFDC or SSI shall be [are] categorically eligible and shall [as defined in CFR 273.2 do] not be required [have] to meet

either the gross or net income eligibility standards.

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

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

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

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

(3) Payments for the actual cost for the care of a child or other dependent, not to exceed \$160 per month per dependent, when necessary for a household member to:

(a) Seek, accept or continue employment;

(b) [or] Attend training; or

(c) Pursue education preparatory to employment; [. This deduction shall not exceed the child care maximum established by FNS.]

(4) The monthly shelter cost deduction shall be determined as follows:

(a) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made.

(b) The shelter deduction shall not exceed the excess shelter maximum established by FNS, except that households containing an elderly or disabled member shall not be subject to the [said] maximum [with regard to the shelter deduction].

(c) The excess shelter maximum shall be adjusted periodically by FNS to reflect changes in the cost of living for a prior period of time.

(d) Allowable monthly shelter expenses shall include the following [be those] expenses; [outlined in 7 CFR 273.9(d)(5).]

1. Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments;

2. Property taxes, state and local assessments, and insurance on the structure itself, but no separate cost of insuring furniture or personal belongings;

3. The cost of:

a. Heating and cooking fuel;

b. Cooling;

c. Electricity;

d. Water and sewage;

e. Garbage and trash collection fees;

f. The telephone standard deduction; and

g. Fees charged by the utility provider for the initial installation of the utility;

4. The shelter costs for the home if temporarily not occupied by the household because of:

a. Employment or training away from home;

b. Illness; or

c. Abandonment caused by a natural disaster or casualty loss; and

d. If the household intends to return to the home;

e. The current occupants of the home are not claiming the shelter costs for food stamp purposes; and

f. The home is not leased or rented during the absence of the household; and

5. Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood, unless such costs are reimbursed by:

- a. Private or public relief agencies;
- b. Insurance companies; or
- c. From any other source.

(e) The cabinet shall develop a standard utility allowance for use in calculating shelter cost for those households which receive Low Income Home Energy Assistance Program (LIHEAP) benefits or which incur heating or [] cooling (by air conditioning units only) costs separate and apart from their rent or mortgage payments [in accordance with 7 CFR 273.9(d)(6)].

(f) If the household is not entitled to the utility standard or does not choose to use the utility standard, it may claim actual utility expenses for any utility which it does pay separately.

(g) The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.

(5) Allowable medical expenses, excluding special diets, in excess of thirty-five (35) dollars per month incurred by any household member who meets the definition of elderly or disabled as specified by 904 KAR 3:010, Section 1(10), [set forth in 7 CFR 271.2, are those meeting the criteria set forth in 7 CFR 273.9(d)(3)] including, but not limited to:

- (a) Medical and dental care;
- (b) Hospitalization or outpatient treatment and nursing care;
- (c) Medication and medical supplies;
- (d) Health and hospitalization premiums; and
- (e) Dentures, hearing aids, eyeglasses and prosthetics.

Section 6. Resources. (1) Uniform national resource standards of eligibility shall be utilized.

(2) Eligibility shall be denied or terminated if the total value of a household's liquid and nonliquid resources, not exempt under Section 7 of this regulation [and in accordance with 7 CFR 273.8,] exceed:

- (a) [(1)] \$3000 for all households with one (1) or more members, when at least one (1) member is sixty (60) years or older; or
- (b) [(2)] \$2000 for all other households.

(3) Households which are categorically eligible as specified in Section 4(2) of this regulation [defined in 7 CFR 273.2] shall be considered as having met the food stamp resource requirement.

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

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

(2) Household goods;

(3) Personal effects including one (1) burial plot per household member;

(4) The cash value of life insurance policies; and

(5) Pension funds (except that Keogh plans which involve no contractual relationship with individuals who are not household members and Individual Retirement Accounts shall not be exempt); [and]

(6) Prepaid burial plans if a contractual agreement for repayment must be signed in order to withdraw any funds;

(7) [(3)] Licensed or []unlicensed vehicles [as specified in 7 CFR 273.8];

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

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

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

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

(12) [(8)] Resources whose cash value is not accessible to the household;

(13) [(9)] Resources which have been prorated as income;

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

(15) [(11)] Resources which are excluded for food stamp purposes by express provision of federal statute;

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

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

(18) [(14)] Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401, [P.L. 98-64] as distribution from judgment awards and trust funds, of \$2,000 or less per individual per payment [effective September 1, 1989].

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

(20) The earned income tax credit (EITC) income of an individual and his spouse for the month of receipt and the following month.

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

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

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

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

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

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

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

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

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

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

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

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: May 23, 1991

FILED WITH LRC: June 3, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1991 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 July 17, 1991, 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: There is no method available to determine the number of food stamp recipients who would be entitled to such a resource exclusion. However, the number of Kentuckians utilizing the earned income tax credit (EITC) and receiving food stamps is believed to be minimal.

(a) Direct and indirect costs or savings to those affected:

1. First year: Unable to determine.

2. Continuing costs or savings: Unable to determine.

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: Unable to determine.

2. Continuing costs or savings: Unable to determine.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

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

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

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Federal and state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 101-508 (Omnibus Budget Reconciliation Act of 1990) State Welfare Commissioners, Region IV, Administrative Letter No. 024-91, 2/27/91.

2. State compliance standards. There are no state compliance standards different from the federal mandate.

3. Minimum or uniform standards contained in the federal mandate. This Public Law allows the state agency to exclude EITC income for 2 months.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provision of this administrative regulation coincide with the provision mandated by the Public Law and the food and nutrition service.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose a stricter requirements or any additional or different responsibilities than those required by the federal mandate.

**CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)**

907 KAR 1:045. Payments for mental health center services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447.325, 42 USC 1396a, 1396b, 1396c, 1396d

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 mental health center services.

Section 1. Mental Health Centers. Participating [In accordance with 42 CFR 447.325, the cabinet shall make payment to Kentucky based ([in-state]) mental health center providers shall be reimbursed as follows: [who are appropriately licensed and have met the conditions for participation (including the signing of such contractual arrangements as the cabinet may require of this class of provider) set by the cabinet, on the following basis:]

(1) Payment shall be on a prospective basis based on reasonable allowable prior year costs (utilizing the latest audited annual cost report or unaudited report if an audited report is not available) not to exceed usual and customary charges or the upper limits on payments. Allowable costs shall be trended to the beginning of the rate year and indexed for the rate year, [so as] to more accurately approximate actual costs incurred during the year. (If an unaudited report is used, cost and payment rates shall not be adjusted based on audit unless the cabinet determines that the cost report contains a misrepresentation(s).)

(2) Payment amounts shall be determined by application of the "Community Mental Health/Mental Retardation Center Reimbursement Manual," (revised May 16, 1991) [July 1, 1990] developed and issued by the cabinet, which is incorporated by reference in this regulation and [to the extent that these policies, guidelines and principles are applicable to Title XIX services and reimbursement,] supplemented by the use of the Medicare [Title XVIII] reimbursement principles. The Community Mental Health/Mental Retardation Center Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

(3) Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), the costs of motor vehicles used by management personnel which exceed \$15,000 total valuation annually (unless the excess cost is considered as compensation to the management personnel), 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.

(4) The prospective rate shall not exceed 110 percent of the median of the reasonable allowable cost for each reimbursable departmental cost center (i.e., inpatient, outpatient, partial hospitalization and personal care) for all participating facilities. For services provided on or after July 1, 1990, a funding adjustment of seventy-eight (78) cents shall be added to the outpatient (clinical) per unit rate.

Section 2. Implementation of Payment System.

(1) Payments may be based on units of service such as fifteen (15) minute or hourly increments, or at a daily rate, depending on the type of service.

(2) Overpayments discovered as a result of audits shall be settled in the usual manner, i.e., through recoupment or withholding.

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

(4) Each community mental health center provider shall make available to the cabinet at the end of each fiscal reporting period, and at intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet. Notwithstanding this general requirement, the provider need not make available (for purposes of determining Medicaid payment amounts) staff notes or treatment records which show treatment details for non-Medicaid covered services; for these services, the information required shall be limited to a case summary sheet or listing which shows, at a minimum, the type of service provided, the staff member who provided the service, the date of the service, and appropriate identifying information relating to the patient.

(5) Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the cabinet's "Community Mental Health/Mental Retardation Center Reimbursement Manual."

Section 4. Reimbursement of Out-of-state Providers. Reimbursement to participating [The cabinet shall make payment to] out-of-state mental health center providers [who are appropriately licensed, participate with their state's Title XIX Medicaid Program, and have met the Kentucky Medical Assistance Program conditions of participation. The payment rate] shall be the lower of charges, or the facility's rate as set by the state Medicaid Program in the

other state, or the upper limit for that type of service in effect for Kentucky providers.

ROY BUTLER, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: May 9, 1991

FILED WITH LRC: May 24, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1991 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 July 17, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: Participating mental health centers.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

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

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES Department for Medicaid Services (Proposed Amendment)

907 KAR 1:410. Incorporation by reference of the Vision Services Manual.

RELATES TO: KRS 205.520[, Title XIX of the Social Security Act]

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, 1396c, 1396d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program. [in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers] The cabinet is empowered to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the vision services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Vision Services Manual, revised June 1, 1991 [September 1, 1988], used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: June 12, 1991

FILED WITH LRC: June 13, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1991 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 July 17, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public

hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating providers of vision services are potentially affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

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

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

PROPOSED REGULATIONS RECEIVED BY NOON, JUNE 14, 1991

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 the circumstances when an athletic trainer can be employed in the private practice of a duly licensed physician. Nothing in this regulation shall prohibit the freedom of any individual to choose his own 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 treating athletes while working in a private practice as long as the athletic trainer has a written contract from a bona fide educational institution, professional athletic organization or other bona fide athletic organization and practices under the advice and consent of the athlete's team physician. The term athlete as used herein shall include only those individuals who are participating athletes at an educational institution, professional athletic organization or other bona fide athletic organization.

ROYCE E. DAWSON, M.D., President

APPROVED BY AGENCY: June 12, 1991

FILED WITH LRC: June 13, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Tuesday, July 23, 1991, at 10 a.m., eastern time, 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 July 18, 1991, 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 throughout 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. Continued certification 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 the continued certification of athletic trainers.

Section 1. Definitions. As used in this regulation, "continuing education unit (CEU)" shall be defined as ten (10) contact hours of participation in an organized continued education experience under responsible sponsorship, capable direction and qualified instruction and must be approved by the National Athletic Trainer Association (NATA) or the Kentucky Board of Medical Licensure.

Section 2. All athletic trainers certified to practice in the Commonwealth of Kentucky shall:

(1) Complete six (6) continuing education units (CEU) in a three (3) year period beginning July 1, 1991, and ending July 1, 1994, and on a continuous three (3) year cycle thereafter; said CEU's to include human immunodeficiency virus education mandated by KRS 311.908(4) and 902 KAR 2:150; and

(2) Pay the required fees.

ROYCE E. DAWSON, M.D., President

APPROVED BY AGENCY: June 12, 1991

FILED WITH LRC: June 13, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Tuesday, July 23, 1991, at 10 a.m., eastern time, 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 July 18, 1991, 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 required fees.

1. First year: Costs will be spread over a 3 year period and required fees 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 continued certification forms.

(2) Effects on the promulgating administrative body: This regulation will increase workload of the board. It must develop continued certification forms and procedures.

(a) Direct and indirect costs or savings: Direct costs will include the drafting and presenting of continued certification forms and the staff costs associated with this process.

1. First year: Costs will be more appreciable in the first year. However, the costs will be offset by the required 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 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

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 10:010. Kentucky Heritage Land Conservation Fund Board.

RELATES TO: KRS Chapter 13A, 146.550, 146.555, 146.560, 146.565, 146.570, 150.015, 150.025, 150.250, 150.620

STATUTORY AUTHORITY: KRS 13A.110, 13A.120

NECESSITY AND FUNCTION: This regulation pertains to the operations of the Kentucky Heritage Land Conservation Fund Board. The function of this regulation is to identify the structure and operating procedure of the board and to detail how land acquisition projects will be ranked and selected.

Section 1. Chairman, Regular Meetings, Special Meetings, Meeting Announcement, Meeting Location, and Quorum. (1) Chairman. The Commissioner of the Department of Fish and Wildlife Resources shall be the permanent Chairman of the Kentucky Heritage Land Conservation Fund Board, hereinafter referred to as "board".

(2) Regular meetings. The board shall meet quarterly on the second Wednesday of January, April, July and October. If there is no new or pending business, the chairman may cancel regular meetings by notifying board members of cancellation at least seven (7) days prior to the meeting date.

(3) Special meetings. Any member of the board, with the concurrence of the chairman, may call a special meeting at any time to bring new business before the board or to seek action on pending business. All board members shall be notified by the chairman in writing of all special meetings at least twenty (20) days prior to the meeting date.

(4) Meeting announcement. All regular and special meetings shall be announced in a newspaper with statewide distribution and by letter to individuals, groups or organizations that have requested to be made aware of meetings. Announcements shall be made at least ten (10) days in advance of the meeting.

(5) Meeting location. All regular and special meetings shall be held at the headquarters of the Kentucky Department of Fish and Wildlife Resources located at #1 Game Farm Road in Frankfort, Kentucky.

(6) Quorum. Five (5) members of the board shall constitute a quorum.

Section 2. Application for Grants and Submittal Deadlines. (1) Application for grants. State agencies applying for grants shall submit eight (8) copies of a written grant proposal to the chairman. Grant proposals shall be single project oriented and shall minimally contain the following:

(a) Grant identification and location, which includes a project title, general physical description of the project, an acreage estimate, and appropriate cover, area and vicinity maps.

(b) A project rationale demonstrating that it meets the acquisition criteria of the board. Supporting information such as species checklists, wildlife, recreational or educational use data or projections, relationships to other plans and narrative descriptions of natural functions or potentials for loss or alteration may be included here. The

rationale shall provide information that supports the agency ranking provided under Section 3(1)(a) of this regulation.

(c) A total cost estimate of the acquisition, which shall include line item estimates for any appraisals, surveys and closing costs. All cost estimates shall include a fee of one (1) percent of total acquisition cost to be applied toward project maintenance.

(d) Identification of any matching fund or in-kind contribution potential from sources other than the Kentucky Heritage Land Conservation Fund. To the extent possible, the ratio of other funds or contributions to Kentucky Heritage Land Conservation Fund money shall be identified. If there are no known matching funds or in-kind contributions, such shall be specifically stated in the proposal.

(e) Identification of any knowledge that the seller may make all or part of the sought-after property available at below market value. If there is no knowledge to that effect or the seller will not accept payment below market value, such shall be specifically stated in the proposal.

(2) Submittal deadlines. In order for grant proposals to be considered at either a regular or special meeting of the board, applications shall be submitted to the chairman at least thirty (30) days prior to the respective meeting date. The chairman shall further submit the grant proposals to individual members of the board at least twenty (20) days prior to the regular or special meeting.

Section 3. Balloting, Scoring Projects, Project Funding, Project Approvals and Project Life. (1) Balloting. All board actions relating to project evaluation shall be by written ballot by all members present at the board meeting. The following evaluation criteria shall be applied. Scores from all criteria given in paragraphs (a) through (e) of this subsection shall be tabulated into a score for each individual board member.

(a) All agencies applying for grants shall provide a priority ranking score in the range of zero to fifty (50) points. Higher scores shall indicate the project's importance to fulfilling agency goals. This score shall be provided only by the grant applicant and be applied by all board members in the balloting process.

(b) Present relative availability of the habitat or features represented in the grant proposal shall be scored by individuals on the board based on the following: If the availability is rare on a statewide basis, score = ten (10). If availability is rare on a regional basis, score = six (6). If availability is rare on a county basis, score = four (4). If availability is not limited, score = zero.

(c) Prognosis for future availability of the habitat or features represented in the grant proposal shall be scored by individuals on the board based on the following: If loss is imminent, score = ten (10). If loss is not imminent but certain in next ten (10) years, score = six (6). If loss is not imminent but certain in next twenty (20) years, score = four (4). If loss threat is low and they appear secure in the state, score = zero.

(d) Points shall be awarded by individuals on the board, based on the following, if the project is a joint venture between state agencies or between a state agency and other

government agencies or the private sector and has matching funds or other in-kind contributions associated with it. If matching funds or other contributions equal or exceed a 50:50 matching formula, score = five (5). If the matching fund or other contribution ratio is below 50:50, score = three (3). If the project is not a joint venture and has no outside funds or contributions, score = zero.

(e) Points shall be awarded by individuals on the board, based on the following, if the proposed acquisition of a tract of land is key to the completion or consolidation of an existing project. If acquisition is a key tract score = two (2). If not a key tract, score = zero.

(2) Scoring projects. The total score for a proposed project shall be calculated by summing all scores given by board members. Positive scores shall constitute an approved project. Higher positive scores shall indicate the board's relative priority for project funding. Projects eliminated from funding consideration may be resubmitted to the board for reevaluation.

(3) Project funding. The board shall by separate action vote to approve the funding of approved projects based upon their numerical score until the available funds are fully committed. Projects with higher scores shall be completed first and shall block action on all projects with lesser scores unless a specific action of the board directs otherwise. Agencies may substitute another approved project or projects for one that has been authorized for funding if the substitute project has a score equal to or higher than the project it is replacing and provided that its total cost is equal to or less than the project it is replacing. Such shifts may be permissible if acquisition problems arise or just cause can be demonstrated to delay or terminate a project approved for funding. The board shall be fully apprised of these actions in writing at the next regular or special meeting and shall vote to fund the replacement project.

(4) Project approvals. Money available to the board shall not limit the approval of projects and their prioritization. The board shall continue to evaluate project proposals regardless of availability of funds. No vote to commit funds shall be taken until such time that uncommitted funds become available. If an approved project is not funded for two (2) years it shall be dropped from funding consideration unless the sponsoring agency requests that it be maintained on the priority list. Should two (2) projects score the same but the financial resources in the fund not allow the funding of both, a simple voice vote by the board members will decide which will be funded.

(5) Project life. Projects which have been approved for funding and which have not been completed within two (2) years of approval by the board shall be automatically terminated unless a specific action of the board directs otherwise.

RONALD E. GENTRY, Secretary
DON R. MCCORMICK, Commissioner
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: June 11, 1991

FILED WITH LRC: June 14, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 24, 1991 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 July 19, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Lauren E. Schaaf, Director of Wildlife, Department of Fish and Wildlife Resources, 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: Should the General Assembly fund the Kentucky Heritage Land Conservation Fund, the approximately 2.75 million Kentuckians who believe wildlife is an important part of their lives will be positively benefitted through land acquisition projects.

(a) Direct and indirect costs or savings to those affected: The level of commitment to the conservation and protection of important wildlife lands in Kentucky remains to be seen. The pro rata share per Kentuckian is likely to be limited to a dollar or two per year.

1. First year: Remains to be determined.

2. Continuing costs or savings: Remains to be determined.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Agencies applying to the Kentucky Heritage Fund will have to fully document and prepare grant proposals as per directions in this regulation.

(2) Effects on the promulgating administrative body: Administrative costs of implementing this regulation will be borne by the Kentucky Department of Fish and Wildlife Resources.

(a) Direct and indirect costs and savings: All costs are fixed. No additional costs will be incurred.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Grant application proposals will be prepared by individual agencies applying to the Kentucky Heritage Land Conservation Fund. The copies provided by the applying agencies will be dispersed by the Department of Fish and Wildlife Resources to board members.

(3) Assessment of anticipated effect on state and local revenues: Expenditures should bolster local and state economies through exchanges of acquisition dollars in the economy.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Processes and procedures detailed here are variations of

standard parliamentary protocol. No other alternatives would be appropriate. Discussions of content of this regulation were held with the Kentucky Heritage Land Conservation Fund Board and the Kentucky Department of Fish and Wildlife Resources Commission. Full acceptance of the package was indicated by each group.

(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: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. This regulation applies to processes and procedures governing the operations of a board created by statute. Tiering does not apply to this type of regulation.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

415 KAR 1:040. Guidelines for reimbursement from the fund.

RELATES TO: KRS 224.810, 224.814 through 224.825

STATUTORY AUTHORITY: KRS Chapter 13A, 224.815, 224.817, 224.819

NECESSITY AND FUNCTION: KRS 224.810 to 224.825 relate to the regulation of petroleum storage tanks. KRS 224.815 through 224.825 provide for the creation of a program to assist owners and operators in meeting federal financial responsibility requirements for petroleum storage tanks under 401 KAR 42:090. KRS 224.819 requires the Petroleum Storage Tank Environmental Assurance Fund Commission to promulgate regulations to establish the policy, guidelines, and procedures to administer the petroleum storage tank environmental assurance fund. This regulation establishes the policies, guidelines, and procedures for eligibility for reimbursement from the fund, the procedure for filing a claim for payment against the fund, and the procedures for appealing decisions and hearing complaints brought before the commission.

Section 1. General Provisions. (1) The commission shall execute an assistance agreement with the applicant in accordance with 415 KAR 1:030 upon approval of the application for assistance. The assistance agreement states the responsibilities of both parties for completion of the project and shall stipulate an amount to be committed to the project. No monies shall be reimbursed or secured as a guarantee until the assistance agreement is executed.

(2) Upon execution of the assistance agreement, funds obligated shall be considered a guarantee to a contractor performing corrective action for an owner or operator.

(3) Any amendment required to the amount of funds obligated in the assistance agreement shall be requested and documented by the owner or operator as necessary, and as more complete information regarding a site becomes available. Payment shall not exceed the obligated amount.

(4) Upon completion of the project and determination of the exact costs, any amendments

to the assistance agreement shall be requested and documented by the owner or operator and executed following revision of those amendments.

(5) Any amendment to the assistance agreement shall be requested by the applicant and shall require the same documentation as the original application for assistance. Any amendment shall be administratively processed consistent with 415 KAR 1:030.

(6) The owner or operator or the selected corrective action contractor shall maintain detailed records demonstrating compliance with the approved corrective action plan, and all invoices and financial records associated with costs for which reimbursement is requested.

Section 2. Application Process. (1) Applications. Any applicant, upon receipt of an executed assistance agreement, shall be eligible to receive compensation from the fund. The claim shall be on a form prescribed to the commission on the claim form dated June, 1991, hereby incorporated by reference. This form may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky, 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m., Monday through Friday. The claim form and attachments shall be administratively complete when it contains at least the following:

- (a) The name of the person making the claim;
- (b) The name of the person or persons authorized for payment from the fund;
- (c) A description of the site of release;
- (d) A copy of the corrective action plan and the Department for Environmental Protection's approval of the plan; and
- (e) An itemized list of all corrective actions taken, the eligible costs associated with the actions, and the name of the engineer, contractor, or subcontractor who performed the action;
- (f) Third party liability information in accordance with Section 4(6) of this regulation, if applicable.

(2) Time of application. The claim form and all accompanying documentation shall be received by the commission's office thirty (30) days before a commission meeting in order for reimbursement to be considered at that meeting. The commission may waive the thirty (30) day requirement, if it finds that undue financial hardship to the applicant will result if action is delayed.

(3) Signatures. A claim form shall be signed as follows:

(a) For a corporation, by a principal executive officer of at least the level of vice president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for the overall operation of the subject of the application or a person whom the board of directors designates by means of a corporate resolution;

(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor, or individual respectively; or

(c) For a municipality, state, federal or public agency, by either a principal, executive officer, or ranking elected official.

(4) Request for payment.

(a) Requests for payment may be submitted following the Department for Environmental

Protection's approval of the corrective action plan.

(b) Requests for payment for the implementation of corrective action may be submitted sixty (60) days following initiation of work to implement the corrective action plan and at sixty (60) day intervals thereafter until completion of the authorized activities. Upon request, the commission may approve interim payments at more frequent intervals.

(c) All payments shall be subject to approval by the commission. Should a site inspection or other information available to the commission reveal a discrepancy between the work performed and the work addressed by a request for payment, the commission shall deny payment or institute proceedings to recover any cost paid, or adjust payment to eligible costs.

(d) A request for payment shall be received within one (1) year from the date of closure by the Department for Environmental Protection in order to be eligible for payment from the fund.

(e) Except for the situations provided for in 415 KAR 1:030, Section 1(6), payment shall not be made for corrective actions performed at a site until the commission has reviewed and approved an application for that work, and until monies have been obligated from the fund for completion of that particular stage of work.

(f) For payment of third party liability claims, the petroleum storage tank owner or operator shall submit a request for payment to the commission attaching the original or a certified copy of a final judgment with proof of payment of state financial responsibility no later than thirty (30) days after notification of final judgment.

(g) Request for payment shall be certified by the owner or operator and submitted to the commission. The amount requested shall be supported and documented as prescribed on the listing of invoices form and shall show that the deductible has been applied and evidenced with invoices and cancelled checks attached. The commission shall consider only eligible costs. The listing of invoices form dated June, 1991, herein incorporated by reference, may be copied and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky, 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m., Monday through Friday.

(8) The authorized representative who signs a claim form shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I further certify that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this affidavit."

Section 3. Review and Determination. (1) Review. The commission's staff shall review all claims. If the commission's staff finds that the claim form is incomplete or otherwise deficient, the commission staff shall within fifteen (15) days advise the applicant of the incompleteness or deficiency. Further processing of the

application affected by the deficiency shall be suspended until the applicant has supplied the necessary information or otherwise corrected the deficiency.

(2) Determination. After a claim form is administratively complete, the commission shall make a decision whether to approve or disapprove the claim. The commission shall determine the amount of reimbursement based on those costs it finds are eligible. The applicant shall be notified within ten (10) days of the commission's determination. If the application or any portion thereof is denied, and a request for a panel review as set forth in subsection 3 of this section was not made, the determination shall be considered final.

(3) Panel review. If the applicant is aggrieved by the commission's determination as to eligibility for participation, funds to be obligated toward a request or claims made for corrective action, the applicant may, within twenty (20) days of receipt of the determination, ask to appear before a three (3) member panel of the commission to present additional documentation and supplemental information explaining the application. The panel shall be comprised of three (3) commission members appointed by the chairman of the commission with the consent of the commission. The panel may establish a fair and reasonable limit on time allowed for oral presentation. The panel shall make recommendations to the commission on the application.

(4) Final determination. The commission shall determine the amount of reimbursement based on those costs it finds are eligible, actually incurred, and reasonable. The final determination shall be made on the basis of the written record and, if applicable, panel recommendation. The applicant shall be notified, in writing, within fifteen (15) days of the commission's decision. If the commission rejects any portion of the request for reimbursement, a statement of the reasons for rejection shall be included with the notification.

(5) Right to appeal. A final determination by the commission shall be a final order or determination for the purpose of KRS 224.081.

Section 4. Fund Payment Procedures. (1) Where the owner or operator submitted an acceptable request for payment for corrective actions or third party liability claims in excess of the state financial responsibility, but has not paid for these actions or claims, payments from the commission may be made by a check written to both the eligible owner or operator and the provider of the corrective action services or to the third party.

(2) Payments from the fund shall be made directly to the eligible owner or operator in cases where the owner or operator submits documentation verifying the owner or operator has paid in excess of the required state financial responsibility.

(3) Contingent upon availability of funds, the commission shall process all requests for payment within ninety (90) days of receipt of administratively complete application.

WILLIAM C. EDDINS, Chairman

APPROVED BY AGENCY: June 5, 1991

FILED WITH LRC: June 7, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July

23, 1991, at 10 a.m. at the Capital Plaza Tower Meeting Room G-2. Individuals interested in being heard at this hearing shall notify Morgan Kelly at the address noted below in writing by July 18, 1991 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons testifying at the hearing are required to provide the commission with a written copy of their testimony. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Kelly. Written comments must be received by Mr. Kelly no later than 4:30 p.m. on July 23, 1991. CONTACT PERSON: G. Morgan Kelly, Petroleum Storage Tank Environmental Assurance Fund Commission, 59 Fountain Place, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: G. Morgan Kelly

(1) Type and number of entities affected: The proposed regulation will affect approximately 12,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: Tank owners or operators are financially responsible for \$10,000 or \$25,000, dependent upon the number of tanks, rather than \$1,000,000 of financial responsibility for clean-up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners will continue to experience savings associated with payment of corrective action, and third party liability expenses.

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: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund Commission receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The commission is recently formed. Costs and savings are not yet established. The commission is in the process of hiring support staff to assist in administering the program.

2. Continuing costs or savings: The commission anticipates first year costs associated with staff and general operation of the program to continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain and process claim forms. The commission will provide eligible entities with state certification of financial assurance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods; reasons

why alternatives were rejected: (a) HB 194, codified at KRS 224.814 through 224.825, created the Petroleum Storage Tank Environmental Assurance Fund by establishing a fee on each gallon of gasoline sold. This fund shall be administered by the Petroleum Storage Tank Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by the Environmental Protection Agency as well as provide reimbursement to owners or operators for corrective action expenses and third party damages.

ALTERNATIVES: 1. Less stringent. The commission cannot be less stringent and maintain authorization to administer the program.

2. More stringent. The commission cannot be more stringent than state statutes.

3. Present proposal. The proposed regulation establishes reimbursement procedures for financial assistance from the petroleum storage tank environmental assurance fund.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies in conflict 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: There is no additional information.

TIERING: Was tiering applied? Yes. This regulation applies to all owners or operators of petroleum underground storage tank systems. The proposed regulation is tiered dependent upon the number of tanks owned or operated, and the level of financial responsibility required.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third parties for bodily injury and property damage caused by accidental releases. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the requirements of the demonstration.

2. State compliance standards. In response to the federal requirement of 40 CFR 280 Subpart H, the 1990 General Assembly enacted HB 194 which provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. HB 194, codified at KRS 224.814 through 224.825, created the petroleum storage tank environmental assurance fund by establishing a fee on each gallon of gasoline sold. This fund shall be administered by the Petroleum Storage Tank Environmental Assurance Fund Commission. The fund will fulfill two needs. It can provide the financial responsibility required by the Environmental Protection Agency as well as provide reimbursement to owners or operators for corrective action expenses and third party damages.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations at

40 CFR 280 Subpart H specify requirements for compliance dates for demonstrating financial responsibility in 40 CFR 280.91, the amount and scope of required financial responsibility in 40 CFR 280.93, and state funds or other state assurances in 40 CFR 280.101.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The administrative regulation will not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This regulation will affect any division of local government that owns or operates a petroleum storage tank. These units may include fiscal court, city government, local fire departments, city schools, and city or county garages.

3. State the aspect or service of local government to which this administrative regulation relates. 40 CFR 280 Subpart H requires owners of petroleum storage tanks to demonstrate financial responsibility for taking corrective action, and for compensating third parties for bodily injury and property damage caused by accidental releases. KRS 224.814 through 224.825 provides for the creation of a program to assist owners and operators in meeting the demonstration of financial responsibility. The administrative regulation relates to any aspect of local government that owns or operates a petroleum storage tank.

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: Local governments, like any owner of a petroleum storage tank, will be required to demonstrate financial responsibility in the amount of \$10,000 or \$25,000 depending on the number of tanks owned. Once these tanks meet the requirements of 401 KAR Chapter 42 and are in substantial compliance, the petroleum underground storage tank assurance fund may be used to cover corrective action and third party liability expenses. Although there is a deductible, extensive savings will be realized by local government for corrective action and third party liability expenses.

EDUCATION AND HUMANITIES CABINET Department of Education Office of Chief State School Officer

701 KAR 5:090. Teacher disciplinary hearings.

RELATES TO: KRS 161.770, 161.790

STATUTORY AUTHORITY: KRS 156.029, 156.070, 161.790

NECESSITY AND FUNCTION: KRS 161.770 and 161.790 provide for the chief state school officer, now the Commissioner of Education, to appoint an impartial three (3) member tribunal to hear evidence and make the final administrative determination whenever a local school district proposes to discipline or place on involuntary leave a certificated employee. This regulation establishes necessary administrative and hearing procedures with respect to the tribunal process.

Section 1. A local board of education or superintendent, as applicable under statute, proposing to discipline (except for a private reprimand) or place on involuntary leave a certificated employee shall immediately after notice to the employee transmit a copy of the notice of the action to the chief state school officer, along with advice as to the date of the receipt of the notice by the employee.

Section 2. If the employee fails to contest the proposed action, by written intent filed with the chief state school officer and the local superintendent within ten (10) days of receipt of the notice of the proposed action by the employee, the chief state school officer shall transmit appropriate notice that the district's action has become final. Failure to transmit such notice shall not affect the finality of the local district's action.

Section 3. (1) If, after a requested hearing has been scheduled by the chief state school officer, or his designee, a continuance is requested by the certificated employee, the employee shall specifically and in writing waive the statutory hearing deadlines and any subsequent backpay award for the period of the requested continuance, unless the continuance request was initiated by the school district. No continuance initiated by the employee shall be granted without the appropriate waiver.

(2) A continuance requested by the certificated employee may be granted for good cause shown, including but not limited to pending criminal charges making it inadvisable for the employee to testify at any administrative hearing and late entry of an attorney into the case on behalf of the employee. Objections to a continuance request by the school district shall be considered on a case-by-case basis.

(3) A continuance requested by the school district, and not agreed to by the employee, shall be granted only upon documentation of the existence of an emergency or other circumstances making it impossible or prejudicially impractical for the district to adequately present its case at the scheduled hearing.

(4) All requests for continuances prior to the three (3) member tribunal convening shall be directed in writing to the office of the chief state school officer, and the chief state school officer or his designee shall consider and grant

or deny all such requests.

(5) After convening a hearing, the three (3) member tribunal shall consider and rule upon all other requests for continuances.

Section 4. (1) The chief state school officer shall, whenever practicable, provide a legal advisor for the three (3) member tribunal, and the local school district shall pay all travel expenses of the legal advisor.

(2) The local school district shall, no later than the convening of the hearing, advise the tribunal members how to claim their per diem and travel expenses.

Section 5. (1) No later than seven (7) days after an employee files a notice to contest, the school district shall provide the employee, and the chief state school officer and the panel members, with a proposed witness list and general summary of testimony and a list of proposed exhibits. The employee shall provide such documents no later than two (2) days prior to the scheduled hearing. No proposed witness or exhibit not on the list shall be utilized at the hearing except for good cause demonstrated to the tribunal or for rebuttal.

(2) No later than one (1) day prior to a scheduled hearing, any party may submit to the other, and to the chief state school officer and the tribunal members, proposed findings of fact and conclusions of law. If a tribunal continues a hearing once convened or defers its decision, any right to submit proposed findings and conclusions shall be governed by ruling of the tribunal.

(3) Prehearing documents shall be submitted to panel members through the chief state school officer, and the chief state school officer or his designee shall have discretion to eliminate potentially prejudicial or inadmissible information from prehearing documents and from the notice of charges to be supplied to panel members until the panel has an opportunity to rule upon such matters.

Section 6. At the hearing, both the school district and the certificated employee shall be allowed to direct reasonable voir dire to the tribunal members, such voir dire going solely to the tribunal members' possible bias, meeting statutory eligibility requirements, or improper prior knowledge of the case.

Section 7. (1) Once the hearing has been convened and the parties given the opportunity for appropriate motions and responses, voir dire, and opening statements, the local school district shall have the burden of proof and the burden of going forward with its evidence.

(2) Technical rules of evidence shall not apply, but all witnesses shall be subject to cross examination and any finding of fact by a tribunal shall be supported by some substantial and legally competent evidence.

Section 8. (1) If, for any reason and after testimony has commenced, a tribunal member becomes unavailable to complete the hearing of the evidence of both parties, an appropriate substitute tribunal member shall be appointed by the chief state school officer and provided by the school district with a written transcript of all prior proceedings at the hearing.

(2) A hearing may be concluded and a decision

rendered in such circumstances by a two (2) member tribunal only upon express agreement of both parties.

Section 9. The three (3) member tribunal shall render its decision by findings of fact and conclusions of law spread upon the stenographic record of the proceedings or by separate written decision incorporating appropriate findings and conclusions. Any decision spread upon the stenographic record shall be considered final as of the date such decision is read into the record.

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).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: May 20, 1991

FILED WITH LRC: May 20, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 24, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 19, 1991, 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 of 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: Local school districts (176) and certificated employees.

(a) Direct and indirect costs or savings to those affected: Costs of legal advisor travel expenses allocated to local district.

1. First year: Costs of legal advisor travel expenses allocated to local district.

2. Continuing costs or savings: Costs of legal advisor travel expenses allocated to local district.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Prehearing disclosure of witnesses and evidence.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Saves unbudgeted travel expenses of legal

advisor for Department of Education.

1. First year: Saves unbudgeted travel expenses of legal advisor for Department of Education.

2. Continuing costs or savings: Saves unbudgeted travel expenses of legal advisor for Department of Education.

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:

(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: Regulation provides for necessary practice and procedure provisions for teacher disciplinary hearings to supplement KRS 161.790.

TIERING: Was tiering applied? Yes. Uniform practice and procedure provisions necessary for most part, but some tiering with respect to prehearing disclosure of witnesses and evidence and grounds for continuances.

EDUCATION AND HUMANITIES CABINET

Department of Education

Office of Chief State School Officer

701 KAR 5:100. Guidelines for alternative models for school-based decision making.

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070, 160.345

NECESSITY AND FUNCTION: The State Board for Elementary and Secondary Education is directed by KRS 160.345(7) to review for approval applications for alternative models for school-based decision making. This regulation establishes approval guidelines for alternative models for school-based decision making.

Section 1. The membership of school councils shall be maintained at the 3-2-1 ratio set forth in KRS 160.345(2) such that parental membership shall not fall below one-third (1/3) of voting members. Any representation of classified staff or of students on the school council shall either be as ex-officio members of the council or on committees advisory to the council, whichever the council itself shall decide.

Section 2. Terms of office for teachers and parents on the school council shall be one (1) year. Council members shall have the right to stand for reelection.

Section 3. (1) If a school can demonstrate that it had in operation prior to July 13, 1990, a successful school-based decision making model composed of a different membership than specified in KRS 160.345(2), it may apply to the State Board for Elementary and Secondary Education for approval of its model under KRS 160.345(7) regarding alternative models. Priority for approval of such alternative models shall be given to those preexisting models which

add parents in numbers sufficient to meet the 3-2-1 statutory configuration.

(2) To demonstrate that a school had such a formal, operational, decision-making entity in place before July 13, 1990, it shall submit written evidence of decisions and actions taken by the decision-making body and implemented in the school. Groups that were informal, and advisory in that they were dealing with peripheral issues not covered in the Kentucky Education Reform Act of 1990, do not qualify for alternative model approval.

(3) In the case of requests for approval of such alternative models which were in operation prior to July 13, 1990, the school shall show evidence that the model in existence has been subjected to review, evaluation, and recommendation regarding its continuation by representatives of the parents, students, certified personnel, and the administrators of the school, and that two-thirds (2/3) of the faculty (all certified members of the school excluding the principal, assistant principal, and any head teacher and including any itinerant teacher assigned to the school for payroll purposes) have agreed to apply for the continued use of that model for school-based decision making.

Section 4. All other applications for alternative models from schools which began school-based decision making after July 13, 1990, shall be based on the 3-2-1 statutory configuration such that parental membership shall not fall below one-third (1/3) of voting members, shall have one (1) year terms of office, and shall show any student or classified staff representation as ex-officio or advisory. Such other requests shall be approved or rejected after a case-by-case review by the board and recommendation by the Department of Education.

Section 5. KRS 160.345(7) stipulates that the school shall submit its application for an alternative model "through" the local board to the Commissioner of Education and the State Board for Elementary and Secondary Education for approval. The state board interprets that provision to mean that the local board shall transmit the request to the state as quickly as possible. In exercising this function, the local board is serving as transmittal agent and does not have the right to delay or deny a school's request for an alternative model.

Section 6. All alternative models submitted to the state board since July 13, 1990, shall be reviewed for approval using the criteria in this regulation.

Section 7. All alternative models approved by the state board pursuant to any provision contained in this regulation shall be valid for a period not to exceed two (2) years. Applications for a renewed waiver may be resubmitted in accordance with the procedures set forth in this regulation.

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).

Thomas C. Boysen, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: May 22, 1991

FILED WITH LRC: June 7, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 24, 1991, 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 July 19, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at 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: Jack Gray

(1) Type and number of entities affected: All local schools.

(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: Initial application requirements for those eligible schools.

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This regulation applies to all schools on an equal basis.

EDUCATION AND HUMANITIES CABINET

Department of Education

Office of School Administration and Finance

702 KAR 3:250. Preschool grant allocations.

RELATES TO: KRS 156.160, 157.226, 157.3175

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.226, 157.3175

NECESSITY AND FUNCTION: KRS 156.160 authorizes the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which school districts shall meet in student, program, service and operational performance; KRS 157.226 authorizes preschool programs and related services for handicapped children who are three (3) or four (4) years of age or who may become age five (5) after October 1 of the current year and authorizes the State Board for Elementary and Secondary Education to promulgate regulations regarding the use of funds; and KRS 157.3175 authorizes preschool education programs for four (4) year old children who are at risk of educational failure and authorizes the State Board for Elementary and Secondary Education to establish a grant allocation system. This administrative regulation is necessary to implement those state board duties.

Section 1. Preschool Programs. For the purposes of this regulation, the term "preschool programs" refers to the two (2) educational programs established in the KRS 157.226 and 157.3175 for children below primary school age; the preschool program for handicapped children and the preschool education program for four (4) year old children.

Section 2. Funding Eligibility. (1) Children eligible to be counted for funding purposes for the preschool program for four (4) year old children shall include only those children who are at risk of educational failure and who meet the criteria set forth in 704 KAR 3:410, Section 1(1).

(2) Children eligible to be counted for funding purposes for the preschool program for handicapped children shall include only those children who meet the criteria set forth in 707 KAR 1:150, Section 1(2).

(3) A child who meets the eligibility criteria under both subsections (1) and (2) shall be included in only one (1) of these two (2) groups for purposes of generating funds under these preschool programs.

(4) Eligible children who are enrolled by parent choice in other preschool programs providing nonsupplemental 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 these preschool programs.

Section 3. Enrollment Data. (1) Funds for districts shall be allotted based on the number of eligible children as defined in Section 2 of this regulation who are enrolled in the district's preschool programs.

(2) Funding for districts initiating the preschool program for four (4) year old children in 1990-91 shall be based only on the number of children who are at risk of educational failure as defined in Section 2 of this regulation and who are enrolled in the program on December 1,

1990.

(3) Funding for the preschool programs in 1991-92 shall be based on the number of eligible children who are enrolled on September 30, 1991.

(4) After the 1991-92 school year, funding for the preschool programs shall be based on enrollment data from the district's operation of the preschool program in the previous year.

Section 4. Use of Funds. (1) Appropriations to the local school district for the preschool programs shall be separate and apart from all other funds appropriated to the local school district.

(2) Use of the funds appropriated for the preschool programs shall be limited to activities for the implementation of these programs, pursuant to 704 KAR 3:410, 707 KAR 1:150, and the district's application for the preschool programs.

Section 5. Formula. The Preschool Allocation Formula, May, 1991, specifying the amount of funds to be allocated for each eligible child for 1991-92, is hereby incorporated by reference. Such may be inspected, copied, and obtained at the Office of Instruction, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. If the state funds appropriated are not sufficient, the funding formula shall be adjusted proportionately.

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).

Thomas C. Boysen, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: May 22, 1991

FILED WITH LRC: June 7, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 24, 1991, 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 July 19, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at 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: Betty Steffy, Debbie Schumacher

(1) Type and number of entities affected: 176 local school districts.

(a) Direct and indirect costs or savings to those affected:

1. First year: Funding for both at-risk and handicap preschool programs is contained in executive budget.

2. Continuing costs or savings: Above

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

(b) Reporting and paperwork requirements: No additional. Reporting system is set forth in 704 KAR 3:410 (at-risk preschool grant application).

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Savings to allow efficient operation of at-risk and handicap preschool programs.

2. Continuing costs or savings: Above

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: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative was two separate preschool allocation systems. The alternative was rejected to allow more efficient and appropriate state and local operation of the preschool programs

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 704 KAR 3:410, Section 1(5)-(8).

(a) Necessity of proposed regulation if in conflict: To include preschool handicap allocation system and to adjust 1991-92 enrollment count date to 9/30/91 for all districts for both programs.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes. 704 KAR 3:410, Section 1(5)-(8) is recommended to be deleted in another board action.

(6) Any additional information or comments:

TIERING: Was tiering applied? No

EDUCATION PROFESSIONAL STANDARDS BOARD

704 KAR 20:590. Alternative training program eligibility requirements for middle grade and secondary classroom teachers.

RELATES TO: KRS 161.028, 161.030, 161.048, 161.049

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY AND FUNCTION: KRS 161.048 establishes the basic eligibility requirements for candidates seeking to participate in a local district alternative training program. This regulation establishes the minimum scores required on certain tests and establishes the study or experience required of candidates.

Section 1. (1) A local district or a group of districts may seek approval for a training program that is an alternative to a college

teacher preparation program as a means for a candidate to acquire initial teacher certification.

(2) The district superintendent is responsible for development, submission and implementation of the district plan, which shall be submitted over his signature or the signatures of superintendents involved in the consortium.

Section 2. The alternative training program for middle grade teachers and for secondary classroom teachers shall include the district plan, professional support team, formal instruction, training for the candidate, training for the support team, informal observation and critique, formal observation and evaluation, evaluation report of candidate, program evaluation, and appeals process as defined in 704 KAR 20:600.

Section 3. Prerequisites for Participation. To be eligible to participate in a state approved local district alternative training program for middle grade or high school teachers, the candidate shall provide evidence of:

(1) A bachelor's degree with an overall grade point average of at least two and five tenths (2.5) on a four (4) point scale and a grade point average of at least two and five tenths (2.5) on a four (4) point scale in the subject area in which the candidate is seeking certification.

(2) Minimum passing scores on the following National Teacher Examinations as established in 704 KAR 20:305:

- (a) Communication skills;
- (b) General knowledge;
- (c) Specialty area test that corresponds to the area in which the candidate is seeking certification.

(3) Study or experience in the certification field:

(a) Thirty (30) semester hour major in the subject field. Candidates who do not have a thirty (30) semester hour major in the subject field shall satisfy the experience requirement in paragraph (b) of this subsection.

(b) Experience in lieu of a major in the subject field. Candidates shall provide documentation of five (5) years of experience in the subject field. Documentation shall include the candidate's employment history to include a current position description or, if the candidate is currently unemployed, the position held immediately prior to application for entry to the alternative training program. To be acceptable, the position description shall show a direct relationship to the subject matter of the candidate's teaching field.

(c) Candidates for middle school certification shall show a minimum of a thirty (30) semester hour major in one (1) of the broad areas of preparation established under 704 KAR 20:080 and TEC 35.0 of the Kentucky Standards for the Preparation- Certification of Professional School Personnel incorporated by reference in 704 KAR 20:005. The Kentucky Department of Education shall determine whether there are deficiencies in breadth of preparation or in experience used in lieu of a subject field major in the middle grade specialty field as specified in TEC 35.0. Where deficiencies are determined to exist, the district plan shall include a curriculum guide sheet from a Kentucky college or university approved to offer middle grade

programs showing how the deficiencies will be addressed, along with the anticipated timeline for completing all requirements for the academic specialty.

(4) Candidate shall provide evidence of offer of employment in a school district which has an approved training program.

Section 4. Issuance of Provisional Certificate. (1) Upon meeting the requirements established in Section 3 of this regulation, the candidate shall be issued a one (1) year provisional certificate as established in 704 KAR 15:030.

(2) The certificate shall be issued for a second year only if the candidate is recommended for reentry to an alternative training program and is employed by a district for participation in its approved training program.

(3) Teachers holding the one (1) year provisional certificate established in 704 KAR 15:030 shall be classified in Rank IV for salary purposes.

Section 5. Completion of Training Program. Upon successfully completing the alternative training program and the professional knowledge portion of the core battery of the National Teacher Examination as established in 704 KAR 20:305, and upon receiving a recommendation of approval by the professional support team, the candidate shall be issued a statement of eligibility for participation in the Kentucky teacher internship program established in KRS 161.030 and implemented through 704 KAR 20:320.

JANICE WEAVER, Chairman

APPROVED BY AGENCY: May 20, 1991

FILED WITH LRC: May 21, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on July 22, 1991, 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 July 17, 1991, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dr. Elizabeth Nelli, Interim Executive Secretary, Education Professional Standards Board, 18th Floor, Capital Plaza Tower, Frankfort, KY 40601.

CONTACT PERSON: Hanson Williams, Staff Attorney, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Elizabeth Nelli

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: Estimate that costs will affect 2-5 districts the first year, 5-10 the second year.

1. First year: Staffing and training costs to participating districts, time and salaries of 4-member support team per candidate and salary for candidate.

2. Continuing costs or savings: Continued costs, same as the first year unless number of candidates increases.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Number of candidates in each district's program each year.

(b) Reporting and paperwork requirements: Districts offering alternate certification program will prepare and file application for approval by the Education Professional Standards Board. Candidates' academic credentials and work experience will be reviewed by districts; comprehensive records on candidates' admission, employment, progress through the program and completion must be maintained by district along with all communication in this regard with the Education Professional Standards Board and of all results of candidate and program evaluations.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Substantial and continuing informational paperwork to every district and teacher education institution every year.

1. First year: Staff salary and operating costs for the preparation of application packets; dissemination of information; review of proposals; presentation and disposition by EPSB; communication between districts and EPSB; and the certification of the candidate.

2. Continuing costs or savings: Increase in staff salary and operating costs resulting in any increase in number of proposals to be reviewed. Increase in number of final reports to be processed and candidates to be certified. Costs related to program review and on-site evaluation.

3. Additional factors increasing or decreasing costs: Frequency of on-site evaluations.

(b) Reporting and paperwork requirements: Processing and recordkeeping related to review and approval of district plans. Processing of final reports. Preparation of proposal packets each year. Monitoring and evaluation of programs, certification of candidates and maintenance of all records pertaining to the above.

(3) Assessment of anticipated effect on state and local revenues: Costs associated with implementing program to districts choosing to participate.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Required by KRS 161.048.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 161.030 and related regulations on preparation of school personnel.

(a) Necessity of proposed regulation if in conflict: To provide an alternative route for preparing teachers required by KRS 161.048.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: KRS 161.048 mandates the regulation.

(6) Any additional information or comments: TIERING: Was tiering applied? Yes. No district is required to participate in the alternative certification program. However, this regulation

applies uniformly to all local school districts that choose to participate.

EDUCATION PROFESSIONAL STANDARDS BOARD

704 KAR 20:600. The alternative training program for preparation of candidates for initial teacher certification.

RELATES TO: KRS 161.028, 161.030, 161.048, 161.049

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048, 161.049

NECESSITY AND FUNCTION: KRS 161.048 directs the Education Professional Standards Board to adopt regulations establishing standards for local district training programs and the approval and evaluation process for these programs. This regulation establishes the required elements of a local district program, outlines the training and responsibilities required of the professional support team, and establishes the training which a candidate for alternative certification shall be provided. In addition, the regulation establishes the process for evaluation of the candidate.

Section 1. The alternative training program as defined in KRS 161.048 and 161.049 is an alternative program to prepare a candidate for initial teacher certification. A local district or a group of districts may seek approval to offer the program in all instructional fields for middle grade teachers as identified in 704 KAR 20:080 and TEC 35.0 of the Kentucky Standards for the Preparation-Certification of Professional School Personnel incorporated by reference in 704 KAR 20:005 and for secondary classroom teachers as identified in 704 KAR 20:070 and TEC 40.2, except for the preparation of teachers of exceptional children.

Section 2. District Plan. (1) The local school district or consortium shall submit a plan for the alternative training program for approval by the Education Professional Standards Board, to include the following:

(a) Written evidence that the district has sought sponsorship of the program with an accredited college.

(b) The names of a four (4) member professional support team for each candidate, as described in Section 4 of this regulation.

(c) The names and qualifications of personnel other than the four (4) member professional support team who will provide formal instruction as described in Section 5 of this regulation.

(d) The training program for the support team, as described in Section 6 of this regulation.

(e) The training program for each candidate, as described in Section 5 of this regulation.

(f) A tentative budget to include expected personnel costs, for the period of time for which the district is requesting approval of the proposal, which may not exceed five (5) years.

(g) Name, title, address and telephone number of program director.

(h) Appeal process.

1. The sponsoring district or consortium shall establish an appeals process for candidates in the alternative training program and shall notify the Education Professional Standards Board of this process at the time of application for approval of the program.

2. Complaints relative to failure of the sponsoring district or consortium or the professional support team to comply with and follow all prescribed statutory and regulatory requirements and procedures of an approved alternative training program shall be directed to and assessed by the superintendent or designee of the sponsoring district or consortium.

3. The district shall notify the Education Professional Standards Board of all appeals and actions taken as a result of appeals.

(i) Roles and expectations for the professional support team during the eight (8) week training and the two (2) subsequent eighteen (18) week training sessions.

(2) The proposed plan for an alternative training program shall be reviewed by staff of the Kentucky Department of Education. Staff shall review the district plan in terms of the following criteria:

(a) Compliance of the proposed program with requirements and standards set forth in 704 KAR 20:590 and this regulation.

(b) Evidence that sufficient financial and staff resources are available to the program for its effective implementation.

(c) Qualifications of program staff in the areas of instruction and supervision for which they have responsibility, including qualifications described in Section 6 of this regulation. The district plan for the proposed alternative certification program shall provide evidence to the satisfaction of the Education Professional Standards Board in support of the three (3) criteria listed above. Staff shall recommend acceptance or denial of the plan to the EPSB which shall include the rationale for the recommendation. The EPSB shall review the staff recommendations, shall approve or deny each plan and shall transmit the decision and rationale for the decision to the district. The district may revise and resubmit a plan that has been denied. Any approval granted by the Education Professional Standards Board shall specify the period of approval of the training program, which shall not exceed five (5) years. Districts may apply for an extension of approval as outlined in Section 11 of this regulation.

(3) The district shall offer employment to a candidate seeking certification only after the district plan for an alternative training program has been approved by the Education Professional Standards Board.

(4) For each candidate seeking certification through an approved alternative training program, the district shall submit the following:

(a) Evidence of a criminal records check.

(b) Transcripts of all college work undertaken by the candidate.

(c) Three (3) recent letters of reference from persons not related to the candidate who are familiar with the candidate's professional work.

(d) Identification of the school, or an accurate description of another location, in which the candidate shall be trained during the first eight (8) weeks of training. Reasons for selecting a nonschool site shall be provided.

(e) Identification of the school, or an accurate description of another location, in which the candidate shall teach and be trained during the two (2) subsequent eighteen (18) week periods of training.

(f) A list of grade levels and classes the candidate will teach.

(g) The proposed daily workload and schedule of the candidate for each phase of the training.

(h) A copy of the official letter offering employment to the candidate.

(i) Evidence that the candidate has accepted the offered employment.

(j) The names and positions of the members of the four (4) person professional support team to include evidence that each member has successfully completed training and testing for participation in the Kentucky teacher internship program or the required update as established in 704 KAR 20:320.

Section 3. Orientation and Professional Development Plan. An orientation and a professional development plan for assisting each candidate toward proficiency shall be provided by the local school district as follows:

(1) The four (4) member professional support team and the candidate shall meet before the candidate begins Phase 1 training and shall be oriented to the approved training proposal and to the responsibilities and expectations for each team member and the candidate.

(2) The professional support team shall draft an individual professional development plan for the candidate to cover all phases of the training. The candidates' professional development plan shall be consistent with the district plan for assisting a teacher toward proficiency as described in KRS 156.101(c)6 and with the district's approved alternative certification proposal, and shall be fully discussed with the candidate.

(3) The candidate's professional development plan shall be submitted to the Education Professional Standards Board for review and approval, along with documentation of each team member's knowledge and skills as described in Section 6 of this regulation and the candidate's application for candidacy as described in Section 3 of 704 KAR 20:590. If the board's judgment is that the professional development plan is not consistent with the approved district plan, the board may refuse to approve the individual plan and may deny the candidacy until a professional development plan is approved.

Section 4. Professional Support Team. A four (4) member professional support team who have successfully completed the training identified in Section 6 of this regulation shall be identified by the local school district for each candidate seeking certification through an approved alternative training program as follows:

(1) School principal. The principal of the school where the candidate will be initially assigned to teach shall chair the professional support team. He shall keep records of the following:

(a) All informal visits and critiques;

(b) All formal visits and evaluations; and

(c) Documented changes made in the candidate's professional development plan. At regular intervals, the chair shall convene the team in order to discuss with the candidate his professional progress and appropriate modifications in the professional development plan.

(2) Experienced teacher. The teacher shall hold current certification valid for the grade range and subject area or a closely related subject area for which the candidate is seeking

certification. The teacher shall hold Rank I or II, and shall have at least four (4) years of full-time teaching experience. At least one (1) year of the prior teaching experience shall be in the district that has employed the candidate.

(3) Instructional supervisor. The instructional supervisor shall hold a valid Kentucky certificate for supervision of instruction and shall have at least one (1) year of prior experience in the district that has employed the candidate. If an instructional supervisor is not available, the district shall assign a person who has held the full-time position of supervisor of instruction for at least one (1) year within the prior three (3) years and who holds a valid Kentucky certificate for supervision of instruction.

(4) College or university faculty member. The faculty member shall be a full-time faculty member of an accredited senior college or university who is associated with the teacher preparation program and whose academic field is the same as or closely related to the field in which the candidate is seeking certification. If a faculty member is not available, the district shall assign a person approved by a senior college or university who has held the full-time position of college faculty member within the prior three (3) years and whose academic field is the same as or closely related to the area in which the candidate is seeking certification.

Section 5. Training for the Candidate. A three (3) phase training program for each candidate, as established in KRS 161.049 shall occur to ensure implementation of the candidate's professional development plan and a minimum of 250 hours of formal instruction. Formal instruction shall be for the purpose of ensuring that the candidate acquires the competencies established in 704 KAR 20:070, Sections 2, 3, 4, 5, 6 and 8 and shall relate directly to the candidate's professional development plan and to the knowledge base of the Kentucky teacher internship program. Formal instruction shall include:

(1) Phase 1 training. Phase 1 shall include a full-time seminar and practicum of no less than eight (8) weeks' duration prior to the time the candidate assumes responsibility for a classroom and shall comply with the following:

(a) The training program shall include an introduction to basic teaching skills through supervised teaching experiences with students.

(b) The training program shall integrate the candidate's supervised teaching experience with formal instruction in human growth and development, basic teaching skills, classroom management, dealing with diverse learning styles of diverse student populations, student assessment, and the knowledge base for the Kentucky teacher internship program.

(c) The district shall provide a formal orientation to the policies, organization, curriculum, and student characteristics of the employing district. The orientation shall be supervised by, or provided by, one (1) or more members of the professional support team.

(d) During the last week of Phase 1 training, evaluations shall be performed by or supervised by one (1) or more members of the professional support team, and shall include written tests and observations of the candidate's classroom performance. The candidate's understanding in the areas of formal instruction outlined in

Section (5)(1)(b) and the candidate's performance in the competency areas established in the designated sections of 704 KAR 20:070 shall be evaluated, along with the candidate's understanding of policies, organization and curriculum of the employing school district. Evaluation results in written form shall be shared with all members of the professional support team and shall be used to modify and improve the candidate's professional development plan. The revised professional development plan shall be discussed with the candidate and forwarded to the Kentucky Department of Education.

(2) Phase 2 training. Phase 2 shall include eighteen (18) weeks of formal instruction, informal observations and critiques of the candidate during which time the candidate shall have responsibility for one-half (1/2) time classroom assignment. Formal instruction, informal observations, critiques and evaluations shall relate directly to the candidates' professional development plan and to the competencies established in 704 KAR 20:070. Phase 2 training shall comply with the following:

(a) Prior to or during the first week of Phase 2 training the team shall discuss with the candidate the purpose and expectations of informal observations, critiques, formal observations and evaluations, as defined in Sections 7 and 8 of this regulation.

(b) Informal observation and critique. The candidate shall be visited, informally observed, and critiqued at least one (1) time per week by one (1) or more members of the professional support team. Over the eighteen (18) week period, each member of the team shall visit, informally observe and critique no less than five (5) times.

(c) Formal observation. Each team member shall schedule a formal observation of the candidate at least one (1) time during the first five (5) weeks, one (1) time during the second five (5) weeks, and one (1) time during the last eight (8) weeks.

(d) Formal evaluation. The team shall meet to formally evaluate the candidate at the end of five (5) weeks, at the end of ten (10) weeks, and at the end of eighteen (18) weeks. After each set of formal evaluations, the team shall meet with the candidate to discuss evaluation results which may lead to modifications of the candidate's professional development plan.

(3) Phase 3 training. Phase 3 training shall include eighteen (18) weeks of formal instruction, informal visits and critiques of classroom assignment, and at least two (2) formal observations and evaluations during which time the candidate shall have full-time classroom assignment. Phase 3 training shall comply with the following:

(a) Each member of the professional support team shall informally visit and critique the candidate at least one (1) time per month. Each informal observation shall last no less than a full class period.

(b) The district plan shall show time and personnel allocations to permit the candidate to spend at least one (1) class period per week observing an experienced teacher. Teachers selected for observation shall represent a variety of classroom subjects and levels, and shall be chosen for their ability to demonstrate a variety of exemplary teaching techniques and strategies.

(c) Each member of the professional support team shall formally observe and evaluate the candidate at least two (2) times. No more than eight (8) weeks shall occur without a formal observation.

(d) Formal instruction shall continue during this period.

(e) The candidate shall take the professional knowledge portion of the core battery of the NTE no earlier than the Phase 3 training period. The score required of the candidate is established in 704 KAR 20:305. The professional support team shall not recommend approval for a candidate until a passing score is achieved.

Section 6. Training for the Professional Support Team. (1) Each member of the professional support team shall successfully complete the training to prepare classroom observers for the Kentucky teacher internship program. Each member of the team shall successfully complete the written and coding tests for the Kentucky teacher internship program before undertaking service on a professional support team. In no case shall training for a team member occur after the start of Phase 1 training.

(2) In addition, each member of the professional support team shall provide documented evidence of possessing knowledge and skills in field and clinical supervision, mentoring, conferencing, student assessment, evaluation of curricula and teaching skills, and dealing with a variety of students including children of diverse cultural backgrounds and exceptional children. Documentation of these competencies shall accompany the district proposal.

(3) Prospective team members who have successfully completed the training and testing for the Kentucky teacher internship program, but who lack documented evidence of knowledge and skills in one (1) or more of the areas specified in subsection (2) of this section, shall successfully complete training in these areas. The training shall be completed prior to Phase 1 of the district's approved program, and shall be provided through, or approved by, the Kentucky Department of Education.

Section 7. Informal Observation and Critique.

(1) During an informal observation visit, each team member shall record observations regarding the candidate's performance in relation to the Kentucky teacher internship knowledge base and the performance of students in the classroom. Team members may use the classroom observation instrument of the Kentucky teacher internship program. Each informal observation leading to a critique shall be no less than twenty (20) minutes. Visits for informal observations shall be scheduled and unscheduled, and over the period of eighteen (18) weeks shall cover the range of times and activities for which the candidate is responsible for the classroom.

(2) At a critiquing session following an informal observation, results shall be shared with the candidate. The critique shall occur as soon as possible after the observation in order to assist the candidate to improve his classroom performance and the performance of his students.

Section 8. Formal Observation and Evaluation.

(1) Formal observations shall be scheduled in advance with the candidate and shall last no

less than one (1) class period. Team members shall use the classroom observation instrument of the Kentucky teacher internship program during each formal observation and shall share observation results with the candidate as soon as possible after the end of the formal observation.

(2) As a part of the formal evaluation, team members shall review the candidate's progress as recorded on observation instruments, notes and other documents relating to the candidate's classroom performance.

(3) Each formal evaluation shall consist of the team's written assessment of the candidate's performance as measured through formal and informal observations.

(4) Following each set of formal evaluations, the team shall meet with the candidate to discuss evaluation results, which may lead to modification of the candidate's professional development plan. The team and the candidate shall plan together for the candidate's professional growth over the following training periods.

Section 9. Evaluation Report of the Candidate.

(1) At the conclusion of the alternative training program for each candidate, the chair of the professional support team shall prepare a comprehensive evaluation report on the candidate's performance. The professional support team shall by majority vote recommend one (1) of the following actions to the Education Professional Standards Board:

(a) Approved. The professional support team recommends issuance of the statement of eligibility for the candidate, who may seek a teaching position and undertake the Kentucky teacher internship program established under 704 KAR 20:320.

(b) Insufficient. The professional support team recommends that the candidate be allowed to seek reentry into a district alternative teacher preparation program. The team shall identify areas of insufficiency and shall attach to the recommendation a suggestion for remediation in each area. The team shall also recommend a point of reentry to a district alternative preparation program.

(c) Disapproved. The professional support team recommends that the candidate not be permitted to enter a district alternative teacher preparation program. The team shall identify specific reasons for this recommendation and shall document the evidence used by the team to reach its decision. Reasons for the recommendation of disapproved shall be attached to the recommendation form, and shall be directly related to one (1) or more of the areas of formal instruction, testing, and classroom performance specified in Sections 5, 7 and 8 of this regulation.

(2) All team members shall vote on the final recommendation. If the professional support team fails to achieve a majority vote (3-1 or 4-0) for any recommendation, the decision shall be interpreted as falling under the insufficient category. The team chair shall prepare a narrative describing the vote. Team members may attach an individual position statement to any recommendation. All documents shall be forwarded for review by the Education Professional Standards Board.

(3) The chair shall forward the recommendation form and all observation and evaluation

documents to the Education Professional Standards Board.

Section 10. Program Evaluation. (1) The district or consortium proposal for an alternative teacher preparation program shall include a schedule for short-range program evaluation to include, but not be limited to, an evaluation of the effectiveness of the formal instruction in relation to acquisition by the candidate of the knowledge and competencies specified in Section 5 of this regulation, the supervised student teaching, the assistance provided by the professional support team, and the effectiveness of the candidate in the classroom during the two (2) eighteen (18) week training sessions.

(2) The plan shall include a schedule for long-range program evaluation to include, but not be limited to, the goals of the alternative preparation program and the effectiveness of the program in meeting these goals.

(3)(a) The Education Professional Standards Board shall conduct periodic reviews of the district training programs which shall include on-site evaluations to verify the quality of the programs. The on-site evaluations shall be scheduled in advance with the district to allow sufficient time for the district to provide evaluation results and other necessary records and documents, ensure availability of program staff and candidates and provide other facilities for the conduct of the evaluation.

(b) The Educational Professional Standards Board shall provide a copy of its evaluation report to the district within thirty (30) working days of the site visit. The district shall provide a written response to all program weaknesses identified in the board's report and shall forward this response to the board within thirty (30) working days of receipt of the board's evaluation report. The board shall review the report and response and shall take appropriate action.

(c) If in the judgment of the board an alternative training program exhibits continuing and insurmountable weaknesses, the board may direct termination of the program at the end of the current school year.

Section 11. Extension of Program Approval. (1) Over the signature of the appropriate superintendent or superintendents, a district or consortium of districts may apply for an extension of an approved alternative training program for an additional period of time not to exceed five (5) years. The request for extension shall reference program evaluation results described under Section 10 of this regulation, and shall specify significant changes in program components that have occurred since the training program received prior board approval and that are planned for implementation in subsequent training periods.

(2) The request for extension shall specify how program costs in terms of salaries, training personnel, staff time and district facilities shall be accommodated within the district's budget, and shall provide other assurances of program quality as may be requested by the Education Professional Standards Board. Standards for program approval and program quality specified under Sections 2 through 10 of this regulation shall be maintained under any program extension.

JANICE WEAVER, Chairman

APPROVED BY AGENCY: May 20, 1991

FILED WITH LRC: May 21, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on July 22, 1991, 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 July 17, 1991, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dr. Elizabeth Nelli, Interim Executive Secretary, Education Professional Standards Board, 18th Floor, Capital Plaza Tower, Frankfort, KY 40601.

CONTACT PERSON: Hanson Williams, Staff Attorney, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Elizabeth Nelli

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: Estimate that costs will affect 2-5 districts the first year, 5-10 the second year.

1. First year: Staffing and training costs to participating districts, time and salaries of 4-member support team per candidate and salary for candidate.

2. Continuing costs or savings: Continued costs, same as the first year unless number of candidates increases.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Number of candidates in each district's program each year.

(b) Reporting and paperwork requirements: Districts offering alternate certification program will prepare and file application for approval by the Education Professional Standards Board. Candidates' academic credentials and work experience will be reviewed by districts; comprehensive records on candidates' admission, employment, progress through the program and completion must be maintained by district along with all communication in this regard with the Education Professional Standards Board and of all results of candidate and program evaluations.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Substantial and continuing informational paperwork to every district and teacher education institution every year.

1. First year: Staff salary and operating costs for the preparation of application packets; dissemination of information; review of proposals; presentation and disposition by EPSB; communication between districts and EPSB; and the certification of the candidate.

2. Continuing costs or savings: Increase in

staff salary and operating costs resulting in any increase in number of proposals to be reviewed. Increase in number of final reports to be processed and candidates to be certified. Costs related to program review and on-site evaluation.

3. Additional factors increasing or decreasing costs: Frequency of on-site evaluations.

(b) Reporting and paperwork requirements: Processing and recordkeeping related to review and approval of district plans. Processing of final reports. Preparation of proposal packets each year. Monitoring and evaluation of programs, certification of candidates and maintenance of all records pertaining to the above.

(3) Assessment of anticipated effect on state and local revenues: Costs associated with implementing program to districts choosing to participate.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Required by KRS 161.049.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 161.030 and related regulations on preparation of school personnel.

(a) Necessity of proposed regulation if in conflict: To provide an alternative route for preparing teachers required by KRS 161.049.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: KRS 161.049 mandates the regulation.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. No district is required to participate in the alternative certification program. However, this regulation applies uniformly to all local school districts that choose to participate.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children

707 KAR 1:150. Preschool education program for children with disabilities.

RELATES TO: KRS 156.160, 157.226

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.226

NECESSITY AND FUNCTION: KRS 156.160 authorizes the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which school districts shall meet in student, program, services and operational performance; and KRS 157.226 authorizes preschool education programs and related services for handicapped children who are three (3) or four (4) years of age or who become five (5) after October 1 of the current year and mandates that administrative regulations be promulgated related to the administration and supervision of programs, eligibility criteria, personnel requirements, and the use of funds. This administrative regulation implements that state board duty.

Section 1. Free Appropriate Preschool Education. (1) Effective at the beginning of the 1991-92 school year, each local school district shall make available a free appropriate preschool education and related services to all

eligible children with disabilities.

(a) "Preschool education" means programs which:
1. Focus on the physical (e.g., motor development, self-help/adaptive behavior), intellectual (e.g., cognition, communication), and social and emotional development of the child;

2. Include appropriate student learning activities to assist the child with intrapersonal, interpersonal and socialization skills development; and

3. Meet the unique needs of a child with disabilities.

(b) "Related services" means transportation and such developmental or other supportive services as are required to assist an eligible child to benefit from preschool education. Related services for preschool children include, but are not limited to, parent education and service coordination to assist the parent in coordinating services for the child with disabilities.

(2) Children shall meet the following criteria to be eligible for this program:

(a) The child is a resident of the school district;

(b) The child is three (3) or four (4) years of age, or becomes five (5) years of age after October 1 of the current year; and

(c) The child has disabilities as identified under Sections 4 and 5 of this regulation.

(3) Enrollment of eligible children is at the discretion of the parent or legal guardian. 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; and

(c) A Social Security number.

(4) State funding shall be provided to local school districts for serving eligible children and shall be based upon funding allocation procedures established by 702 KAR 3:250.

(5) 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 2. Child Identification and Location.

(1) The local school district shall advise parents of eligible children of the availability of services, pursuant to child location and identification requirements contained in 707 KAR Chapter 1 for children and youth with disabilities, and pursuant to preschool recruitment requirements contained in 704 KAR 3:410, Section 4.

(2) Referral procedures shall enable the individual education plan (IEP) to be developed and services initiated for eligible children, pursuant to 707 KAR Chapter 1.

(3) For those children who are receiving early intervention services based on an individual family service plan (IFSP) prior to the third birthday and who have been referred to the school district, referral procedures shall:

(a) Include district collaboration in the development of the IFSP transition plan prepared by the early intervention agency; and

(b) Allow initiation of preschool services upon the third birthday.

Section 3. Due Process Procedures. (1) Eligible children shall be afforded all the rights and protections afforded to children with disabilities, pursuant to 707 KAR Chapter 1.

(2) The Admissions and Release Committee shall include among its membership representative(s) from agencies providing early childhood or intervention services to the child or family which relate to the child's preschool education needs.

(3) The Admissions and Release Committee shall assign a specific person(s) to report to parent(s) or legal guardian on at least a semiannual basis regarding the child's progress toward and mastery of the objectives on the IEP.

(4) Districts shall have the option to develop local policies and procedures on alternate membership of administrative admissions and release committees for preschool children who are not attending a preschool program directly operated by the district, within the requirements of 20 USC §1400 to §1420.

Section 4. Evaluation. (1) Multidisciplinary evaluations for determining the eligibility of a preschool child with suspected disabilities shall include:

(a) Current information on hearing, vision and health to determine if there is a need for further assessment;

(b) Developmental and social history, including any health or medical concerns;

(c) At a minimum, information across all areas of development sufficient to determine if there is need for further assessment in any areas: cognition, communication, motor development, social-emotional development, or self-help/adaptive behavior;

(d) Norm-referenced and informal assessment of basic skills in any area of suspected delay: cognition, communication, motor development, social-emotional development, or self-help/adaptive behavior;

(e) Written behavioral observations in natural settings and familiar environments;

(f) Any additional information required under 707 KAR Chapter 1 if the child is to be determined eligible under a specific category of disability; and

(g) Additional reports, information, and assessments as deemed necessary by the Admissions and Release Committee.

(2) For preschool children, the educational evaluation used in specific categories of disability under 707 KAR Chapter 1 shall refer to evaluation of developmental, rather than academic, skills. The school district shall not routinely use intelligence (IQ) testing with preschool children, but when appropriate shall use alternative tools, including norm-referenced instruments which assess cognitive function.

(3) When a preschool child has been or is currently being provided early childhood or intervention services by another agency, the school district shall contact these agencies for available data and assessment information. Available information which is current within one (1) year shall be used in conjunction with other new or existing data, unless the Admissions and Release Committee determines a need for further information to meet evaluation and eligibility requirements under subsection (1) of this section and Section 5(1) of this regulation.

(4) The Admissions and Release Committee shall

assure that the parent, legal guardian, or parent's designee, is interviewed as part of the evaluation process to obtain information about the child's developmental history and current functioning levels.

Section 5. Criteria for Identification. (1) For all preschool children who are suspected of having a disability, the Admissions and Release Committee may use a specific categorical identification under other sections of 707 KAR Chapter 1 or may identify the child as having a developmental delay if the child is determined to be eligible.

(2) The Admissions and Release Committee shall determine that a child has a developmental delay only if:

(a) The child is under six (6) years of age;

(b) The child has not acquired skills or achieved commensurate with recognized performance expectations for his or her age in one (1) or more of the following developmental areas: cognition, communication, motor development, social-emotional development, or self-help/adaptive behavior; and

(c) The child demonstrates a measurable, verifiable discrepancy between expected performance for the child's chronological age and the current level of performance. The discrepancy shall be documented by:

1. Scores of two (2) standard deviations or more below the mean in one (1) of the five (5) developmental areas, as obtained using norm-referenced instruments and procedures;

2. Scores of one and one-half (1 1/2) standard deviations below the mean in two (2) or more of the five (5) developmental areas, as obtained using norm-referenced instruments and procedures;

3. The professional judgment of the Admissions and Release Committee that there is a significant atypical quality or pattern of development. Professional judgment shall be used only where normed scores are inconclusive and the Admissions and Release Committee documents in a written report the reasons for concluding that the child has a developmental delay based on the required evaluation information.

(3) The Admissions and Release Committee shall review progress data on an annual basis to determine any need to reevaluate the child for purposes of ongoing eligibility.

Section 6. Individual Education Programs. (1) The local school district shall have policies and procedures for the development of an IEP for each eligible child prior to the delivery of preschool education and related services, pursuant to 707 KAR Chapter 1.

(2) The Admissions and Release Committee shall consider the need for parent education or service coordination as a related service on the child's IEP.

Section 7. Placement in the Least Restrictive Environment. (1) To the maximum extent appropriate, preschool children with disabilities shall be educated with children without disabilities, pursuant to 707 KAR Chapter 1. The district shall not routinely place children with disabilities in settings serving only other children with disabilities.

(2) In developing the IEP, the Admissions and Release Committee shall consider the child's need for the development of interpersonal and socialization skills and for the maintenance and

generalization of developmental skills in natural settings.

(3) The school district shall make available to preschool children with disabilities the same or similar learning opportunities which are available through the district to nondisabled preschool children of the same age.

Section 8. Delivery of Services. (1) Preschool education and related services shall be made available to eligible children through programs directly operated by the school district or contractual or other cooperative agreements between the district and other agencies, pursuant to Section 10 of this regulation.

(2) For children with disabilities who are four (4) years of age by October 1, the district shall make available preschool services which are operated according to the requirements for four (4) year old children at risk of educational failure, pursuant to 704 KAR 3:410, Section 5, or as determined by the Admissions and Release Committee based on the options described under subsection (3) of this section.

(3) The district shall make preschool services available to eligible children through a variety of program options. Options may include, but are not limited to, the following:

(a) Parent-child programs which are provided in the home or a center to work with the child and parent together shall include a minimum of one and one half (1 1/2) hours of service per child per week and allow socialization experiences with other children at least once per month, or as determined by the Admissions and Release Committee;

(b) Itinerant programs which are provided by personnel who travel to the child's class, day care center, or other setting shall include at least one (1) hour of services for each child per week, either direct or in consultation with the staff in the setting, or as determined by the Admissions and Release Committee;

(c) Preschool class programs which provide educational services in a setting with other children according to the class models described in subsection (4) of this section shall provide at least six (6) hours of instruction per week for three (3) year olds or ten (10) hours per week for four (4) year olds, or as determined by the Admissions and Release Committee;

(d) Combinations of any of the above options.

(4) Classroom models for preschool children with disabilities may include the following:

(a) Classes composed of children with and without disabilities where the majority of the children do not have disabilities;

(b) Classes composed of children with and without disabilities where half or more of the children have disabilities;

(c) Classes composed only of children with disabilities, under the requirements set forth in Section 7 of this regulation.

(5) When preschool children with disabilities are placed in classes where the majority of the children do not have disabilities, the Admissions and Release Committee shall determine any modifications or support needed to implement the IEP, including but not limited to the need for decreasing the maximum group size allowed for nondisabled children of that age or increasing the minimum adult-to-child ratio required for nondisabled children of that age.

(6) The maximum number of preschool children with disabilities who may be present at any one

time in a class where half or more of the children have disabilities shall be six (6), with at least one (1) adult for every three (3) children with disabilities, or as determined by the Admissions and Release Committee.

(7) Instructional staff providing preschool and related services to eligible children under each of the program models shall include, but not be limited to, the following types of personnel as required by subsections (8), (9), and (10) of this section:

(a) A lead teacher meeting the qualifications set forth in 704 KAR 3:410, Section 6(1)(a);

(b) A teaching associate, such being an instructional aide meeting the qualifications required under 704 KAR 15:080; and

(c) Related services personnel who meet licensing requirements specific to the discipline.

(8) Each parent-child and itinerant program shall be operated by at least one (1) lead teacher with responsibility for providing preschool and related services as indicated on the IEP, supervising and assigning the activities of teaching associates and other noncertified staff in the program, and conducting parent-teacher conferences.

(9) Each preschool class shall have at least one (1) lead teacher.

(a) Teaching associates and other personnel shall be used in addition to the lead teacher to provide an appropriate adult-child ratio in each classroom. The local school district shall have policies and procedures for additional adult support whenever an adult is to be alone with a group of children.

(b) The lead teacher is responsible for organizing the classroom, providing preschool and related services as indicated on the IEP, supervising and assigning the activities of teaching associates and other noncertified personnel in the classroom, and conducting parent-teacher conferences.

(10) The local school district shall assign staff, including but not limited to the lead teacher, to implement parent education and service coordination activities indicated as related services on the IEP, pursuant to Section 6(2) of this regulation.

(11) Maximum caseloads for lead teachers shall be individually determined by the district to allow for the time required to provide at least the minimum amount of preschool and related services required for the assigned children under the parent-child, itinerant or class program(s) travel to and from sites as needed and a minimum of one-half (1/2) day per week for planning for a full-time position.

(12) The preschool program shall operate in compliance with administrative regulations promulgated by the State Board for Elementary and Secondary Education in areas including but not limited to facilities, safety, health, transportation, finance and food services.

Section 9. Confidentiality. Districts shall maintain the confidentiality of the child's educational records as required under 707 KAR 1:051 and the Family Educational Rights and Privacy Act regulations, 34 CFR Part 99. The school district shall obtain the parent's consent prior to collecting information from other agencies about any early intervention services provided to the child under an

individual family service plan (IFSP) prior to the age of three (3).

Section 10. Interagency Services. (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 a preschool program may be negotiated with another school district, another public agency, or a nonpublic school preschool program. All nonpublic school programs providing preschool placements shall be approved for that purpose by the State Board for Elementary and Secondary Education, pursuant to KRS 157.280, and shall meet the requirements for interagency agreements specified for the preschool program for four (4) year old children at risk of educational failure, as contained in 704 KAR 3:410, Section 3.

Section 11. Personnel Development. (1) Lead teachers shall participate in the required number of professional development days applicable to certified personnel in the district.

(2) Teaching associates shall participate annually in a minimum of eighteen (18) clock hours of professional development.

(3) Professional development activities shall be related to the nature and needs of young children and families, including those with special needs. Records shall be kept for all personnel documenting attendance and participation in professional development activities.

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).

Thomas C. Boysen, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: May 22, 1991

FILED WITH LRC: June 7, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 24, 1991, 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 July 19, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at 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: Betty Steffy and Debbie Schumacher

(1) Type and number of entities affected: 176 local school districts.

(a) Direct and indirect costs or savings to those affected:

1. First year: New direct costs of initiating services for 3-4 year old children with handicaps per KERA Section 17 (KRS 157.226). Funding for districts is contained in executive budget. Implementation of these services avoids federal sanctions which would have totalled \$13 million per year.

2. Continuing costs or savings: Avoidance of federal sanctions.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Avoidance of federal sanctions allows local school districts to continue to receive federal supplemental grants, in addition to state funds.

(b) Reporting and paperwork requirements: Fiscal reporting has been combined with the preschool program for four year olds (application, quarterly reports, etc.).

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: New indirect costs in processing state grants and monitoring local programs.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: Since federal sanctions will not be in effect, federal funds can continue to be received and used for administrative and discretionary purposes.

(b) Reporting and paperwork requirements: Reporting has been combined with the preschool program for four year olds (application, quarterly reports).

(3) Assessment of anticipated effect on state and local revenues: Anticipated increase due to state and federal grants to operate the program.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulation necessitated by KRS 157.226.

(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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 94-142 as amended (currently PL 101-476): Individuals with Disabilities Education Act. Regulations at 34 CFR 300 and 301.

2. State compliance standards. States are required: (1) To make available a free

appropriate public education to all children with disabilities as of their third birthday in order for the state to avoid extensive federal sanctions; and (2) To specify procedures which implement federal requirements for all children and youth with disabilities ages 3-21. KRS 157.226 (Kentucky Education Reform Act, Section 17) sets forth the state statutory requirement for implementation of the federal mandate. State implementation of the federal requirements is contained in 707 KAR Chapter 1, with this new regulation to specify preschool implementation procedures not already addressed in the program for school-age children and youth with disabilities.

3. Minimum or uniform standards contained in the federal mandate. Federal requirements for all children and youth ages 3-21 include: procedural safeguards, development of individual education programs (IEPs), multidisciplinary evaluations, team decision-making with parental input, and provision of special education and related services at no cost to parent.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The regulation is not stricter than federal mandate. Federal regulations require that certain areas be defined by the state, and in those areas, the preschool regulation follows the state standards already promulgated to implement PL 94-142 for school-age children and youth, clarifying only as needed to address the needs of young children with disabilities and to coordinate with the state Preschool Program for Four Year Old Children (Kentucky Education Reform Act, Section 16: KRS 157.3175).

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

**WORKFORCE DEVELOPMENT CABINET
Board for Proprietary Education**

783 KAR 1:030. Student protection fund.

RELATES TO: KRS 165A.450

STATUTORY AUTHORITY: KRS 13A.100, 165A.340(3), 165A.450

NECESSITY AND FUNCTION: KRS 165A.450 requires each school licensed by the Board for Proprietary Education to contribute to a student protection fund in an amount equal to its licensing fee. The statute mandates that the fund shall be used to pay off debts incurred due to the closing of a school, and this regulation sets forth standards for distribution of the funds.

Section 1. Definitions. (1) "Board" means the State Board for Proprietary Education.

(2) "Schools" means all schools, resident and nonresident, licensed by the board.

(3) "Sponsor" means the original source of funds, whether student or entity, used to pay student charges for tuition, books, and fees.

(4) "Student enrolled" means a student currently enrolled and attending classes on a regular basis.

Section 2. Standards for Fund Distribution.

(1) The board is to manage the student protection fund ("the fund"). The fund shall be

used solely to provide restitution to each student enrolled who has suffered pecuniary loss, when:

(a) A school closes, either voluntarily or involuntarily;

(b) The student can no longer continue his education at the school; and

(c) No viable alternative for full restitution is available, as determined by the board.

(2) Each fund distribution for restitution shall be made payable to the appropriate sponsor, as determined by the board. The amount to be refunded shall equal the actual amount of loans and cash that have been applied to tuition, books, and fees on behalf of the student's attendance at the school. If the claims resulting from a school closing exceed the balance in the fund, the board shall provide for a pro rata distribution of the fund balance.

(3) Whenever restitution is paid by the fund, the fund shall be subrogated to the amount of the restitution.

(4) Notwithstanding any other provision of this regulation, the payment of restitution from the fund shall be a matter of grace and not of right and no person shall have any vested rights in the fund as a beneficiary or otherwise.

NAT SANDERS, Chairman

APPROVED BY AGENCY: June 10, 1991

FILED WITH LRC: June 13, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 1991 at 10 a.m. at State Board Office, Berry Hill Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 20, 1991, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Robert L. Summers, Executive Director, State Board for Proprietary Education, P.O. Box 456, Berry Hill Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person:

(1) Type and number of entities affected: 95 licensed resident schools. Fees range from \$200 to \$1,000 based on net tuition income. 50 licensed nonresident schools. Fees are \$600 for each school.

(a) Direct and indirect costs or savings to those affected: All licensed schools pay same amount to protection fund, that being their annual renewal fee.

1. First year: Approximately \$80,000.

2. Continuing costs or savings: Remain the same.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Increase will not be significant. Schools will send one check to the student protection fund.

(2) Effects on the promulgating administrative body: Not significantly. Agency will have to bill schools for money owed to fund. Administer any refunds.

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The requirements of KRS Chapter 165A are mandatory.

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Oil and Gas

805 KAR 1:120. Operating or deepening existing wells and drilling deeper than the permitted depth.

RELATES TO: KRS 353.520

STATUTORY AUTHORITY: KRS Chapter 13A, 353.540, 353.550, 353.560, 353.570, 353.590

NECESSITY AND FUNCTION: KRS 353.550 requires the Department of Mines and Minerals to regulate the drilling and operation of all wells, while KRS 353.590 requires it to regulate the drilling of a well past the permitted depth. This regulation establishes the requirements to operate a well and drill deeper than the permitted depth.

Section 1. Definitions. The definitions contained in KRS 353.510 and the following additional definitions shall apply to this regulation:

(1) "Deepening" means the drilling deeper of any existing well where new drilling is to proceed past the depth at which the initial drilling of the well ceased.

(2) "Operating a well" means to reenter, reopen, deepen, drill, inject into, produce, attempt to produce, or work over, any well.

Section 2. Permit Required. The operator shall obtain a permit to operate any well if the well is in violation of applicable standards and the department has forfeited the bond for noncompliance.

Section 3. Permit Not Required. An operator may operate an existing well if he submits an acceptable well transfer form and bonding as required in KRS 353.590(5) and if the following conditions apply:

(1) The well is producing or capable of producing, not abandoned and not in violation of applicable standards; or

(2) The well has been abandoned by the previous operator, but the current operator's sole intent is to reenter the well for the purpose of properly plugging and abandoning it.

Section 4. Permit Required for Deepening. The operator shall obtain a new permit prior to deepening any well if the original permit is more than one (1) year old or the original well was drilled prior to the permitting requirements of the department, and shall not drill until the permit is issued.

Section 5. Permit Not Required for Deepening. The permitted operator may deepen an existing well if the permit is not more than one (1) year old and if the well has not been drilled past the permitted and bonded depth.

Section 6. Drilling Deeper Than the Permitted Depth. An operator may drill deeper than the permitted depth of the well provided that he brings his permit into compliance within the time and conditions set forth below:

(1) The operator shall notify division personnel that he has drilled deeper than the permitted depth the next official work day of the department.

(2) The operator shall, within ten (10) days of drilling deeper than the permitted depth, amend his permit to the depth to which he has drilled.

(3) The operator shall, within ten (10) days of drilling deeper than the permitted depth, submit additional bonding required to satisfy KRS 353.590(5).

(4) The operator shall not drill deeper than the permitted depth if such drilling causes the well to be in noncompliance with the well spacing standards set out in KRS 353.610.

Section 7. A directional or horizontal well or a deep well shall not be deepened without prior approval of the director or a permit therefor being issued.

Section 8. An operator in noncompliance with the requirements of this regulation is subject to penalties pursuant to KRS 353.991.

CARL ANKROM, Acting Commissioner

THEODORE T. COLLEY, Secretary

D. MICHAEL WALLEN, Director

APPROVED BY AGENCY: June 11, 1991

FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 22, 1991 at 10 a.m. in the Conference Room of the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Brian C. Gilpin, Kentucky Department of Mines and Minerals, P.O. Box 14090, Lexington, Kentucky 40512.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Brian C. Gilpin

(1) Type and number of entities affected: The regulated oil and gas industry will be affected by this regulation.

(a) Direct and indirect costs or savings to those affected: This regulation clarifies the process already in place at the Division of Oil and Gas for permitting wells and the requirements for the transferring and bonding of existing wells. The provision allowing an operator to drill a well deeper than the permitted depth for wells less than one year old will enable the operator to deepen a well if spacing laws are not exceeded. After the well is deepened, the operator can revise his existing permit and submit additional bonding if required. This will shorten drilling time, particularly when the operator is drilling when state inspectors are not available.

1. First year: There are no first year costs.

2. Continuing costs or savings: There are no additional 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: The notification to the department after the well is deepened is required; however, previously the operator had to make notification prior to deepening of wells.

(2) Effects on the promulgating administrative body: There will be no additional effect on the Department of Mines and Minerals.

(a) Direct and indirect costs or savings: There will be no additional direct or indirect costs or savings to the administrative agency:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements for the administrative agency.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods to accomplish the purpose of this proposed amendment. The changes being made are in response to the statutory amendments made as to bonding during the 1990 legislature. These changes require individual well bonding to be increased according to the well's depth. The previous bond for a well was \$1,000. This regulation is required to clarify how the department enforces the bonding revisions or policies of KRS 353.590.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicts between this regulation and other

statutes, regulations or policies.

(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:

(6) Any additional information or comments: There are no further comments or information.

TIERING: Was tiering applied? No.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Division of Oil and Gas

805 KAR 1:130. Deep well regulation relating to casing, cementing, plugging, gas detection and blow-out prevention.

RELATES TO: KRS 353.520

STATUTORY AUTHORITY: KRS Chapter 13A, 353.540, 353.550, 353.560

NECESSITY AND FUNCTION: KRS 353.550 requires the Department of Mines and Minerals to regulate the drilling and casing of all wells. This regulation establishes the requirements for the drilling and casing of a deep well.

Section 1. Definitions. The definitions in KRS 353.510, 805 KAR 1:020, Section 1, and 805 KAR 1:140 are applicable to this regulation.

Section 2. When an application for a deep well permit is submitted to the department, the operator shall prepare a detailed drilling and casing plan on forms provided by the director for the review by and approval of the department. This plan shall include the following:

(1) A drafted schematic showing the hole size and depth of each casing string. The freshwater string shall be set at least thirty (30) feet below the depth recommended by the department; if fresh water is encountered during drilling operations deeper than such recommended depth, the freshwater casing shall be set at least thirty (30) feet below the actual freshwater depth. All freshwater casing strings shall be circulated when they are set before drilling commences.

(2) A description of the type, size and grade of casing to be used and the manner in which the annulus of the casing string and well bore will be cemented to protect all fresh water, coal, mineral, and oil and gas producing formation in the area proposed for drilling. The volume, class, additives and weight of the cement to be used shall also be described.

(3) If drilling fluid is used, it shall comply with 805 KAR 1:020, Section 2(1)(c).

Section 3. The operator shall install a blow-out prevention device capable of withstanding a working pressure of 1500 psi and a test pressure of 3000 psi. A description of this device and its installation shall be included with the drilling and casing plan required in Section 2 of this regulation. The BOP equipment shall be in place at such time as the well is drilled past the depth at which it becomes a deep well. A test shall be performed at regular intervals to ensure the BOP will operate at its rated capacity, and the results of such test(s) shall be kept at the drill site

and made available to department personnel upon request.

Section 4. The director may waive the requirements for a BOP established in Section 3 of this regulation if the operator submits a written request for such a waiver that includes:

- (1) The geologic formations to be drilled through; and
- (2) A history of drilling in the vicinity of the proposed well with pressure measurements that show gas pressures were not encountered at such levels to require the BOP equipment; and
- (3) The maximum anticipated gas pressure in the proposed well.

Section 5. The operator shall obtain written instructions from the department prior to plugging the well and the department shall approve the commencement of plugging operations. Upon the department's request, the operator shall submit a well log and completion report and any geophysical logs used for preparing plugging instructions.

Section 6. The department shall be notified verbally within forty-eight (48) hours of any mechanical failure or other difficulty which may jeopardize the plugging operation or mechanical integrity of the well encountered while conducting any operation or production of a deep well; provided, however, DES or the department shall be immediately notified whenever there are any well failures or blow-outs which pose the likelihood of imminent environmental damage or danger to the public. The operator shall correct any and all such difficulties with due diligence.

Section 7. An operator in noncompliance with the requirements of this regulation is subject to penalties pursuant to KRS 353.991.

THEODORE T. COLLEY, Secretary
CARL ANKROM, Acting Commissioner
D. MICHAEL WALLEN, Director

APPROVED BY AGENCY: June 11, 1991

FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 22, 1991 at 10 a.m. in the Conference Room of the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 1991, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Brian C. Gilpin, Kentucky Department of Mines and Minerals, P.O. Box 14090, Lexington, Kentucky 40512.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Brian C. Gilpin

(1) Type and number of entities affected: The entities affected by this regulation will be the citizens of Kentucky, the natural resources of Kentucky, and the oil and gas industry.

(a)(1) Direct and indirect costs or savings to those affected:

1. First year: Not applicable.

2. Continuing costs or savings: Continuing costs to the residents of Kentucky will be the implementation and administration of the regulation discussed in Section 2. The residents of Kentucky should enjoy continuing savings in the increased quality of water, safety, and protection of mineral resources.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Not applicable. The adverse impacts on the citizens of the Commonwealth involve the possible contamination of various sources of water for both human and animal consumption, escape of hazardous gas(es) and loss of mineral resources. A well not properly constructed or plugged could allow salt water, oil or gas(es) to contaminate freshwater zones, or could damage the oil or gas producing reservoirs. A surface leak or blow-out could allow oil or gas to contaminate streams, lakes, ponds, and reservoirs, for their use as domestic and public water sources. An escape of gas may endanger the drill crew or the public by causing fires or by the breathing of hazardous gas(es). A well not properly cased and cemented is dangerous to mining operations and gases escaping into or near a mine could expose miners to hazardous or flammable gases.

*There are no impacts on local government from the promulgation of this regulation and a local mandate impact statement (fiscal note) is not required.

(a)(2) Direct and indirect costs or savings to the environment of Kentucky: The adverse impacts of a failure of a well system to the environment include: subsurface leakage into an underground source of drinking water (USDW), leaks of oil and brine into streams destroying fish and other aquatic life and their habitats, and leakage onto the vegetative cover destroying crop and forest resources.

1. First year costs: Not applicable.

2. Continued costs or savings to the environment of Kentucky: Not applicable.

3. Additional factors increasing or decreasing costs: Not applicable.

(a)(3) Direct and indirect costs or savings to the oil and gas industry. The regulation will require the filing of records, blow-out prevention equipment, and notification of well failures.

1. First year costs: Such costs are as follows:

- A schematic of the well bore and a description of the casing and cementing methods; and
- A blow-out preventer; and
- A requirement to obtain plugging instructions from the division prior to plugging the well; and
- A requirement to notify the state DES in case of emergencies.

2. Continued costs or savings to the oil and gas industry: The protection of deep well reservoirs will insure the rights and interests of all operators and offset mineral owners planning any future drilling.

3. Additional factors increasing or decreasing costs: The factors considered that may increase or decrease the costs to the oil and gas industry of Kentucky are discussed in this section.

Description of Kentucky's Oil Industry and Contribution to Domestic Production. The number of active oil wells in Kentucky is about 21,500 and there are about 11,000 gas wells. During 1989, Kentucky produced 5,414,000 barrels of oil and 75,810,000 mcf of gas. Kentucky produces less than one percent of the nation's total domestic production.

Permits Issued	Total Number of Permits Issued for all Wells
1986	2414
1987	1838
1988	1663
1989	1570
1990	2020

The division has issued 12 permits for deep wells during 1990 and has issued 5 permits as of May 30, 1991.

Impact on the Structure of the Regulated Industry. The production oil and gas should not be reduced significantly. Most of Kentucky's production comes from shallow wells and there are few deep wells. Most deep wells are drilled by drilling contractors having blow-out prevention (BOP) equipment available. Liability insurance carriers also require BOP equipment. Due to the complexity of drilling deep wells, casing and cementing and geophysical logging of wells is planned in advance and it should not be difficult for operators to provide this information.

(b) Reporting and paperwork requirements: Such requirements include a description of a casing and cement plan and a drafted schematic of the well bore, a description of the BOP equipment and maintaining a file of the test results of this BOP equipment to operate at its rated capacity.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First Year: The number of deep wells being drilled is less than 1% of the total of all wells being drilled, and with existing permitting and inspection in place for deep wells, the additional work for the office and field staff will be negligible.

2. Continuing costs or savings: The major costs are during the the drilling and permitting of the well and additional costs will be covered by existing procedures in place for field inspections of well sites.

3. Additional factors increasing or decreasing costs: If there is an increase in permit activity for deep wells, then costs would increase; however, the number of deep wells being drilled has historically been low.

(b) Reporting and paperwork requirements: Existing files are maintained for deep wells and a hearing process is already in place. The additional filing of logs and forms for an estimated 20 deep wells per year is very low, and existing staff can accomplish this workload.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons

why alternatives were rejected: There are no alternative methods to accomplish the purposes of this proposed regulation. This regulation is required to provide the department with the necessary authority to review the drilling plans of deep wells to prevent unsafe casing and cementing techniques to be used. If the regulation is not implemented, there will be increased risks of well failures which may contaminate freshwater zones or pose hazards to the citizens of the Commonwealth.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicts between this regulation and other statutes, regulations or policies.

(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:

(6) Any additional information or comments: There are no additional comments.

TIERING: Was tiering applied? Yes. The requirements for permitting and/or drilling deep wells in this regulation are more stringent than for shallow wells because of the increase in potential of downhole problems encountered while drilling deep wells. The potential for blow-outs may be greater in some of the unknown deep formations; however, the regulation has a provision where the director may waive the requirement for blow-out prevention equipment where enough drilling in an area indicates it is not required.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Oil and Gas

805 KAR 1:140. Directional and horizontal wells.

RELATES TO: KRS 353.520

STATUTORY AUTHORITY: KRS Chapter 13A, 353.540, 353.550

NECESSITY AND FUNCTION: KRS 353.550 requires the Department of Mines and Minerals to regulate the drilling and casing of all wells and filing of all downhole surveys. This regulation identifies the requirements for permitting directional and horizontal wells.

Section 1. Definitions. The definitions in KRS 353.510, 805 KAR 1:020 and the following additional definitions shall apply to this regulation:

(1) "Blow-out preventer (BOP)" means a device installed on the surface or intermediate casing to prevent the escape of pressure either in the annulus between casing and drill pipe or in the open hole without drill pipe and which is used during drilling operations.

(2) "Cement" means hydraulic cement properly mixed with water or with additives approved by the director, and which is used to fill the annulus of casing string(s) or to plug the well.

(3) "Deep well" means any well drilled and completed below the depth of 4000 feet or, in the case of a well located east of longitude line eighty-four (84) degrees thirty (30) minutes, a well drilled and completed at a depth below 4000 feet or below the base of the lowest member of the Devonian Brown Shale, whichever is

deeper.

(4) "DES" means the State Disaster and Emergency Services Office under authority of the Department of Military Affairs in Frankfort, Kentucky, with regional offices throughout the Commonwealth.

(5) "Directional and horizontal drilling" means the science of directing a well bore along a predetermined course to a "target" located a given distance from the vertical.

(6) "Directional survey" means a survey taken while drilling using continuous measuring technology or a survey made through drill tools at such intervals to accurately determine the location of the deviated well bore.

(7) "Intersection length" means the horizontal distance between the point at which the well penetrates the top of the intended formation and the end point within that formation.

(8) "Measured depth" means the total depth measured in the well from the surface.

(9) "True vertical depth" means the depth of the well from any point in the well being measured to the surface of the ground above the point being measured.

Section 2. Prior to drilling a directional or horizontal well, the operator shall submit the following information on forms approved by the director:

(1) An application for a permit to drill the well, with a cover letter from the operator making a request for drilling the horizontal or directional well. A bond as required in KRS 353.590(5) and an application fee of \$100 shall be submitted with the application.

(2) Three (3) copies of a location plat satisfying the requirements of 805 KAR 1:030 (plan view), in addition to the following requirements:

(a) The surface location and proposed target formation with their respective "Carter Coordinates".

(b) The proposed course of the well.

(c) The identification of the intersection length of the proposed well and the proposed producing formation(s). To avoid any conflicts with the spacing requirements, a dashed line shall be drawn around the intersection length with regard to the spacing requirements in KRS 353.610 or, for deep wells, 805 KAR 1:100 and KRS 353.651 and 353.652. This distance shall be clearly shown in feet.

(3) In addition to the plan view required in this section, the operator shall submit three (3) copies of a plat which shows a vertical cross-section view of the area to be drilled by the well. This cross-section shall be prepared from the proposed "predrill hole" directional survey compiled by the contractor responsible for the directional control mechanism and certified as required by 805 KAR 1:030, Sections 2 and 6(11). The cross-section shall include the area from the well site to the target made through the proposed course of the well. The surface shall be located as zero in reference to the depth and the lateral distance from the well site and true vertical depths shall be shown for all of the following:

(a) The kick-off point or selected depth at which the deviation is started.

(b) The known coal seams to be intersected.

(c) The producing interval(s).

(d) The proposed producing formation(s).

(e) The proposed target.

(4) When the permit is issued, the operator shall provide verbal or written notice to the department field inspector at least forty-eight (48) hours in advance of the commencement of drilling operations.

(5) Once the well has been drilled and completed, the following shall be submitted within ten (10) days from the date of completion.

(a) Three (3) copies of an amended plan view of the well location plat required in subsection (2)(a), (b), and (c) of this section, with the actual course drilled, the kick-off point and the actual target superimposed on the proposed well location plat. A correction in the target Carter Coordinates, if necessary, shall then be issued by the department; and

(b) Three (3) copies of the side or cross-sectional view plat required in subsection (3)(a) through (e) of this section shall be amended for the actual path of the well, showing the actual formation(s), coal seams, target, kick-off point; and

(c) Copies of all directional surveys certified by the operator and the contractor responsible for the directional survey. This survey shall be submitted for the entire well bore, and the operator shall be able to identify the path or depth of the well bore at any given time during and after the drilling of the directional or horizontal well. The survey points shall be made at each tool joint or at any intervals more frequent; and

(d) On a form provided by the director, the operator shall record the lateral offset from the well in feet and the true vertical depth for the producing interval and formation and the coal seam intersections and their true vertical depth.

(6) The operator shall satisfy spacing requirements of offset mineral boundary lines and between wells for the actual drilled course of the well and its end point and the intersection of the well bore and the producing formations.

(7) All coal operators or owners affected by the drilling of a directional or a horizontal well shall be provided a copy of the predrill plat and cross-section plat described in subsections (2) and (3) of this section as required by KRS 353.050 and 353.060. Within ten (10) days after the well is drilled, the operator shall submit to the coal operator or owner the revised plats and deviation survey log required in subsection (5) of this section.

(8) The requirements for a deep directional or horizontal well shall satisfy those requirements set out in 805 KAR 1:100 and KRS 353.651 and 353.652 regarding the application process and spacing units. Prior to the deep directional or horizontal well being drilled, a hearing shall be held before the Kentucky Oil and Gas Conservation Commission.

Section 3. When an application for a directional or horizontal permit is submitted to the department, the operator shall prepare a detailed drilling and casing plan on forms provided by the director for the review by and the approval of the department. The items requested in 805 KAR 1:130, Section 2(1), (2) and (3) shall be submitted with this plan.

Section 4. The operator shall install a blow-out prevention device capable of withstanding a working pressure of 1500 psi and

a test pressure of 3000 psi. A description of this device and its installation shall be included with the drilling and casing plan required in Section 3 of this regulation. This BOP equipment shall be tested at intervals necessary to maintain its ability to operate at rated capacity. The results of these tests shall be kept at the drill site and made available to department personnel at their request.

Section 5. The requirements of 805 KAR 1:130, Sections 4, 5 and 6 shall also apply to this regulation.

Section 6. An operator in noncompliance with the requirements of this regulation is subject to penalties pursuant to KRS 353.991.

THEODORE T. COLLEY, Secretary
CARL ANKROM, Acting Commissioner
D. MICHAEL WALLEN, Director

APPROVED BY AGENCY: June 11, 1991

FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 22, 1991 at 10 a.m. in the Conference Room of the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 1991, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Brian C. Gilpin, Kentucky Department of Mines and Minerals, P.O. Box 14090, Lexington, Kentucky 40512.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Brian C. Gilpin

(1) Type and number of entities affected: The entities affected by this regulation will be the citizens of Kentucky, the natural resources of Kentucky, and the oil and gas industry.

(a)(1) Direct and indirect costs or savings to the citizens of Kentucky

1. First year: Not applicable.

2. Continuing costs or savings: Continuing costs to the residents of Kentucky will be the implementation and administration of the regulation discussed in Section 2. The residents of Kentucky should enjoy continuing savings in the increased quality of water, safety, and protection of mineral resources.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Not applicable. The adverse impacts on the citizens of the Commonwealth involve the possible contamination of various sources of water for both human and animal consumption, escape of hazardous gas(es) and loss of mineral resources. A well not properly constructed or plugged could allow salt water, oil or gas(es) to contaminate

freshwater zones, or could damage the oil or gas producing reservoirs. A surface leak or blow-out could allow oil or gas to contaminate streams, lakes, ponds, and reservoirs, for their use as domestic and public water sources. An escape of gas may endanger the drill crew or the public by causing fires or by the breathing of hazardous gas(es). A well not properly cased and cemented is dangerous to mining operations and gases escaping into or near a mine could expose miners to hazardous or flammable gases.

*There are no impacts on local government from the promulgation of this regulation and a local mandate impact statement (fiscal note) is not required.

(a)(2) Direct and indirect costs or savings to the environment of Kentucky: The adverse impacts of a failure of a well system to the environment include: Subsurface leakage into an Underground Source of Drinking Water (USDW), leaks of oil and brine into streams destroying fish and other aquatic life and their habitats, and leakage onto the vegetative cover destroying crop and forest resources.

1. First year costs: Not applicable.

2. Continued costs or savings to the environment of Kentucky: Not applicable.

(a)(3) Direct and indirect costs or savings to the oil and gas industry: The regulation will require a plan view plat, a cross-section plat, directional survey logs, well records, blow-out prevention equipment, and notification of well failures.

1. First year cost: Such costs are as follows:

- The filing of plats identifying the course of the well; and

- The directional survey logs; and

- A schematic of the well and a description of the casing and cementing methods; and

- A blow-out preventer; and

- Requirement to obtain written plugging instructions from the division prior to plugging the well; and

- Notification to the state DES if there are well failures or blow-outs.

2. Continued costs or savings to the oil and gas industry: The protection of oil and gas reservoirs will ensure the rights and interests of all operators and offset mineral owners planning any future drilling.

3. Additional factors increasing or decreasing costs: The factors considered that may increase or decrease the costs to the oil and gas industry of Kentucky are discussed in this section. Description of Kentucky's Oil Industry and Contribution to Domestic Production. The number of active oil wells in Kentucky is about 21,500 and there are about 11,000 gas wells. During 1989, Kentucky produced 5,414,000 barrels of oil and 75,810,000 mcf of gas. Kentucky produces less than one percent of the nation's total domestic production.

Permits Issued	Total Number of Permits Issued for all Wells
1986	2414
1987	1838
1988	1663
1989	1570
1990	2020

The division has issued only fifteen (15) permits for directional or horizontal wells since 1978 and eight (9) directional wells were

drilled prior to the Division of Oil and Gas being formed.
Impact on the Structure of the Regulated Industry.

The production oil and gas will not be reduced. The drilling of horizontal wells requires special technology that is developing rapidly and the requirements in this regulation will not exceed the prudent operational standards within the industry.

(b) Reporting and paperwork requirements: A requirement to file plats of the well's location and course, and a schematic and description of the casing, cement and blow-out prevention equipment.

(2) Effects on the promulgating administrative body: There will be no effect on the Department of Mines and Minerals due to this regulation.

(a) Direct and indirect costs or savings:

1. First Year: The number of directional and horizontal wells drilled is very small, and with existing permitting and inspection in place, the additional work for the office and field staffs will be negligible.

2. Continuing costs or savings: The major costs are during the permit review process and inspection of initial well drilling; additional costs will be covered by existing procedures in place for field inspections of well sites.

3. Additional factors increasing or decreasing costs: If there is an increase in permit activity for directional or horizontal wells, cost will increase.

(b) Reporting and paperwork requirements: It is anticipated there will be less than twenty (20) horizontal wells drilled per year and existing staff can accomplish this workload.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods to accomplish the purposes of this proposed amendment. This regulation is required to provide the department with the necessary authority to review the drilling plans of directional or horizontal wells in order to prevent the use of unsafe casing and cementing techniques. If the regulation is not implemented, there will be increased risks of well failures which may contaminate freshwater zones or pose hazards to the citizens of the Commonwealth. The department is required in KRS 353.500 to protect the correlative rights of land and mineral owners and this regulation ensures that the department can verify the location of the well to be able to protect correlative rights.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicts between this regulation and other statutes, regulations or policies.

(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:

(6) Any additional information or comments: There are no further comments or information.

TIERING: Was tiering applied? Yes. The requirements for permitting and/or drilling directional or horizontal wells are more stringent than for standard wells because of the increase in potential of downhole problems

encountered while drilling. The installation of blow-out prevention equipment on directional or horizontal wells is required because of anticipated higher pressures due to the nature of the drilling. The horizontal well may intercept more than one fracture, significantly increasing the possibility of blow-outs not as likely with standard wells. The casing and cementing of the horizontal portion of the well is more difficult and special care must be taken by the operator to ensure other potential oil and gas zones are not damaged by well failures.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

806 KAR 3:150. Standards for insurers deemed to be in hazardous financial condition.

RELATES TO: KRS 304.3-200, 304.33-140

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 establishes standards which the Commissioner of Insurance may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to policyholders, creditors, or the public.

Section 1. Definitions. As used in this regulation:

(1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance; and

(2) "Insurer" means any of the entities listed in KRS 304.33-020.

Section 2. Standards. One (1) or more of the following standards may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in Kentucky may be deemed to be hazardous to policyholders, creditors, or to the general public:

(1) Adverse findings reported in financial condition or market conduct examination reports;

(2) The National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;

(3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;

(4) Whether the insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature;

(5) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(6) Whether the insurer's operating loss in the last twelve (12) month period or any shorter period of time, such as net capital gain or loss, change in nonadmitted assets, or cash dividends paid to shareholders, is greater than fifty (50) percent of the insurer's remaining

surplus as regards policyholders in excess of the minimum required;

(7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations;

(8) Any contingent liabilities, pledges, or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;

(9) Whether any controlling person of an insurer is delinquent in transmission or payment of net premiums to the insurer;

(10) The age and collectability of receivables;

(11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in that position;

(12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false or misleading information concerning an inquiry;

(13) Whether management of an insurer either has filed any false or misleading sworn financial statement, has released a false or misleading financial statement to lending institutions or to the general public, has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

(14) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; or

(15) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems.

Section 3. Corrective Action. (1) For the purposes of making a determination of an insurer's financial condition under this regulation, the commissioner may:

(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(b) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

(c) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(d) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken with the next twelve (12) month period.

(2) If the commissioner determines that the continued operation of the insurer in Kentucky may be hazardous to policyholders, creditors, or to the general public, the commissioner may, upon his determination, issue an order requiring the insurer to:

(a) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) Reduce, suspend, or limit the volume of business being accepted or renewed;

(c) Reduce general insurance and commission expenses by specified methods;

(d) Increase the insurer's capital and surplus;

(e) Suspend or limit the declaration and payment of dividends by an insurer to stockholders or policyholders;

(f) File reports in a form acceptable to the commissioner concerning the market value of the insurer's assets;

(g) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

(h) Document the adequacy of premium rates in relation to the risks insured; or

(i) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in the format prescribed by the commissioner.

(3) Any insurer subject to an order under subsection (2) of this section may request a hearing to review the order. The hearing, and judicial review thereof, shall be conducted as provided in KRS 304.2.

ELIZABETH P. WRIGHT, Commissioner

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: June 6, 1991

FILED WITH LRC: June 12, 1991 at 9 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for July 22, 1991, at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Elizabeth P. Wright, Commissioner, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 9 a.m. (ET) on July 22, 1991, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance in writing at least five days prior to the hearing that they will be in attendance at the hearing to comment.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patrick Watts

Need for the Proposed Regulation: Virtually every state has statutes such as KRS 304.3-200(2)(a) and 304.33-140(1)(f) permitting insurance regulators to suspend or revoke an insurer's certificate of authority or place the insurer in rehabilitation or liquidation if the insurer is in such financial condition that its continued business is hazardous to policyholders, creditors, or to the general public. The National Association of Insurance Commissioners, as part of its minimum standards for solvency regulation, requires states to adopt its model regulation to define standards and commissioner's authority for companies deemed to be in hazardous financial condition. The proposed regulation is substantially identical to the model regulation.

The proposed regulation identifies matters which the Commissioner of Insurance may consider in deciding whether an insurer is in hazardous financial condition. The regulation further confirms the specific actions which the commissioner may require an insurer to take if

the commissioner deems the insurer to be in hazardous financial condition.

(1) Type and number of entities affected: The regulation will affect 1,300 insurers authorized to transact business in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: Any insurers identified as being in hazardous financial condition will have to comply with directives of the Commissioner of Insurance to eliminate hazardous financial condition.

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

(b) Reporting and paperwork requirements: The proposed regulation specifies that insurers may be required to document the adequacy of rates or file interim financial reports as a corrective measure.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: The proposed regulation will result in savings by making clear the authority of the commissioner to rely on certain information to indicate insurers' hazardous financial conditions and require corrective action.

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: The Kentucky Department of Insurance desires to obtain accreditation under the solvency regulation standards established by the National Association of Insurance Commissioners. The proposed regulation is necessary to receive that accreditation.

(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? Tiering is recognized in that different aspects of an insurer's business may indicate various causes of hazardous financial condition and the Commissioner of Insurance may require corrective action tailored to those circumstances to solve the problem.

PUBLIC PROTECTION AND REGULATION CABINET Public Service Commission

807 KAR 5:005. Settlements.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040(3), 278.310

NECESSITY AND FUNCTION: KRS 278.310(2) provides that all hearings and investigations before the Public Service Commission (hereinafter referred to as "commission") shall be governed by rules adopted by the commission. It is commission policy to encourage resolution of disputes among parties in all cases. The

purpose of this regulation is to foster settlements and establish minimum procedures for consideration of settlements.

Section 1. Definitions. (1) "Settlement" means an agreement between some or all of the parties to a commission proceeding, or between some or all of the parties and commission staff, on a mutually acceptable resolution of some or all issues of law or fact material to the proceeding.

(2) "Contested" means a settlement proposed for adoption by the commission that is opposed in whole or part, as provided in this regulation, by any of the parties to the proceeding or by commission staff, if staff has participated in settlement negotiations.

(3) "Uncontested" means a settlement proposed for adoption by the commission which has been signed by all parties to the proceeding and by commission staff, if staff has participated in settlement negotiations, or a settlement which is not contested by any party to the proceeding or by staff, if staff has participated in settlement negotiations, within the comment period after service of the settlement on all parties to the proceeding.

Section 2. Signatories. In addition to other parties to an agreement, settlements in proceedings commenced by an application shall be signed by the applicant and, in proceedings commenced by a complaint, by the complainant and defendant. Commission staff may be a signatory to any settlement, but is not a required signatory to any settlement.

Section 3. Authority of Commission. The commission may approve and adopt a settlement, whether contested or uncontested, upon a finding that the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed and as to all issues and persons affected by the settlement agreement.

Section 4. Settlement Conferences. (1) Before any settlement is signed, at least one (1) conference shall be held in accordance with this section. The conference may be convened by any party at any time for the purpose of discussing settlements. Written notice of the date, time, and place shall be filed with the commission and shall be furnished at least ten (10) days in advance to all parties to the proceeding. The notice shall contain a certificate of service upon all parties. The notice shall state whether attendance of commission staff is requested and the matters to be addressed at the conference. Notice of any subsequent meetings may be oral, may occur less than ten (10) days in advance, and shall be furnished to all parties to the proceeding, regardless of whether all parties attended prior conferences.

(2) When attendance of commission staff is requested in the notice of convening of a settlement conference, staff shall notify in writing all parties to the proceeding within five (5) days of receipt of the notice as to whether it will attend the conference or whether it will decline to participate in the settlement negotiations.

(3) Commission staff on its own initiative may at any time convene a settlement conference, to

be attended by staff, in order to explore the opportunity for settlement. Staff shall provide written notice to all parties a minimum of ten (10) days prior to the date of the conference. The notice shall include the time and place of the conference and the matters to be addressed at the conference.

(4) Attendance at any settlement conference shall be limited to the parties to a proceeding, their representatives, and commission staff.

(5) This section shall not prohibit any parties to a proceeding from informally negotiating a settlement. Parties who successfully negotiate a settlement shall not sign it until a conference has been held in accordance with this section. Any negotiations which include commission staff shall occur only during a conference held in accordance with this section.

(6) No discussion, admission, concession or offer to settle, whether oral or written, made during any negotiation on a settlement, shall be subject to discovery or admissible in any evidentiary hearing, nor shall it be disclosed outside the negotiations, without the consent of all participants in the negotiations. If a settlement is not adopted by the commission, the terms of the proposed settlement are also inadmissible unless their admission is agreed to by all parties joining in the initial proposal. Nothing herein shall preclude the commission from ordering disclosure of all or parts of the negotiations when required or allowed by law in order to resolve charges of misconduct or irregularity in the negotiation process.

Section 5. Procedure for Filing Settlements.

(1) Settlements shall be filed with the commission by written motion for approval and adoption, containing a certificate of service upon all parties, after compliance with applicable requirements of Section 4 of this regulation.

(2) The motion shall contain a statement of the factual and legal considerations adequate to advise the commission and parties not expressly joining the agreement of its scope and of the grounds on which adoption is urged. In a rate proceeding, the motion shall contain a comparison indicating the impact of the settlement in relation to the utility's application and in relation to existing rates. The motion shall state the date on which comments on the settlement are due pursuant to Section 7 of this regulation.

Section 6. Contents of Settlements.

(1) Settlements shall be in writing, shall contain all of the terms and conditions agreed upon by the signatories, and shall be clearly labeled contested or uncontested and partial or full.

(2) If filed in a rate proceeding, the settlement shall contain a statement showing the dollar impact of the settlement and, to the extent agreed upon, the resulting rates. The settlement shall address its effect on all customer classes, if applicable.

(3) A settlement shall include citations to relevant provisions of commission statutes and regulations which are required to be addressed in the proceeding.

Section 7. Comments. (1) If a party to a proceeding does not expressly join in a settlement proposed for adoption in that

proceeding, the party shall have fifteen (15) days from the date of mailing of the settlement within which to file comments contesting all or part of the settlement, and shall serve the comments on all parties to the proceeding. Parties shall have fifteen (15) days after the comments are filed within which to file reply comments. The commission may extend the comment or response period on motion and for good cause.

(2) A party contesting a proposed settlement shall specify in its comments the portions of the settlement that it opposes, and the legal or factual basis of its opposition. Parties shall indicate whether they plan to participate at any hearing which may be scheduled, and shall specify whether they plan to present witnesses at the hearing. Failure by a party to file comments constitutes waiver by that party of all objections to the settlement, including the right to hearing to the extent that a hearing is not otherwise required by law.

(3) Commission staff may file comments in accordance with this section if staff participated in the settlement negotiations.

Section 8. Hearing. (1) If any party or staff contests the settlement pursuant to Section 7 of this regulation, in whole or in part on any material issue of fact, the commission shall schedule a hearing on the contested issue(s), including the overall reasonableness of the settlement, as soon after the close of the comment period as reasonably possible. Each signatory to the settlement shall provide one (1) or more qualified witnesses with personal knowledge of the contested issues to testify concerning said issues and to undergo cross-examination by contesting parties. Signatories who are parties may sponsor witnesses jointly. Contesting parties or staff may present evidence and testimony on the contested issues.

(2) The commission may decline to set hearing in any case if it finds the contested issue of fact is not material or if the contested issue is one of law. In the latter case, opportunity for briefs shall be provided.

(3) Upon receipt of any uncontested settlement which would settle substantive issues, the commission may conduct a hearing to determine whether the settlement should be approved by the commission.

(4) At any hearing on any settlement sufficient independent evidence shall be presented by the signatories in support of the settlement to allow the commission to make a reasoned decision on the benefits or shortcomings of the settlement.

Section 9. Burden of Proof. The proponents of a settlement have the burden of supporting the settlement with sufficient evidence and legal argument to warrant commission approval.

Section 10. Communications. (1) Commission staff members who participate in settlement negotiations in a proceeding, whether such negotiations are successful or unsuccessful, or who sign a settlement, shall not advise or communicate with the commission with respect to the settlement or any issues which were or are the subject of settlement negotiations.

(2) Commission staff members who participate in settlement negotiations, whether such negotiations are successful or unsuccessful, or

who sign a settlement, shall not communicate regarding the settlement or any issues which were or are the subject of settlement negotiations, with staff members designated to advise the commission on the issues involved in the settlement.

(3) The provisions of this section shall not apply in proceedings in which the settlement is uncontested.

(4) The provisions of this section shall not preclude staff who participate in settlement negotiations from introducing oral or written testimony into the record of the proceeding.

Section 11. Rejection. Upon rejection of any settlement the commission may take various steps, including the following:

(1) Proceed with the case on its merits;

(2) Allow the signatories, parties, or staff time to renegotiate the settlement;

(3) Propose alternative terms to the signatories to the settlement which are acceptable to the commission and allow the signatories and parties reasonable time within which to elect to accept such terms or to request other relief.

Section 12. Effect of Adoption. (1) A settlement is not binding upon the commission until it has been formally adopted by order of the commission.

(2) Unless the parties agree and the commission expressly provides, adoption of a settlement shall not constitute approval of, or precedent regarding, any principle or issue in the proceeding not specifically addressed by the settlement or in any future proceeding.

Section 13. The provisions of this regulation shall not prohibit reading into the record at any hearing oral stipulations on factual or procedural issues not objected to by any party at the hearing.

Section 14. Deviations from Regulation. In special cases, for good cause shown, the commission may permit deviations from this regulation.

GEORGE EDWARD OVERBEY, JR., Chairman

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: June 12, 1991

FILED WITH LRC: June 13, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 29, 1991 at 9 a.m. in Hearing Room 1 of the Commission's Offices at 730 Schenkel Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 24, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lee M. MacCracken,

Executive Director, Public Service Commission,
730 Schenkel Lane, P.O. Box 615 Frankfort,
Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact: Lee M. MacCracken

(1) Type and number of entities affected: This regulation affects all utilities under Public Service Commission jurisdiction. There are currently 471 jurisdictional utilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: This regulation sets out specific procedures to be followed by parties to proceedings before the commission and by commission staff in the conduct of settlement negotiations. Many of these procedures are already followed by the commission. To the extent that the regulation facilitates and encourages lawful settlements, the affected entities will save litigation expense. It is not anticipated that the procedures will have a direct or indirect cost to the entities affected in the first year of implementation.

2. Continuing costs or savings: To the extent that the regulation facilitates and encourages lawful settlements, the affected entities will continue to save litigation expense. The procedures established in this regulation will have no direct or indirect continuing cost to the entities affected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The procedures established in the regulation have no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Section 4(1) requires parties to a proceeding to provide written notice of the date, time, and place of the convening of a settlement conference. Section 5(1) requires parties to file settlements with the commission by written motion for approval and adoption and to serve said motion on all parties. Section 5(2) and Section 6 set out the required contents of the motion and settlement agreement. Section 7 permits contesting parties to file comments setting out the basis of their objection to the settlement. Other than the notice of convening of a settlement conference, the documents required to be filed and/or served by the regulation are currently routinely filed and/or served.

(2) Effects on the promulgating administrative body: If commission staff participates in settlement negotiations, the regulation requires one team of staff members to participate in negotiations and a separate team of staff members to advise the commission. This will require the assignment of more staff members to a proceeding than would normally occur, resulting in an allocation of more staff time. However, Section 4(2) of the regulation permits staff to decline to participate in negotiations for any reason, including the anticipation of a drain on staff time. The commission has recently been utilizing this procedure and it is merely codified by the regulation.

(a) Direct and indirect costs or savings:

1. First year: To the extent that the regulation facilitates and encourages lawful settlements, the agency will save resources otherwise expended in the lengthy litigation process. The regulation will have no direct or

indirect costs on the agency.

2. Continuing costs or savings: To the extent that the regulation facilitates and encourages lawful settlements, the agency will continue to save resources otherwise expended in the lengthy litigation process. The regulation will not have any direct or indirect continuing costs.

3. Additional factors increasing or decreasing costs: The regulation does not have any additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Section 4(3) requires staff to notify parties to a proceeding as to whether it plans to participate in negotiations, and Section 4(3) requires staff to provide written notice to all parties when convening a settlement conference on its own initiative. Under the commission's current procedures, staff would routinely provide this notice, so these are not additional paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: It is the commission's impression that all affected entities are in favor of adopting a regulation setting out procedures to be followed in settlement negotiations in proceedings before the commission. Comments as to the specific procedures to adopt were solicited and received from utilities and other interested parties before filing with LRC. Many alternative procedures suggested in those comments have been incorporated into the proposed regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 807 KAR 5:001, Section 4(4) is a one-sentence subsection in the commission's procedural regulation which permits parties to a proceeding to request an informal conference with commission staff for the purpose of negotiating a settlement. As currently written, this subsection presents a potential conflict or overlap with the proposed settlement regulation in that it appears to authorize settlement conferences outside the parameters established by the proposed regulation. A proposed amendment to 807 KAR 5:001, Section 4(4) has been filed simultaneously with this proposed regulation which will eliminate any potential conflict and/or overlapping with this regulation.

(a) Necessity of proposed regulation if in conflict: The regulation is necessary even if it overlaps with 807 KAR 5:001, Section 4(4), as it sets out more specific and comprehensive procedures for settlement negotiations than 807 KAR 5:001, Section 4(4).

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: A proposed amendment to 807 KAR 5:001, Section 4(4) has been filed simultaneously with this proposed regulation which will eliminate any potential conflict and/or overlapping with this regulation. Specifically, the amendment eliminates the reference in the subsection to settlement negotiations, thus continuing to authorize the arrangement of informal conferences to discuss other issues in proceedings, while ensuring that parties understand that conferences convened to discuss settlement must be conducted pursuant to the

provisions of the proposed settlement regulation.

(6) Any additional information or comments: No additional comments.

TIERING: Was tiering applied? No. This regulation applies equally to all utilities and other entities who are parties to commission proceedings. It is essential for due process reasons that all parties to a proceeding be treated with uniformity in the conduct of settlement proceedings.

CABINET FOR PUBLIC PROTECTION AND REGULATION
Department of Financial Institutions
Division of Securities

808 KAR 10:260. Examination requirement for individuals advising the public on securities.

RELATES TO: KRS Chapter 292, 292.310, 292.330
 STATUTORY AUTHORITY: KRS 292.330(4), (11)(g), (12)(b)6, 292.500(3)

NECESSITY AND FUNCTION: To better protect the investing public by requiring that all individuals who advise the public regarding the value of securities or the advisability of investing in, purchasing, or selling securities demonstrate their knowledge of the requirements of the law regarding securities by taking a written examination.

Section 1. All individuals, including investment advisers or those who represent investment advisers (investment adviser representatives), who advise the public regarding the value of securities or the advisability of investing in, purchasing, or selling securities shall demonstrate their competence in the law of securities by taking and passing with a minimum score of seventy (70) percent either the Series 63 Uniform Securities Law Examination administered by the National Association of Securities Dealers or the Series 65 Uniform Investment Advisor Law Examination administered by the National Association of Securities Dealers. Each individual who takes the exam shall provide to the director a copy of the notification from the National Association of Securities Dealers informing him of his score on the examination.

Section 2. The following individuals shall not be required to take and pass the examination:

(1) Individuals employed by registered investment advisers prior to July 1, 1991;

(2) Individuals (including officers, partners, directors, clerical staff) employed by registered investment advisers if those individuals do not themselves advise the public regarding the value of securities or the advisability of investing in, purchasing, or selling securities.

(3) Investment advisers who are exempted from registration under KRS 292.330(1) and those individuals employed by the exempted investment advisers.

Section 3. No registered investment adviser shall employ an individual as an investment adviser or as one who represents an investment adviser unless that individual has complied with this regulation.

RONDA S. PAUL, Director
 EDWARD B. HATCHETT, JR., Commissioner

APPROVED BY AGENCY: June 14, 1991

FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1991 at 2:30 p.m. in Room 125, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 17, 1991, 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: Pat Harris, Office of General Counsel, Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pat Harris

(1) Type and number of entities affected: Approximately 170 investment adviser entities, undeterminable individual applicants.

(a) Direct and indirect costs or savings to those affected: Exam fee charged applicants by National Association of Securities Dealers - \$60 to \$85.

1. First year: Exam fee charged applicants by National Association of Securities Dealers.

2. Continuing costs or savings: NASD exam fee to new applicants.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Indirect indeterminable savings to investing public as a result of requiring exam.

(b) Reporting and paperwork requirements: Applicants will be required to furnish copies of results of exam to Division of Securities.

(2) Effects on the promulgating administrative body: Division of Securities will be required to review and keep record of submitted exam results.

(a) Direct and indirect costs or savings:

1. First year: Negligible

2. Continuing costs or savings: Negligible

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Division will be required to review and keep permanent record of exam results.

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

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

(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 to all applicants equally.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions

Division of Securities

808 KAR 10:270. Registration exemption for securities listed on the Chicago Board Options Exchange.

RELATES TO: KRS Chapter 292, 292.340 to 292.390, 292.400

STATUTORY AUTHORITY: KRS 292.400(8), 292.500

NECESSITY AND FUNCTION: The requirements for listing with the Chicago Board Options Exchange, Incorporated will sufficiently protect the investing public and are substantially equal to those for listing with the exchanges exempted by KRS 292.400(8).

Section 1. KRS 292.340 to 292.390 shall not apply to any of the following securities:

(1) Any security listed or approved for listing on the Chicago Board Options Exchange, Incorporated (CBOE) provided that the security is not offered or sold pursuant to an issuer's initial public offering and provided that there has been no waiver of the requirements set forth in the Memorandum of Understanding between the North American Securities Administrators Association, Inc. and the CBOE adopted May 1991; or

(2) Any other security of an issuer which has a security listed on the CBOE provided that the other security is of senior or substantially equal rank to the listed security; or

(3) Any security called for by subscription rights or warrants if the security, subscriptions rights or warrants are listed or approved for listing on the CBOE; or

(4) Any warrant or right to purchase or subscribe to any of the foregoing.

RONDA S. PAUL, Director

EDWARD B. HATCHETT, JR., Commissioner

APPROVED BY AGENCY: June 14, 1991

FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1991 at 3 p.m. in Room 125, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 17, 1991, 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: Pat Harris, Office of General Counsel, Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pat Harris

(1) Type and number of entities affected: Undeterminable number of issuers of securities.

(a) Direct and indirect costs or savings to those affected:

1. First year: Savings of a minimum one-time \$60 Kentucky registration fee to issuers affected.

2. Continuing costs or savings: Savings of Kentucky registration fee to new registrants.

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: Nominal

(a) Direct and indirect costs or savings: Division will not collect registration fees for those exempted.

1. First year: Division will not collect one-time registration fee of minimum of \$60 per exempted security.

2. Continuing costs or savings: Division will not collect registration fees for new exempted securities.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Nominal

(3) Assessment of anticipated effect on state and local revenues: Nominal and undeterminable.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None available.

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

(a) Necessity of proposed regulation if in conflict:

(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 affected.

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

904 KAR 3:025. Technical requirements.

RELATES TO: KRS 194.050, 7 CFR 273.4, 273.5, 273.7, 273.21

STATUTORY AUTHORITY: KRS 194.0507, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Definitions. (1) "Certification period" means a definite period of time within which a household shall be eligible to receive food stamp benefits.

(2) "Quality control review" means a review of a statistically valid sample of active and denied or discontinued cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to ensure that inactive cases are not incorrectly denied or terminated.

(3) "Student status" means any person who is between the ages of eighteen (18) and sixty (60) inclusive, physically and mentally fit, and

enrolled at least half-time in an institution of higher education.

Section 2. Technical Eligibility. In accordance with regulations promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, the cabinet utilizes national uniform standards of technical eligibility for the Food Stamp Program.

Section 3. Technical Eligibility Criteria. Technical eligibility standards shall apply equally to all households and consist of:

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

(2) Identity.

(a) The applicant's identity shall be verified; and

(b) If an authorized representative applies for the household, both the applicant's and the authorized representative's identities shall be verified;

(3) Citizenship and alien status.

(a) Program participation shall be limited to:

1. Citizens of the United States; or

2. Eligible aliens as defined by 904 KAR 3:010.

(b) Individuals whose status is questionable shall be ineligible to participate until such status has been verified;

(c) A single household member shall attest in writing to the citizenship or alien status of each household member;

(d) The departmental form required for the declaration of citizenship or alien status is incorporated into this regulation by reference.

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

(5) Students. Any person who meets the definition of a student as specified in Section 1 of this regulation shall be ineligible to participate unless they meet at least one (1) of the following criteria:

(a) Shall be engaged in paid employment for a minimum of twenty (20) hours per week or, if self-employed, shall be employed for a minimum of twenty (20) hours per week and receive weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours; or

(b) Shall participate in a federally financed work study program (funded in full or in part under 20 USC 1070) during the regular school year; or

(c) Shall be responsible for the care of a dependent household member under the age of six (6); or

(d) Shall be responsible for the care of a dependent household member who has reached the age of six (6) but is under age twelve (12) where the cabinet has determined that adequate child care is not available; or

(e) Shall receive benefits from the Aid to Families with Dependent Children Program (AFDC); or

(f) Shall be assigned to or placed in an institution of higher learning through a program under the 25 USC 1501.

(6) Mandatory monthly reporting (MMR).

(a) Households of five (5) or more members in which one (1) or more members has gross earned income of \$200 or more shall be required to file monthly reports, unless otherwise exempt.

(b) The following households shall be exempt from MMR:

1. Households whose sole source of earnings is

from self-employment or contract self-employment income which is annualized for a twelve (12) month period;

2. Migrant or seasonal farm worker households;
3. Households in which all members are homeless individuals; or

4. Households with no earned income in which all adult members are elderly or disabled with no earned income.

(c) Departmental MMR forms are incorporated by reference in this administrative regulation.

(7) Social Security number (SSN).

(a) Households applying for or participating in the Food Stamp Program shall comply with SSN requirements by providing the SSN of each household member or applying for one prior to certification.

(b) Failure to comply without good cause shall be determined for each household member and shall result in such individual's disqualification from participation in the Food Stamp Program until this requirement is met.

(8) Work registration.

(a) All household members, except those exempt in paragraph (b) of this subsection, shall be required to:

1. Register for work;
2. Accept suitable employment; and
3. Be subject to other work registration requirements.

(b) The following persons shall be exempt from work registration requirements:

1. A person younger than sixteen (16) years of age or a person sixty (60) years of age or older, except:

a. A child having its 16th birthday within a certification period shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the child qualifies for another exemption; or

b. A person age sixteen (16) or seventeen (17) who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time basis is exempt;

2. A person physically or mentally unfit for employment;

3. A household member subject to and complying with any work requirement in the AFDC Program;

4. A parent or other household member who is responsible for the care of a dependent child under age six (6) or an incapacitated person;

5. A person who receives unemployment compensation or a person who has applied for, but has not yet begun to receive, unemployment compensation if that person was required to register for work with the Department for Employment Services as part of the unemployment compensation application process;

6. A regular participant in a drug addiction or alcoholic treatment and rehabilitation program;

7. A person who is employed or self-employed and:

a. Working a minimum of thirty (30) hours weekly; or

b. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;

8. A migrant or seasonal farm worker who meets the criteria in paragraph (g) of this subsection and is under contract or similar agreement with an employer or crew chief to begin employment within thirty (30) days; or

9. A student enrolled at least half time in

any recognized school, training program, or institution of higher education; provided that those meeting student status have met the eligibility conditions in subsection (5) of this section.

(c) Strikers whose households are eligible in accordance with 904 KAR 3:035, Section 6(9), shall be subject to the work registration requirements unless exempt for reasons other than employment at the time of application.

(d) Work registrants who reside in a county which offers a food stamp employment and training program shall be required to participate in the food stamp employment and training program. Participants shall:

1. Participate in education, job search, or skills training activities; and

2. Be reimbursed for transportation and dependent care expenses, if otherwise eligible.

(e) Work registrants who are required to participate in the food stamp employment and training program and who fail to do so shall be:

1. Given the opportunity to provide good cause for failure to comply; and

2. Ineligible to receive food stamp benefits for two (2) months if good cause does not exist.

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

Section 4. Material Incorporated by Reference.

(1) Forms FS-301 and FS-301A are necessary for MMR and are incorporated effective June 1, 1991.

(2) Form FS-106.1 is necessary for the declaration of citizenship or alien status in the Food Stamp Program and is incorporated effective June 1, 1991.

(3) 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: May 23, 1991

FILED WITH LRC: June 4, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1991 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 July 17, 1991, 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: The provisions of this proposed regulation reflects the technical requirements currently contained in the administrative regulation 904 KAR 3:020, Eligibility requirements. The provisions are being incorporated into 904 KAR 3:025 without change. Therefore, no food stamp recipients will be affected by the promulgation of this administrative regulation.

(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:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

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

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

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Federal and

state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR 273.4, 273.5, 273.7, 273.21.

2. State compliance standards. This regulation pertains to the technical eligibility requirements for participation in the Food Stamp Program as prescribed by the Food and Nutrition Service. There are no separate state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation allows the state agency to consider technical eligibility requirements in the eligibility determination for food stamps. The technical eligibility requirements contained in this administrative regulation are applied in a like manner on a statewide basis and are consistent with the technical eligibility requirements which are applied in the National Food Stamp Program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation coincide with those mandated by the Food and Nutrition Service.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the June 3 and 4, 1991 Meeting**

The June meeting of the Administrative Regulation Review Subcommittee was held on Monday, June 3, 1991 at 2 p.m. in Room 327 of the Capitol and on Tuesday, June 4, 1991 at 10 a.m. in Room 327 of the Capitol. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the May 6 and 7, 1991 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representatives Woody Allen, Jim Bruce and James Yates.

Guests: Ken Walker, Debbie McGuffey, Council on Higher Education; Pat N. Miller, Stuart Reagan, Teachers' Retirement System; John Phillipa, Thomas Young, Lauren Schaaf, Department of Fish and Wildlife Resources; Frank Dickerson, Dave Rosenbaum, Iris Skidmore, Brad Smock, Jack Wilson, Leon Smothers, Pamela Wood, Tim Brooks, Kim Gray, Natural Resources and Environmental Protection Cabinet; Jack Damron, Corrections Cabinet; Sandra G. Pullen, Transportation Cabinet; J. Gary Bale, Gary Stenhilber, John Batts, Beth Hargett, Rita Osborne, Terry Vance, Angela Wilkins, Department of Education; Audrey T. Carr, Beverly Haverstock, Gary Werenskjold, Workforce Development Cabinet; Larry Schneider, Eugene D. Attkisson, Department of Mines and Minerals; Aaron D. Greenwell, Kathleen Dorman, Public Service Commission; Judith Walden, Thomas Barnes, Housing, Buildings and Construction; Larry Taylor, Dudley Conner, Don Hughes, J.R. Nash, Barbara Coleman, Mark Birdwhistell, Anita Moore, Diana Gaetz, Michael Cheek, Danna Droz, Edward Crews, Cabinet for Human Resources; William E. Doyle, Attorney General's Office; Joseph J. Zaluski, Winston Griffn, Maureen D. Carman, Cumberland Surety Insurance Company, Inc.; Tom Fitzgerald, Kentucky Resources Council; John Barnett, SCB; Ron Sheets, Daniel Yates, Kentucky Association of Electrical Coops; Forest Skaggs, Kentucky Telephone Association; George J. Heady, Franklin County Health Department; Jim Honaker, Kenton, Campbell, & Boond County Water Districts.

LRC Staff: Greg Karambellas, Joe Hood, Susan Wunderlich, Donna Pierce, Peggy Jones, and Susan Eastman.

The Subcommittee determined that the following regulation did not comply with KRS Chapter 13A:

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: Bond and Insurance Requirements

405 KAR 10:050 (Bond forfeiture.) Maureen Carman and Joseph Zaluski, Cumberland Surety Insurance Company, Inc., appeared to testify against the regulation; and Dave Obradovich, Dave Rosenbaum and Frank Dickerson appeared to represent the Cabinet. Mr. Obradovich explained that this regulation was being repromulgated to delete the word "or the surety" from Section 1(2). Mr. Zaluski discussed the decision of the Franklin Circuit Court of the previous promulgation of this regulation which resulted in an injunction issued against the Cabinet's enforcement of the deletion of the words "or the

surety".

After questioning by the Subcommittee, Tom Fitzgerald, Kentucky Resources Council, was requested to answer questions. Mr. Fitzgerald, in discussing federal and state requirements, supported the Cabinet's position.

Senator Quinlan made the following motion: (1) that this regulation is deficient because it negates the legislature's stated policy of obtaining timely and appropriate reclamation by discouraging prompt abatement of violations; and (2) that this regulation be thoroughly reviewed by the Interim Joint Committee on Agriculture and Natural Resources. The motion was seconded and passed unanimously.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:170 (Seasons for deer hunting.) This regulation was amended to conform with the drafting requirements of KRS 13A.222, and to specify that deer hunters shall wear orange garments "while hunting".

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Resources

401 KAR 4:220 (Water supply plan requirements.) This regulation was amended to permit a planning council member to represent more than one entity, to provide 2 weeks notice of the first planning council meeting, to make various other changes relating to the planning council, and to correct the reference to the Urban Research Institute.

Corrections Cabinet: Office of the Secretary

501 KAR 6:090 (Frankfort Career Development Center.) The material incorporated by reference in this regulation was amended to conform with the drafting requirements of KRS 13A.222.

Department of Education: Office of Instruction: Instructional Services

704 KAR 3:035 (Annual professional development plan.) This regulation was amended to conform with the drafting requirements of KRS 13A.222 and to add in the NECESSITY AND FUNCTION clause the mandate of local school district consortia for professional development purposes.

Workforce Development Cabinet: Department for Adult and Technical Education: Management of the Kentucky Tech System

780 KAR 2:130 (Minimum standards of admission for adult students in vocational programs.) This regulation was amended to conform with the drafting requirements of KRS 13A.222 and to correct typographical errors.

Public Protection and Regulation Cabinet: Department of Mines and Minerals: Division of Explosives and Blasting

The following three regulations were amended to specify and incorporate required forms by reference and to add proper citation of federal regulations.

805 KAR 4:085 (Dealer registration; record requirements.)
805 KAR 4:100 (Surface transportation of explosives.)
805 KAR 4:110 (Initiation of explosive charges; electric blasting.)

Cabinet for Human Resources: Department for Health Services: Sanitation

902 KAR 10:030 (Sanitarians.) This regulation was amended to incorporate required forms by reference, and to correct the citations of statutory authority to include the specific parts of House Bill 799 (Budget Bill) and the Final Budget Memorandum. It had been pointed out at the last Subcommittee meeting that statutory authority included the specific sections of both the Budget Bill and the Final Budget Memorandum that authorized, governed or provided program details for matters governed by regulation. Representative Allen objected to the deletion of "good moral character" as a criterion. Representative Bruce and Senator Huff also objected to this deletion.

Department for Social Services: Adult Services

905 KAR 5:060 (Compensation for guardianship program services.) Sections 1 and 2 were amended to provide that a ward's cost of living included all items necessary for necessities of life, such as clothing, food, maintenance, personal needs, etc.; and to state more specifically the conditions under which a charge for compensation could be waived - either by the cabinet on its initiative or upon request of the ward or representative. In addition, language in Section 2(1) was amended to clarify when exceptions would apply.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Council on Higher Education: Public Educational Institutions

13 KAR 2:050 (Tuition at state-supported institutions of higher education in Kentucky.)

Teachers' Retirement System: General Rules

102 KAR 1:175 (Investment policies.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:210 (Antlerless deer permits.)

Natural Resources and Environmental Protection Cabinet: Administration

400 KAR 1:040 (Administrative rules of procedure, discovery.)

Transportation Cabinet: Toll Facilities

600 KAR 2:010 (Toll assessment on turnpikes.)

Department of Highways: Traffic

603 KAR 5:250 (Selection of national truck network highways.)

Education and Humanities Cabinet: Department of Education: Office of School Administration and Finance: General Administration

702 KAR 1:071 (Repeal of 702 KAR 1:070.)

Workforce Development Cabinet: Department for Adult and Technical Education: Management of the Kentucky Tech System

780 KAR 2:090 (Postsecondary vocational technical school admission priorities.)
Personnel System for Certified and Equivalent Employees

780 KAR 3:160 (Local school district service credit.)

Public Protection and Regulation Cabinet: Department of Mines and Minerals: Division of Explosives and Blasting

805 KAR 4:030 (Seismograph measurements.)
805 KAR 4:050 (Records.)
805 KAR 4:060 (Blasting safety.)
805 KAR 4:075 (General blasting provisions.)
805 KAR 4:087 (Explosives.)
805 KAR 4:120 (Detonating cords.)
805 KAR 4:140 (Misfires.)
805 KAR 4:155 (Ground vibration standards for surface coal mines.)
805 KAR 4:160 (Airblast.)
805 KAR 4:165 (Use of nonelectric initiation systems.)

Public Protection and Regulation Cabinet: Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:020 (Parts of materials list.)

Cabinet for Human Resources: Department for Health Services: Controlled Substances

Chairman Kerr stated that agency and Subcommittee staff were working on amendments to the following two regulations to make them conform to the drafting requirements of KRS Chapter 13A. He added that it was necessary to amend all related regulations as a package, and that sometime in the near future amended regulations would be filed.

902 KAR 55:020 (Schedule II substances.)

902 KAR 55:025 (Schedule III substances.)

Department for Employment Services: Unemployment Insurance

903 KAR 5:290 (Employer contribution rates.)

Department for Medicaid Services

907 KAR 1:020 (Payment for drugs.)

The following regulations were deferred at the promulgating agency's request:

Finance and Administration Cabinet: Kentucky Infrastructure Authority

200 KAR 17:020 (Guidelines for solid waste revolving fund and solid waste grant program.)

200 KAR 17:030 (Guidelines for drinking water loan fund.)

200 KAR 17:040 (Guidelines for drinking water grant fund.)

200 KAR 17:050 (Guidelines for federally assisted wastewater revolving fund.)

Public Protection and Regulation Cabinet: Public Service Commission

Kathleen Gorman, Public Service Commission; Ron Sheets, Kentucky Association of Electrical Coops; and Jim Honaker, Kenton, Campbell, & Boone County Water Districts, appeared before the Subcommittee. Chairman Kerr stated that interested parties and Subcommittee staff were attempting to reach an agreement on the amendment of Section 2, relating to the types of utility affiliated entities that would be subject to the audit requirements of the

regulation. Because of this, the regulation would be deferred until the July Subcommittee meeting. Mr. Honaker submitted material relating to other sections of the regulation for consideration by the Subcommittee, and agreed to postpone his comments until the regulation was considered in July.

807 KAR 5:014 (Management and Operation audits.)

Cabinet for Human Resources: Department for Medicaid Services

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

The following regulation was withdrawn by the promulgating agency:

Department of Education: Office of Instruction:
Health and Physical Education Programs
704 KAR 4:020 (Comprehensive school health.)

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 10:30 a.m. until July 1, 1991 at 2 p.m. in Room 327 of the Capitol

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON
AGRICULTURE AND NATURAL RESOURCES
Meeting of May 22, 1991**

The Interim Joint Committee on Agriculture and Natural Resources met May 22, 1991, and submits this report:

The committee determined that Kentucky Agricultural Finance Corporation administrative regulation 200 KAR 18:010 & E, as amended, complies with KRS Chapter 13A.

The committee determined that the following Department for Surface Mining Reclamation and Enforcement administrative regulations comply with KRS Chapter 13A: 405 KAR 7:020 & E, 405 KAR 8:010 & E, 405 KAR 8:030 & E, 405 KAR 8:040 & E, and 405 KAR 12:020 & E.

The committee also determined that the following administrative regulation complies with KRS Chapter 13A: Department for Environmental Protection administrative regulation 401 KAR 6:310, as amended by adding in Section 2 after the words "Section 13 applies to monitoring wells." the following words, "Wells used solely for the purpose of recovery of pollutants shall not be included in this regulation."

The committee adjourned at 2:01 p.m., May 22, 1991.

**TASK FORCE ON
ELECTIONS & CONSTITUTIONAL AMENDMENTS
Meeting of June 6, 1991**

The Task Force on Elections and Constitutional Amendments has on this date reviewed the following administrative regulation and found it to be in conformity with KRS Chapter 13A:
State Board of Elections - 31 KAR 5:010 & E

**INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of June 4, 1991**

The Interim Joint Committee on Transportation met on Tuesday, June 4, 1991, and submits this report:

The Committee determined that the following administrative regulations complied with KRS Chapter 13A:

601 KAR 1:005 & E
600 KAR 3:010
603 KAR 5:066
603 KAR 5:230

The Committee adjourned at 2:30 p.m.

ADMINISTRATIVE REGISTER - A1

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates.....	A2
KRS Index.....	A6
Subject Index.....	A8

ADMINISTRATIVE REGISTER - A2

LOCATOR INDEX — EFFECTIVE DATES

NOTE: Emergency regulations expire 120 days from publication or upon replacement or repeal.

VOLUME 17

Emergency Regulation	17 Ky.R. Page No.	Effective Date	Regulation	17 Ky.R. Page No.	Effective Date
11 KAR 5:140E	3353	5-15-91	11 KAR 12:090	3580	
11 KAR 11:030E	3355	5-15-91	13 KAR 2:050		
31 KAR 5:010E	2931	3-14-91	Amended	3213	
Replaced	3050	6-7-91	30 KAR 1:040	3581	
200 KAR 17:030E	3085	4-15-91	30 KAR 1:050	3582	
200 KAR 17:040E	3088	4-15-91	31 KAR 5:010	3050	6-7-91
200 KAR 17:050E	3090	4-15-91	102 KAR 1:175		
200 KAR 18:010E	2932	2-22-91	Amended	3214	
Replaced	3387	5-22-91	105 KAR 1:010		
405 KAR 7:020E	2600	1-29-91	Amended	3004	6-7-91
Replaced	3152	5-22-91	106 KAR 1:080	3291	(See 18 Ky.R.)
405 KAR 8:010E	2609	1-29-91	106 KAR 1:090	3306	(See 18 Ky.R.)
Replaced	3161	5-22-91	106 KAR 1:100	3311	(See 18 Ky.R.)
405 KAR 8:030E	2623	1-29-91	106 KAR 1:110	3312	
Replaced	3389	5-22-91	106 KAR 1:120	3313	(See 18 Ky.R.)
405 KAR 8:040E	2636	1-29-91	106 KAR 1:130	3314	
Replaced	3401	5-22-91	200 KAR 14:010		
405 KAR 12:020E	2651	1-29-91	Amended	3489	
Replaced	2826	5-22-91	200 KAR 14:061	3583	
415 KAR 1:010E	3356	4-25-91	200 KAR 14:080		
415 KAR 1:020E	3357	4-25-91	Amended	3491	
415 KAR 1:030E	3358	4-25-91	200 KAR 14:090	3584	
501 KAR 6:020E	3093	3-22-91	200 KAR 17:020	3316	
Replaced	3414	6-7-91	200 KAR 17:030	3321	
501 KAR 6:080E	3094	3-22-91	200 KAR 17:040	3324	
Replaced	3018	6-7-91	200 KAR 17:050	3327	
601 KAR 1:005E	2655	1-24-91	200 KAR 18:010	3050	
Replaced	2978	6-4-91	As Amended	3387	5-22-91
900 KAR 4:010E	3360	4-16-91	201 KAR 11:011	2294	
902 KAR 20:290E	3363	5-7-91	As Amended	2690	3-8-91
902 KAR 55:020E	3095	4-12-91	201 KAR 11:095		
902 KAR 55:025E	3096	4-12-91	Amended	2213	
903 KAR 5:290E	3097	4-3-91	As Amended	2690	3-8-91
904 KAR 2:016E	3372	5-15-91	201 KAR 11:105		
907 KAR 1:013E	3382	4-18-91	Amended	2214	
907 KAR 1:017E	3098	3-28-91	As Amended	2690	3-8-91
907 KAR 1:019E	3385	4-18-91	201 KAR 16:010		
907 KAR 1:020E	3100	4-3-91	Amended	3494	
			201 KAR 30:100	3585	
			201 KAR 30:110	3589	
			201 KAR 30:120	3590	
			201 KAR 30:130	3591	
			301 KAR 1:015		
			Amended	1793	12-19-90
			301 KAR 1:085		
			Amended	3216	(See 18 Ky.R.)
			301 KAR 2:111		
			Amended	3495	
			301 KAR 2:170		
			Amended	3218	(See 18 Ky.R.)
			301 KAR 2:210		
			Amended	3223	
			400 KAR 1:040		
			Amended	3006	
			401 KAR 4:220	3054	
			Amended	3457	(See 18 Ky.R.)
			401 KAR 6:310		
			Amended	2762	
			Amended	3142	(See 18 Ky.R.)
			405 KAR 7:020		
			Amended	2774	
			Amended	3152	5-22-91
Regulation	17 Ky.R. Page No.	Effective Date			
11 KAR 4:040					
Amended	3472				
11 KAR 5:030					
Amended	3477				
11 KAR 5:130					
Amended	3479				
11 KAR 5:140					
Amended	3480				
11 KAR 8:030					
Amended	3483				
11 KAR 11:020					
Amended	3486				
11 KAR 11:030					
Amended	3487				
11 KAR 12:010	3568				
11 KAR 12:020	3570				
11 KAR 12:030	3571				
11 KAR 12:040	3572				
11 KAR 12:050	3574				
11 KAR 12:060	3575				
11 KAR 12:070	3576				
11 KAR 12:080	3578				

ADMINISTRATIVE REGISTER - A3

Regulation	17 Ky.R. Page No.	Effective Date	Regulation	17 Ky.R. Page No.	Effective Date
405 KAR 8:010			745 KAR 1:035	3070	
Amended	2784		As Amended	3453	6-7-91
Amended	3161	5-22-91	745 KAR 1:045	3071	
405 KAR 8:030			As Amended	3453	6-7-91
Amended	2800		745 KAR 1:055	3072	
As Amended	3389	5-22-91	As Amended	3453	6-7-91
405 KAR 8:040			780 KAR 1:010		
Amended	2812		Amended	3508	
As Amended	3401	5-22-91	780 KAR 2:090		
405 KAR 10:050			Amended	3259	
Amended	3013		780 KAR 2:130		
405 KAR 12:020			Amended	3260	(See 18 Ky.R.)
Amended	2826	5-22-91	780 KAR 3:160	3337	
415 KAR 1:010	3592		780 KAR 9:100	3603	
415 KAR 1:020	3594		780 KAR 9:110	3604	
415 KAR 1:030	3597		780 KAR 9:120	3605	
501 KAR 6:020			803 KAR 2:309		
Amended	3015		Amended	3509	
As Amended	3414	6-7-91	803 KAR 2:320		
501 KAR 6:030			Amended	3511	
Amended	3499		803 KAR 2:408		
501 KAR 6:040			Amended	3514	
Amended	3501		803 KAR 2:411		
501 KAR 6:060			Amended	3515	
Amended	2831		803 KAR 2:412		
Amended	3502		Amended	3516	
501 KAR 6:070			803 KAR 2:416		
Amended	3017	6-7-91	Amended	3518	
Amended	3504		803 KAR 2:423		
501 KAR 6:080			Amended	3519	
Amended	3018	6-7-91	805 KAR 4:010		
501 KAR 6:090			Amended	3263	(See 18 Ky.R.)
Amended	3253		805 KAR 4:030		
501 KAR 6:140			Amended	3264	
Amended	3019	6-7-91	805 KAR 4:050		
501 KAR 6:150			Amended	3265	
Amended	3021	6-7-91	805 KAR 4:060		
502 KAR 45:080			Amended	3267	
Amended	3023	6-7-91	805 KAR 4:075		
502 KAR 45:100			Amended	3268	
Amended	3024	6-7-91	805 KAR 4:085		
502 KAR 45:110			Amended	3270	(See 18 Ky.R.)
Amended	3025	6-7-91	805 KAR 4:087		
600 KAR 2:010			Amended	3271	
Amended	3025		805 KAR 4:100		
Amended	3468		Amended	3272	(See 18 Ky.R.)
600 KAR 3:010			805 KAR 4:110		
Amended	3026	6-4-91	Amended	3274	(See 18 Ky.R.)
601 KAR 1:005			805 KAR 4:120		
Amended	2504		Amended	3276	
Amended	2978	6-4-91	805 KAR 4:140		
601 KAR 1:025			Amended	3277	
Amended	3505		805 KAR 4:155	3338	
603 KAR 5:066			805 KAR 4:160	3340	
Amended	2835	6-4-91	805 KAR 4:165	3341	
603 KAR 5:230			807 KAR 5:014	3072	
Amended	2838		815 KAR 7:013		
Amended	3175		Amended	3046	6-7-91
As Amended	3415	6-4-91	815 KAR 20:020		
603 KAR 5:250			Amended	3278	
Amended	3468		815 KAR 20:030		
605 KAR 1:190	3600		Amended	3521	
702 KAR 1:071	3334		815 KAR 25:010		
704 KAR 3:035			Amended	3523	
Amended	3254	(See 18 Ky.R.)	815 KAR 25:020		
704 KAR 4:020			Amended	3530	
Amended	3257		900 KAR 4:010	3342	(See 18 Ky.R.)
Withdrawn		6-3-91	902 KAR 10:030		
704 KAR 20:580	3335	(See 18 Ky.R.)	Amended	3048	(See 18 Ky.R.)
745 KAR 1:015	3069		902 KAR 20:008		
As Amended	3452	6-7-91	Amended	3536	
745 KAR 1:025	3070		902 KAR 20:136	3074	5-15-91
As Amended	3453	6-7-91			

ADMINISTRATIVE REGISTER - A4

Regulation	17 Ky.R. Page No.	Effective Date	Regulation	17 Ky.R. Page No.	Effective Date
902 KAR 20:290 Amended	3538		905 KAR 1:320	3608	
902 KAR 55:020 Amended	3281		905 KAR 1:330	3612	
902 KAR 55:025 Amended	3283		905 KAR 5:060 Amended	3075	(See 18 Ky.R.)
902 KAR 55:075	3606		905 KAR 5:070	3618	
902 KAR 55:080	3607		906 KAR 1:080	2919	
903 KAR 5:290 Amended	3284		As Amended	3454	5-15-91
904 KAR 2:016 Amended	3548		907 KAR 1:013 Amended	3560	
905 KAR 1:065 Repealed	2339	3-12-91	907 KAR 1:017 Amended	3285	
905 KAR 1:091 Repealed	2339	3-12-91	907 KAR 1:019 Amended	3563	
905 KAR 1:110 Repealed	2339	3-12-91	907 KAR 1:020 Amended	3287	
905 KAR 1:120 Repealed	2339	3-12-91	907 KAR 1:382 Amended	3565	
905 KAR 1:180 Amended	3558		907 KAR 1:390 Amended	3565	
905 KAR 1:200 Repealed	2339	3-12-91	907 KAR 1:400 Amended	3566	
			907 KAR 1:476	3622	

VOLUME 18

Emergency Regulation	17 Ky.R. Page No.	Effective Date	Regulation	18 Ky.R. Page No.	Effective Date
101 KAR 2:035E	4	6-14-91	401 KAR 6:310		
415 KAR 1:040E	7	6-13-91	As Amended	34	5-22-91
500 KAR 8:010E	9	5-31-91	401 KAR 31:010 Amended	92	
701 KAR 5:090E	10	5-29-91	401 KAR 31:030 Amended	103	
904 KAR 3:020E	11	6-5-91	401 KAR 31:040 Amended	106	
904 KAR 3:025E	15	6-5-91	401 KAR 31:060 Amended	118	
			401 KAR 31:110 Amended	122	
			401 KAR 32:010 Amended	125	
			401 KAR 32:100 Amended	127	
			401 KAR 34:230 Amended	132	
			401 KAR 35:200 Amended	136	
			401 KAR 35:220 Amended	139	
			401 KAR 35:240 Amended	143	
			401 KAR 37:100 Amended	145	
			401 KAR 38:050 Amended	147	
			415 KAR 1:040	214	
			500 KAR 8:010 Amended	148	
			501 KAR 6:020 Amended	150	
			501 KAR 6:050 Amended	152	
			501 KAR 6:070 Amended	153	
			501 KAR 6:080 Amended	154	

Regulation	18 Ky.R. Page No.	Effective Date
101 KAR 1:325 Amended	82	
101 KAR 2:035 Amended	83	
106 KAR 1:080 Amended	54	
106 KAR 1:090 Amended	68	
106 KAR 1:100 Amended	73	
106 KAR 1:120 Amended	73	
201 KAR 9:031 Amended	88	
201 KAR 9:041 Amended	89	
201 KAR 9:300	210	
201 KAR 9:305	211	
301 KAR 1:085 Amended	74	
301 KAR 2:170 As Amended	18	
301 KAR 3:021 Amended	90	
301 KAR 10:010	212	
401 KAR 4:220 As Amended	22	

ADMINISTRATIVE REGISTER - A5

Regulation	18 Ky.R. Page No.	Effective Date
501 KAR 6:140		
Amended	155	
701 KAR 5:090	217	
701 KAR 5:100	219	
702 KAR 3:250	220	
702 KAR 5:080		
Amended	157	
704 KAR 3:035		
As Amended	45	
704 KAR 3:410		
Amended	160	
704 KAR 20:450		
Repealed		6-17-91
704 KAR 20:580		
Amended	75	
704 KAR 20:590	221	
704 KAR 20:600	223	
707 KAR 1:150	228	
780 KAR 2:130		
As Amended	47	
783 KAR 1:030	232	
803 KAR 2:015		
Amended	165	
803 KAR 2:318		
Amended	183	
803 KAR 2:403		
Amended	184	
804 KAR 1:100		
Amended	186	
805 KAR 1:020		
Amended	187	
805 KAR 1:050		
Amended	189	
805 KAR 1:120	233	
805 KAR 1:130	234	
805 KAR 1:140	236	
805 KAR 4:010		
Amended	77	
805 KAR 4:085		
As Amended	49	
805 KAR 4:100		
As Amended	49	
805 KAR 4:110		
As Amended	50	
806 KAR 3:150	239	
807 KAR 5:001		
Amended	191	
807 KAR 5:005	241	
808 KAR 10:010		
Amended	199	
808 KAR 10:220		
Amended	200	
808 KAR 10:260	244	
808 KAR 10:270	245	
900 KAR 4:010		
Amended	78	
902 KAR 10:030		
As Amended	52	
903 KAR 5:270		
Amended	201	
904 KAR 3:020		
Amended	202	
904 KAR 3:025	246	
905 KAR 5:060		
As Amended	52	
907 KAR 1:045		
Amended	207	
907 KAR 1:410		
Amended	208	

ADMINISTRATIVE REGISTER - A6

KRS INDEX

KRS Section	Regulation	KRS Section	Regulation
15.070	500 KAR 8:010	224.033 (cont'd)	401 KAR 35:240
18A.030	101 KAR 2:035		401 KAR 37:100
18A.075	101 KAR 1:325	224.060	401 KAR 34:230
18A.0751	101 KAR 1:325		401 KAR 37:100
18A.110	101 KAR 2:035	224.071	401 KAR 32:010
18A.111	101 KAR 1:325		401 KAR 34:230
18A.165	101 KAR 2:035		401 KAR 37:100
146.550	301 KAR 10:010	224.810	415 KAR 1:040
146.555	301 KAR 10:010	224.814-224.825	415 KAR 1:040
146.560	301 KAR 10:010	224.830-224.877	401 KAR 31:010
146.565	301 KAR 10:010		401 KAR 31:030
146.570	301 KAR 10:010		401 KAR 31:040
150.015	301 KAR 10:010		401 KAR 31:060
150.025	301 KAR 3:021		401 KAR 31:110
	301 KAR 10:010		401 KAR 32:010
150.175	301 KAR 3:021		401 KAR 32:100
150.225	301 KAR 3:021		401 KAR 34:230
150.237	301 KAR 3:021		401 KAR 35:200
150.240	301 KAR 3:021		401 KAR 35:220
150.250	301 KAR 10:010		401 KAR 35:240
150.280	301 KAR 3:021		401 KAR 37:100
150.290	301 KAR 3:021		401 KAR 48:050
150.525	301 KAR 3:021	224.994	401 KAR 31:010
150.620	301 KAR 10:010		401 KAR 31:030
150.660	301 KAR 3:021		401 KAR 31:040
150.990	301 KAR 3:021		401 KAR 31:060
156.016	101 KAR 2:035		401 KAR 31:110
156.031	702 KAR 5:080		401 KAR 32:010
156.160	702 KAR 3:250		401 KAR 32:100
	702 KAR 5:080		401 KAR 34:230
	704 KAR 3:410		401 KAR 35:200
	707 KAR 1:150		401 KAR 35:220
157.226	702 KAR 3:250		401 KAR 35:240
	707 KAR 1:150		401 KAR 37:100
157.3175	702 KAR 3:250		401 KAR 48:050
	704 KAR 3:410	244.130	804 KAR 1:100
160.345	701 KAR 5:100	Chapter 278	807 KAR 5:001
161.028	704 KAR 20:590		807 KAR 5:005
	704 KAR 20:600	Chapter 292	808 KAR 10:010
161.030	704 KAR 20:590		808 KAR 10:220
	704 KAR 20:600		808 KAR 10:260
161.048	704 KAR 20:590		808 KAR 10:270
	704 KAR 20:600	292.310	808 KAR 10:260
161.049	704 KAR 20:590	292.330	808 KAR 10:010
	704 KAR 20:600		808 KAR 10:260
161.770	701 KAR 5:090	292.340-292.390	808 KAR 10:220
161.790	701 KAR 5:090		808 KAR 10:270
165A.450	783 KAR 1:030	292.400	808 KAR 10:270
186.565	500 KAR 8:010	292.410	808 KAR 10:220
189.540	702 KAR 5:080	304.2-110	806 KAR 3:150
194.050	904 KAR 3:020	311.530-311.620	201 KAR 9:031
	904 KAR 3:025		201 KAR 9:041
Chapter 196	501 KAR 6:020	311.900	201 KAR 9:300
	501 KAR 6:050	311.900-311.928	201 KAR 9:305
	501 KAR 6:070	311.990	201 KAR 9:031
	501 KAR 6:080		201 KAR 9:041
	501 KAR 6:140	Chapter 338	803 KAR 2:015
Chapter 197	501 KAR 6:020		803 KAR 2:318
	501 KAR 6:050		803 KAR 2:403
	501 KAR 6:070	341.380	903 KAR 5:270
	501 KAR 6:080	353.520	805 KAR 1:020
	501 KAR 6:140		805 KAR 1:120
205.520	907 KAR 1:045		805 KAR 1:130
	907 KAR 1:410		805 KAR 1:140
224.005-224.110	401 KAR 48:050	353.590	805 KAR 1:050
224.033	401 KAR 31:060	Chapter 439	501 KAR 6:020
	401 KAR 32:100		501 KAR 6:050
	401 KAR 34:230		501 KAR 6:070
	401 KAR 35:200		501 KAR 6:080
	401 KAR 35:220		501 KAR 6:140

ADMINISTRATIVE REGISTER - A7

KRS Section

Regulation

7 CFR 273

904 KAR 3:020

904 KAR 3:025

29 CFR 1910

803 KAR 2:318

40 CFR 261

401 KAR 31:060

401 KAR 31:110

401 KAR 37:100

ADMINISTRATIVE REGISTER - A8

SUBJECT INDEX

ALCOHOLIC BEVERAGE CONTROL

Advertising Distilled Spirits, Wine
General advertising practices; 804 KAR 1:100

BREATH ANALYSIS OPERATORS

Operator certification; 500 KAR 8:010 & E

CORRECTIONS

Facility Standards

Bell County Forestry Camp; 501 KAR 6:140
Cabinet manuals; 501 KAR 6:080
Cabinet policies; 501 KAR 6:020
Correctional Institute for Women; 501 KAR 6:070
Luther Luckett Complex; 501 KAR 6:050

DISTRICT SUPPORT SERVICES (EDUCATION)

Pupil Transportation
Bus driver qualifications; 702 KAR 5:080
School District Finance
Preschool grant allocation; 702 KAR 3:250

EDUCATION AND HUMANITIES CABINET

Commissioner's Office
School-based decision making; 701 KAR 5:100
Teacher disciplinary hearing; 701 KAR 5:090 & E
District Support Services
Pupil transportation; 702 KAR Chapter 5
School district finance; 702 KAR Chapter 3
Exceptional children; 707 KAR Chapter 1
Learning Programs Development
Education professional standards; 704 KAR Chapter 20
Instructional services; 704 KAR Chapter 3

EMPLOYEES, STATE

(See also Personnel)
Personnel Rules
Board; 101 KAR Chapter 1
Classified; 101 KAR Chapter 2

EMPLOYMENT SERVICES

Unemployment Insurance
Maximum weekly benefit rate; 903 KAR 5:270

EXCEPTIONAL CHILDREN PROGRAMS

Disabled children preschool; 707 KAR 1:150

FINANCIAL INSTITUTIONS

Securities
Application, registration; 808 KAR 10:010
CBOE; 808 KAR 10:270
NASDAQ/NMS exemption; 808 KAR 10:220
Public security adviser; 808 KAR 10:260

FISH AND WILDLIFE RESOURCES

Heritage Land Conservation Fund
Board; 301 KAR 10:010
Hunting, Fishing
License fees; 301 KAR 3:021

HERITAGE LAND CONSERVATION FUND

(See Fish and Wildlife)

HUMAN RESOURCES

Employment Services
Unemployment insurance; 903 KAR Chapter 5
Medicaid services; 907 KAR Chapter 1
Social Insurance
Food Stamp Program; 904 KAR Chapter 3

INSURANCE

Authorization of Insurers
Hazardous financial condition insurer standards; 806 KAR 3:150

JUSTICE

Breath analysis operators; 500 KAR Chapter 8

LABOR

Occupational safety, health; 803 KAR Chapter 2

LEARNING PROGRAMS DEVELOPMENT

Education Professional Standards Board
Alternative Training Program
Middle, secondary teachers; 704 KAR 20:590
Teacher certification; 704 KAR 20:600
Instructional Services
Preschool education, 4-year olds; 704 KAR 3:410

MEDICAID SERVICES

Mental health centers; 907 KAR 1:045
Vision services; 907 KAR 1:410

MEDICAL LICENSURE BOARD

Athletic trainer certification; 201 KAR 9:305
Examinations; 201 KAR 9:031
Fee schedule; 201 KAR 9:041
Interpretation of KRS 311.900; 201 KAR 9:300

MINES AND MINERALS

Oil and Gas
Deep wells; 805 KAR 1:130
Directional, horizontal wells; 805 KAR 1:140
Freshwater zone protection; 805 KAR 1:020
Surety bond requirements, cancellation; 805 KAR 1:050

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION

Environmental Protection
Waste management; 401 Chapters 31-48

OCCUPATIONAL SAFETY, HEALTH

General industry standards; 803 KAR 2:015
29 CFR Part 1910; 803 KAR 2:318
29 CFR Part 1926; 803 KAR 2:403

OCCUPATIONS AND PROFESSIONS

Medical licensure; 201 KAR Chapter 9

PERSONNEL

Board
Probationary period; 101 KAR 1:325
Classified
Compensation plan, pay incentive; 101 KAR 2:035 & E

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

Reimbursement guidelines; 415 KAR 1:040 & E

PROPRIETARY EDUCATION BOARD

Student protection fund; 783 KAR 1:030

PUBLIC PROTECTION, REGULATION

Alcoholic Beverage Control
Advertising distilled spirits, wine; 804 KAR Chapter 1
Financial Institutions
Securities; 808 KAR Chapter 10
Insurance
Authorization of insurers; 806 KAR Chapter 3

PUBLIC PROTECTION, REGULATION (cont'd)

Mines, Minerals

Oil and gas; 805 KAR Chapter 1

Public Service Commission; 807 KAR Chapter 5

PUBLIC SERVICE COMMISSION

Settlements; 807 KAR 5:005

Rules of procedure; 807 KAR 5:001

PUPIL TRANSPORTATION

(See District Support Services)

SOCIAL INSURANCE

Food Stamp Program

Financial requirements; 904 KAR 3:020 & E

Technical requirements; 904 KAR 3:025 & E

TOURISM

Fish and Wildlife

Heritage land conservation fund; 301 KAR

Chapter 10

Hunting, fishing; 301 KAR Chapter 3

WASTE MANAGEMENT

Hazardous Waste; Generator Standards

General provisions; 401 KAR 32:010

Manifest, instructions; 401 KAR 32:100

Hazardous Waste; Identification, Listing

Characteristics; 401 KAR 31:030

General provisions; 401 KAR 31:010

Lists; 401 KAR 31:040

Rulemaking petitions; 401 KAR 31:060

Toxicity characteristic leaching procedure; 401
KAR 31:110

Hazardous Waste; Owners, Operators

Landfills; 401 KAR 34:230

Hazardous Waste Storage, Treatment, Disposal

Facilities; Interim Status Standards

Incinerators; 401 KAR 35:240

Land treatment; 401 KAR 35:220

Surface impoundments; 401 KAR 35:200

Land Disposal Restrictions

Treatment standards; 401 KAR 37:100

Solid Waste Facility Standards

Siting requirements; 401 KAR 48:050

WORKFORCE DEVELOPMENT CABINET

Proprietary education; 783 KAR Chapter 1

