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LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on September 3-4, 1991. See **tentative** agenda on pages 615-618 in this Administrative Register.

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA – September 3, 1991 @ 2 p.m.
Room 327, State Capitol

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Kentucky Higher Education Assistance Authority

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Administration

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Division of Waste Management

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Petroleum Storage Tank Environmental Assurance Fund

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TENTATIVE AGENDA - September 4, 1991 @ 10 a.m.
Room 327, State Capitol

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Board of Physical Therapy

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Motor Vehicle Commission

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907 KAR 1:011 & E. Technical eligibility requirements.
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907 KAR 1:021 & E. Amounts payable for drugs. (Repeals 907 KAR 1:020)
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ADMINISTRATIVE REGULATION REVIEW PROCEDURE

Filing and Publication
Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing information, tiering statement, regulatory impact analysis, fiscal note, and the federal mandate comparison. Those administrative regulations received by the deadline required in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing
The administrative body shall schedule a public hearing on proposed administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five (5) days before the scheduled hearing. If no written notice is received at least five (5) days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

No transcript of the hearing need be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure
If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(NOTE: Emergency regulations expire 120 days from publication or upon replacement or repeal.)

STATEMENT OF EMERGENCY
301 KAR 2:044E

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

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

TOURISM CABINET
Department of Fish & Wildlife Resources

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

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.300, 150.305, 150.320, 150.330, 150.340, 150.360, 150.603
STATUTORY AUTHORITY: KRS 13A.350, 150.025
EFFECTIVE: August 9, 1991
NECESSITY AND FUNCTION: In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates where appropriate and add provisions governing use of steel shot.

Section 1. Seasons. (1) Doves: September 1 through September 30; October 5 [6] through October 28 [29]; November 30 [December 1] through December 5 [6].
(2) Woodcock: October 15 [1] through December 18 [4].

(3) Common snipe: October 15 [1] through December 18 [4].
(4) Wood duck: September 18 [12] through September 22 [16].

Section 2. Limits.

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

The possession limit is double the daily bag limit.

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

Section 4. Shooting Hours. (1) Doves: from 11 a.m. until sunset during the period September 1 through September 30 and October 5 [6] through October 28 [29]; from sunrise to sunset during the period November 30 [December 1] through December 5 [6].
(2) Common snipe and woodcock: from one-half (1/2) hour before sunrise to sunset.
(3) Wood duck: from one-half (1/2) hour before sunrise to sunset.

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

Section 6. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this regulation apply to the following areas:
(1) Ballard Wildlife Management Area, located in Ballard County.
(a) Doves: September 1 through September 30; and October 5 [6] through October 13 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.
(b) Woodcock and snipe: seasons closed.
(c) Wood duck: September 18 through September 22. Areas designated by signs are closed hunting.
(2) West Kentucky Wildlife Management Area, located in McCracken County.
(a) Doves: September 1 through September 30; and October 5 [6] through October 13 only.
(b) Woodcock and snipe: hunting permitted on tracts 2, 3, 6, and 7 only.
(c) All tracts designated by numbers followed by the letter "A" are closed to hunting.
(3) Central Kentucky Wildlife Management Area, located in Madison County.
(a) Doves: September 1 through September 30; and October 5 [6] through October 13 only.
(b) Woodcock and snipe: seasons closed.
(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.
(a) Doves: September 1 through September 30 and December 1 through December 5 [6] only.
(b) Woodcock and snipe: December 1 through December 5 [4] only.
(5) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties.
(a) Doves: postwide from September 1 through September 27 [21] and November 30 [December 1] through December 5 [6]. On designated areas [only] from September 28 [22] through September 30; October 5 through October 28 [October 6].
(b) Woodcock: postwide from November 28 [22] through December 13 [3 and January 3 through January 27]. On designated areas only from December 14 [4] through December 18 [31].
(c) Snipe: postwide from November 28 [22] through December 13 [3 and January 3 through January 31]. On designated areas only from December 14 [4] through December 18 [31].
(d) September wood duck: September 18 [13] through 22 [16] only. Hunting permitted during these permits in designated areas only.
(6) Paintsville Lake Wildlife Management Area located in Johnson and Morgan counties and Dewey Lake Wildlife Management Area located in Floyd County.
(a) Doves: September 1 through September 30; and October 5 [6] through October 13 only.
(b) Wood duck: September 18 [12] through September 22 [16].
(7) Closed areas:
(a) The hunting of doves, woodcock, and common snipe is prohibited on Camp Webb Refuge Area, Grayson Lake.
(b) Waterfowl hunting is prohibited on the following areas on Grayson Lake: the Camp Webb Refuge Area; the area north of Rosedale Point, Deer Creek Fork, west of Route 1496; within fifty (50) yards of the state park shoreline.
(8) Dove hunter guidelines on wildlife management areas. The department shall establish hunter density guidelines for dove hunting fields on department property. If those densities are reached, hunters shall be so advised and instructed that they may hunt at their own risk, disperse to other fields, or wait until hunter densities subside, when other hunters may be allowed to replace those leaving on a first-come, first-served basis. Any person behaving in an unsafe or uncooperative manner shall be immediately required to leave the premises.

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

Section 8. Use of Steel Shot. Only steel shot may be in possession when taking or attempting to take waterfowl statewide. [Except for the areas requiring use of steel shot identified in subsections (1) and (2) of this section, all provisions of 301 KAR 3:080, Prohibition of lead shot for waterfowl and dove hunting, apply.]
(1) Prohibition of lead shot for dove hunting. Lead shot is prohibited for the taking of doves on the Ballard, Swan Lake, Peal, Sloughs, Ohio River Islands, Duck Island and Kaler Bottoms Wildlife Management Areas. [Western steel shot zone. That area of Western Kentucky west of an eastern boundary described by the lines and/or roads as follows: The Purchase Parkway from Fulton, Kentucky, on the Kentucky-Tennessee border northeast to the Interstate 24 - Purchase

Parkway junction; northeast on I-24 to the Lyon County line; then on a line including all of Lyon, Caldwell and Hopkins Counties to Fredonia; north from Fredonia on US 641 to US 60 at Marion; north on US 60 to the Union County line; northeast and north along the Union County Henderson County lines to the Indiana-Kentucky border north of Newman, Kentucky.]

(2) Possession of lead shot shells.

(a) Persons hunting waterfowl shall not have lead shot shells in their possession.

(b) Persons hunting doves on wildlife management areas listed in subsection (1) of this section shall not have lead shot shells in their possession. [Bracken and Oldham Counties.]

Section 9. 301 KAR 3:080 is hereby repealed.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
RONALD E. GENTRY, Secretary
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 9, 1991 at 4 p.m.

STATEMENT OF EMERGENCY
601 KAR 12:060E

House Bill 11, the DUI bill, passed by the 1991 Extraordinary Session of the Kentucky General Assembly requires the Transportation Cabinet to promulgate an administrative regulation relating to hardship driver's licenses. This administrative regulation is to include the fee for the issuance of a hardship driver's license. Since the effective date of this Act is July 1, 1991, the required administrative regulation needs to be promulgated on an emergency basis in order to be effective in early July, 1991. The Transportation Cabinet should not be assessing a fee without the administrative regulation to back it up and it took several months to determine the appropriate issuance procedures and fee amount. This emergency administrative regulation will be replaced with an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 11, 1991.

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

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 12:060E. Hardship driver's license.

RELATES TO: KRS 189A.400 through 189A.460
STATUTORY AUTHORITY: KRS 189A.460
EFFECTIVE: July 26,1991
NECESSITY AND FUNCTION: KRS 189A.400 through 189A.460 provides for the issuance of a hardship driver's license to a person whose driving privilege has been withdrawn for a conviction of a first-time violation of KRS 189A.010 or a person who is under the age of twenty-one (21) years, who has been accused of a first-time violation of KRS 189A.010 and who did not refuse to take an alcohol concentration or substance test. The district court withdrawing the person's driving privilege has exclusive jurisdiction to decide whether the person shall be issued a hardship driver's license. The hardship driver's license is to be issued by the Transportation Cabinet. The circuit court clerks acting on behalf of the Kentucky Transportation Cabinet issue all motor vehicle operator's licenses. It is the Transportation Cabinet's intention that the circuit court clerks shall also issue the hardship driver's license. KRS 189A.460 requires the Transportation Cabinet to promulgate administrative regulations relating to the implementation of the hardship driver's license provisions of KRS Chapter 189A. Therefore, this regulation sets forth procedures to be followed in applying to the circuit court clerk for a hardship driver's license and for the circuit clerk to issue the license. It further sets forth the fee for the hardship driver's license, provides for cancellation of a hardship driver's license, and allows a replacement hardship driver's license to be issued.

Section 1. A person who has been given a court order authorizing the issuance of a hardship driver's license by the district court which withdrew his driving privilege, shall apply for the issuance of the license at the driver licensing issuance office of the circuit court clerk in his county of residence. The license to be issued by the circuit clerk shall be a photo license clearly designated "hardship" on the face of the license. He shall not be issued a hardship driver's license sooner than the 31st day of his ninety (90) day driving privilege withdrawal period imposed by the district court in accordance with KRS 189A.070 or 189A.200.

Section 2. When applying for the issuance of the hardship driver's license, the applicant shall present the district court order granting hardship driving privilege, the driving privilege withdrawal notice from the Transportation Cabinet, Division of Driver Licensing, and some form of identification to the driver licensing issuance office. If the applicant does not have the withdrawal notice from the Transportation Cabinet, Division of Driver Licensing, the circuit court clerk shall contact the Division of Driver Licensing to determine the date of expiration of the hardship driver's license.

Section 3. If the applicant for the hardship driver's license who has been charged with a first-time violation of KRS 189A.010 is under the age of eighteen (18) years, he shall not be issued the hardship driver's license until there are no more than sixty (60) days remaining in his driving privilege withdrawal period.

Section 4. (1) Only a person whose Kentucky operator's license has been suspended or revoked as a result of the current charge of driving while under the influence of alcohol or other impairing substances may be issued a hardship driver's license.

(2) If the applicant for a hardship driver's license is a new Kentucky resident who had his driving privilege withdrawn in another jurisdiction, he shall not be eligible for a hardship driver's license until the jurisdiction imposing the driving privilege withdrawal provides a statement that the person is eligible to have his driving privilege restored.

Section 5. The applicant for a hardship driver's license shall pay a five (5) dollar fee to the circuit court clerk for his photo hardship driver's license.

Section 6. The circuit court clerk shall attach the yellow copy of the court order to the hardship driver's photo license before it is given to the applicant. The hardship driver's license shall not be considered complete or official unless the copy of the court order is attached.

Section 7. If a valid hardship driver's license is lost or destroyed, the licensee may apply for a replacement photo license by presenting another copy of the court order and a five (5) dollar fee to the circuit court clerk in the county of his residence.

Section 8. When the person was convicted of driving under the influence of intoxicants or other substances in another state or licensing jurisdiction, the Kentucky court of jurisdiction for the purpose of determining if a hardship driver's license should be issued shall be the district court in his county of residence.

Section 9. (1) If the district court authorizes the issuance of the hardship driver's license, the circuit court clerk in the person's county of residence shall issue the hardship driver's license.

(2) If the Transportation Cabinet upon review of the person's complete driving history record determines that the person holding a hardship driver's license was not eligible to receive the license, i.e., he did not meet the requirements of KRS 189A.410, the Transportation Cabinet shall cancel the hardship driver's license and notify both the licensee and the district court of this action.

(3) The district court withdrawing the person's driving privilege as a result of the charge of first-time violation of KRS 189A.010 has exclusive jurisdiction over the issuance of a hardship driver's license. If another court were to inadvertently order that a hardship license be issued, the Transportation Cabinet shall cancel the hardship driver's license and notify both the licensee and the district court of this action.

(4) If the person is convicted of an additional offense which would cause the withdrawal of his driving privilege or reported by a court to have not satisfied an outstanding citation which would cause the withdrawal of his driving privilege, the Transportation Cabinet shall cancel the hardship driver's license and notify the licensee.

Section 10. The decal required by KRS 189A.430 shall be placed in the lower corner of the rear window on the driver's side in a motor vehicle which has a rear window. If the motor vehicle does not have a rear window, the decal shall be placed so that it is plainly visible from the rear of the motor vehicle.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: June 25, 1991
FILED WITH LRC: July 26, 1991 at 9 a.m.

STATEMENT OF EMERGENCY
904 KAR 2:006E

This emergency administrative regulation implements a federal clarification by adding an additional exemption to the Job Opportunities and Basic Skills (JOBS) Program. This exemption includes a parent or other relative who personally provides child care for a child under six (6) years of age unless the state IV-A agency assures child care will be guaranteed. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler for the July 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 2:006E. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.52, 205.10, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 45 CFR 233.90, 233.100, 250

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

EFFECTIVE: July 19, 1991

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

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

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

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

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

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

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

(d) Delivers JOBS related services to the participant.

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

(5) "JOBS" means a program which assists recipients of AFDC in obtaining the necessary

education and training that will lead to gainful employment and self-support.

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

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

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

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

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

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

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

Section 2. Residence and Citizenship. (1) Residence. A resident is anyone who:

(a) Is living in the state;

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

(c) Is not receiving AFDC benefits from another state.

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

(a) Citizens;

(b) Aliens lawfully admitted for permanent residence; or

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

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

(a) Death;

(b) Continued absence from the home;

(c) Physical or mental incapacity; or

(d) Effective October 1, 1990, unemployment.

(2) A married child living with his spouse in the home of his parents is not deprived of parental support or care.

(3) A married child living in the home of his parents but divorced or legally separated from his spouse is deprived of parental support if he is dependent on the parent and a parent is:

(a) Dead;

(b) Incapacitated;

(c) Unemployed; or

(d) Continually absent from the home.

(4) Continued absence from the home.

(a) To be eligible for AFDC, a needy child shall be physically separated from the parent and:

1. The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

2. The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.

(b) Absence may be voluntary or involuntary.

1. Voluntary absence includes:

a. Divorce;

b. Legal separation;

c. Marriage annulment;

d. Desertion of thirty (30) days or more;

e. Forced separation of seven (7) days or more; or

f. Birth out-of-wedlock.

2. Involuntary absence includes:

a. Commitment to a penal institution for thirty (30) days or more;

b. Long-term hospitalization;

c. Deportation; or

d. Single parent adoption.

(c) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(5) Incapacity.

(a) All determinations regarding whether a child has been deprived of parental support or care by reason of the physical or mental incapacity of a natural or adoptive parent shall be in conformance with federal regulations and the criteria set forth in this subsection.

(b) Each determination shall be based on a full consideration and assessment of all medical, social, and economic factors involving a particular claimant.

(c) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in a parent's inability to support or care for the child.

1. Incapacity exists in each case when the following criteria are met:

a. It is medically determined that one (1) parent has a physical or mental defect, illness or impairment which was:

(i) Present at the time of application; and

(ii) Which has continued or is expected to last for a period of at least thirty (30) calendar days. This may include a period in which the claimant is undergoing planned diagnostic studies or evaluation of rehabilitation potential; and

b. It is determined by nonmedical evaluation that such defect, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

2. Factors to be considered in making the medical determination shall include:

a. The claimant's medical history and subjective complaints regarding an alleged physical or mental defect, illness or impairment; and

b. Competent medical testimony relevant to:

(i) Whether a physical or mental defect, illness or impairment exists;

(ii) Whether the defect, illness or impairment is enough to reduce the parent's ability to support or care for a child; and

(iii) Whether the defect, illness or impairment is likely to last thirty (30) days. The thirty (30) days is not intended to be a "waiting period." Rather, expected duration is pertinent to causal relationship and substantiality.

3. Factors to be considered in making the nonmedical evaluation shall include:

a. The claimant's:

(i) Age;

(ii) Employment history;

(iii) Vocational training;

(iv) Educational background; and

(v) Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

b. The extent and accessibility of employment opportunities available in the claimant's area of residence.

4. In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of handicapped individuals shall be taken into account; and

a. Available printed materials that provide information regarding available employment opportunities shall be researched;

b. The local Department for Employment Service (DES) office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

c. The claimant shall be referred, if necessary, for further appraisal of his abilities.

5. A written report shall be made of the determination under this subsection.

6. Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055.

(6) Unemployment. The determination that a child is deprived of parental support due to the unemployment of a parent shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a prior labor market attachment.

(a) Principal wage earner (PWE). The PWE is the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application.

1. If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

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

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

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

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

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

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

(c) Prior labor market attachment (PLMA).

1. PLMA is met if the parent:

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

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

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

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

a. Participation in CWEP or WIN prior to October 1, 1990, and in JOBS after October 1, 1990, shall be considered as earning an income in determining PLMA.

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

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

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

1. Is on strike;

2. Is temporarily unemployed:

a. Due to weather conditions or lack of work;

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

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

3. Is unavailable for full-time employment;

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

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

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

7. Is not:

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

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

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

Section 4. Living with a Specified Relative. To be eligible for AFDC a needy child shall be living in the home of a relative as follows:

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

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

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

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

(b) Legal documents such as:

1. Hospital records;

2. Juvenile court records;

3. Wills; and

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

(c) Receipt of statutory benefits as a result

of the alleged parent's circumstances; or
(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:
1. School records;
2. Bible records;
3. Immigration records;
4. Naturalization records;
5. Church documents, such as baptismal certificates;
6. Passport;
7. Military records;
8. U.S. Census records; or
9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.
(e) Rebuttal of paternity.
1. Effective April 1, 1987, in cases in which the parent or, in the absence of the parent, the caretaker relative alleges the evidence present in paragraphs (a) or (b) of this subsection is erroneous and provides substantiation of the erroneous information, the parent or caretaker relative shall provide a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.
2. Presence of the sworn statement or affidavit will serve as rebuttal to the evidence present in paragraphs (a) or (b) of this subsection and a determination of paternity will not be acknowledged.
(4) Adoptive parents as well as the natural and other legally adopted children and other relatives of such parents.
(5) Husband or wife of any persons listed above even if the marriage may have terminated, providing termination occurred after the birth of the child.
(6) If the parent continues to exercise control over the child, a child is considered as living in the home even when temporarily absent for:
(a) Medical care;
(b) Attendance at boarding school;
(c) College or vocational school;
(d) Emergency foster care; or
(e) Short visits with friends or relatives.

Section 5. Age and School Attendance. (1) A child may be eligible for AFDC from birth to age eighteen (18).
(2) A child may be eligible to age nineteen (19) if:
(a) A full-time student in a secondary school; or
(b) The equivalent level of vocational or technical training; and
(c) Expected to complete the program prior to or during the month of their 19th birthday.
(3) Full- and part-time is defined in 904 KAR 2:016, standards for need and amount; AFDC.
(4) Unless he has indicated an intention not to reenter school, a child is considered in regular attendance in months in which he is not attending because of:
(a) Official school or training program vacation;
(b) Illness;
(c) Convalescence; or
(d) Family emergency.

Section 6. One Category of Assistance. (1) A child or adult relative shall not be eligible for AFDC if receiving supplemental security income (SSI).
(2) If a child who receive SSI meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility factors are met.

Section 7. Strikers. (1) A family shall be ineligible for benefits for any month in which the natural or adoptive parent, with whom the child is living is, on the last day of such month, participating in a strike; and
(2) No individual shall be considered eligible for benefits for any month if, on the last day of such month, such individual is participating in a strike.
(3) Strike shall be defined to include a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 8. Work Registration. (1) In a case based on the deprivation of unemployment, the PWE shall register for work with the DES if:
(a) He resides in a non-JOBS county; or
(b) He resides in a JOBS county and is exempt from participation as specified in Section 9(1)(e) of this regulation.
(2) Failure of the PWE to register for work shall result in removal of the needs of the sanctioned individual and the second parent, unless the second parent has volunteered or is participating in JOBS.

Section 9. Job Opportunities and Basic Skills (JOBS) Training Program. (1) Exemptions. Effective October 1, 1990, all AFDC recipients are required to participate in the JOBS program if the program is available in the county of residence unless the recipient:
(a) Is a child who:
1. Is under age sixteen (16); or
2. Attends, full time, an elementary secondary, vocational or technical school (unless he was enrolled in school through the JOBS program);
(b) Is ill and the illness or injury is serious enough to temporarily prevent entry into employment or training;
(c) Is incapacitated to the extent that the physical or mental impairment would prevent the recipient from participating in the JOBS program. This may include a period of recuperation after child birth if prescribed by a woman's physician;
(d) Is sixty (60) years old or older;
(e) Resides in a county which offers the JOBS program but in a location in which travel time to the JOBS activity would exceed two (2) hours round trip by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility;
(f) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity;
(g) Is working at least thirty (30) hours per week;
(h) Is pregnant and the child is expected to be born within the following six (6) month period;

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

(j) Is a full-time VISTA volunteer.

(k) Is the parent or other relative personally providing care for a child under six (6) years of age unless the state IV-agency assures that child care will be guaranteed.

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

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

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

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

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

(a) Education is provided:

1. Below the postsecondary level:

a. High school or equivalent;

b. Basic or remedial education; and

c. English as a second language; or

2. At the postsecondary level if:

a. The occupational assessment indicates that the participant has the aptitude to perform a specific job for which this education and training is required;

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

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

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

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

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

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

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

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

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

(5) JOBS participation requirements.

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

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

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

3. The needs of the family of the participant;

4. Any other relevant factors.

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

1. An employment goal for the participant;

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

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

4. Other needs of the family.

(c) Special participation requirements for education.

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

a. The parent is not otherwise exempt;

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

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

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

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

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

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

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

(a) At least half time, as defined by the institution;
(b) A JTPA-funded program, if in training;
(c) A public source or private institution that is licensed by the Kentucky Board for Proprietary Education or recognized by the appropriate regulatory agency or licensing body for the state in which the training is located; or
(d) Other education or training which would otherwise be an approved JOBS activity, for example:
1. GED;
2. Literacy;
3. Other approved education attended less than half time.
(7) Good and satisfactory progress.
(a) Each participant in an education or training component shall meet good and satisfactory progress requirements. Good and satisfactory progress criteria for all JOBS educational activities and approved self-initiated education is established by the educational institution. Good and satisfactory progress shall be measured and reported to the DSI at the following intervals:
1. Literacy, adult basic education, or general educational development. Good and satisfactory progress is measured at the end of seventy-five (75) hours or the 12th month of instruction, whichever comes first.
2. High school. Good and satisfactory progress shall be measured at the end of each semester or quarter.
3. Technical. Good and satisfactory progress shall be measured at regularly scheduled intervals, as defined by the institution.
4. Proprietary school. Good and satisfactory progress shall be measured at the end of each regularly scheduled grading period as defined by the institution, never to exceed a twelve (12) month period.
5. College. Good and satisfactory progress shall be measured at the end of a semester or quarter.
6. DES components. Good and satisfactory progress shall be measured on a monthly basis.
(8) Conciliation. A conciliatory meeting shall be conducted in the following instances:
(a) At the request of a JOBS participant;
(b) At the request of a component provider; or
(c) When a situation is identified which could result in a sanction (as specified in subsection (10) of this section).
(d) The DSI, the DES, or both agencies jointly shall conduct the conciliatory meetings. During the meetings, the agency shall determine if additional services are needed to assist with JOBS participation. Participation shall be monitored for thirty (30) days following the initial meeting to ensure that the dispute has been resolved. The thirty (30) day period may be extended for an additional thirty (30) days, if necessary.
(e) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.
(9) Good cause.
(a) Good cause for noncompliance in the JOBS program or refusal to accept employment shall be found if:
1. The participant is personally providing care for a child under age six (6) and employment or JOBS participation would require the individual to work more than twenty (20) hours per week;
2. Necessary child care is not available;
3. Employment would result in a net loss of cash income;
4. The individual is unable to engage in employment or training for mental or physical reasons including participation in a drug and alcohol rehabilitation program;
5. Unavailability of transportation (including unavailability due to costs which exceed the reimbursement) with no readily accessible alternative means of transportation available;
6. Travel time to the work site or JOBS component site exceeds two (2) hours round trip daily;
7. Illness of another household member requiring the presence of the participant;
8. The participant is temporarily incarcerated;
9. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs occurs;
10. Work demands or conditions render continued employment unreasonable. Examples are:
a. Consistently not being paid on schedule; or
b. The presence of a risk to the individual's health or safety;
11. Wage rates are decreased subsequent to acceptance of employment;
12. The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize;
13. A household emergency occurs, such as:
a. Death of a member of the immediate family;
b. Entry into a spouse abuse center;
c. Natural disasters;
d. Court appearance;
e. Victim of crime; or
f. Flooded basement; or
14. The participant receives temporary military assignment.
(b) The duration of good cause criteria may vary according to individual circumstances.
(10) Sanctions.
(a) When an AFDC recipient fails to comply with the requirements of the JOBS program, he shall be subject to JOBS and AFDC sanctions. Failure to comply shall be found when the participant:
1. Fails without good cause to participate in the required interview, assessment, and employability plan activities;
2. Fails without good cause to participate in the program;
3. Refuses without good cause to accept employment; or
4. Terminates employment or reduces earnings without good cause.
(b) Persons who have failed to comply without good cause shall be sanctioned, as follows:
1. The participant is excluded from JOBS activities and services;
a. For the first failure to comply, until the failure to comply ceases;
b. For the second failure to comply, until the failure to comply ceases, or three (3) months, whichever is longer; and
c. For any subsequent failure to comply, until the failure to comply ceases, or six (6) months, whichever is longer.
2. In determining the amount of the AFDC grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS sanctions begin. In a case based on unemployment, the agency shall not

take into account the needs of the sanctioned individual and the second parent, unless the second parent is participating in JOBS.

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

Section 10. Cooperation in Child Support Enforcement Activities. (1) Inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child made to a protective payee.

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

(3) The Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

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

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

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

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

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

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

(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made.

Section 11. Potential Entitlement for other Programs. (1) All applicants or recipients shall apply for any benefit if potential entitlement exists.

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

Section 12. Furnishing of Social Security Account Numbers. All applicants or recipients shall furnish social security account numbers.

Section 13. Assignment of Rights to Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any child support owed for the child not to exceed the amount of AFDC payments made to the recipient.

Section 14. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

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

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

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 18, 1991
FILED WITH LRC: July 19, 1991 at 4 p.m.

STATEMENT OF EMERGENCY
905 KAR 8:150E

905 KAR 8:150E is a regulation establishing the boarding home registration process pursuant to KRS 216B.305. KRS 216B.990(7) imposes penalties for existing and new boarding homes that fail to register within six months of July 13, 1990. The cabinet through area development district offices is receiving inquiries regarding the registration process. Therefore, in order to effectively implement the registration process the Cabinet for Human Resources needs to have this regulation become effective immediately. The emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 8:150E. Board home registration.

RELATES TO: KRS 216B.300-320, 216B.990(7)
STATUTORY AUTHORITY: KRS 194.050, 216B.300(1), 216B.305(1)
EFFECTIVE: July 23, 1991
NECESSITY AND FUNCTION: KRS 216B.305 mandates the Cabinet for Human Resources to register boarding homes, as defined in KRS 216B.300(4), on an annual basis. In accordance with KRS 216B.300(1) and 216B.305(1) the Department for Social Services has drafted procedures that enable provisions of KRS 216B.305 to be implemented.

Section 1. Registration Process. (1) The area development district office shall forward the boarding home registration form, herein incorporated by reference, to the boarding home;
(a) Upon request pursuant to the public notice; or
(b) Upon identification of the boarding home by other agencies.
(2) The registration form shall be returned to the appropriate area development district office, which shall forward a receipt of registration to the boarding home for their records.
(3) The area development district office shall forward copies of all pertinent documents, including notification of failure to return the registration form, to the Division of Aging Services so that a list of registered boarding homes may be maintained to comply with KRS 216B.310.

Section 2. Renewal Registration. Registration shall be on an annual basis from January 1, through December 31. Registered boarding homes shall receive a renewal notice each January from the area development district office.

Section 3. Material Incorporated by Reference. (1) Forms necessary for the implementation of boarding home registration are herein incorporated by reference.
(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 1, 1991
FILED WITH LRC: July 23, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:004E

This emergency administrative regulation is being amended to comply with mandates in the Omnibus Budget Reconciliation Act of 1990 as follows: to create a new eligibility group of children born after September 30, 1983 who have attained six (6) years of age but have not attained nineteen (19) years of age with income up to 100 percent of the federal poverty income level; to show victims compensation fund payments are excluded as income and resources; to show the veterans $90 reduced benefit is excluded as income in eligibility determinations but is still considered as income in the posteligibility determination with a $90 personal needs allowance to be given; and to show income and resources necessary for an approved plan for achieving self-support (PASS), impairment related work expense (IRWE) deduction, and the blind work expense (BWE) deduction are excluded as income and resources. The regulation is also being amended to provide that the room and board add-on for hospice patients in nursing facilities will be paid at ninety-five (95) percent of the Medicaid rate for the facility; to show that for aged, blind, or disabled couples, living apart for any reason, both concurrently applying for MA, each case is worked as an individual in the month following the month of separation; and to comply with KRS Chapter 13A drafting requirements. This action must be taken on an emergency basis to comply with federal mandates in a timely manner. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435, 42 USC 1396a, b, c, d, p, r-5
EFFECTIVE: July 23, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Definitions. The following definitions shall be applicable:
(1) "Spouse" means a person legally married to another under state law.
(2) "Institutionalized spouse" means an individual who is in a medical institution or nursing facility, or participates in a home and community based services (HCBS) waiver program, with a spouse who is not in a medical institution or nursing facility or HCBS waiver program so long as the [such] individual is likely to be in the medical institution or nursing facility or waiver program for at least thirty (30) consecutive days while the community spouse remains out of a medical institution or nursing facility or HCBS waiver program.
(3) "Community spouse" means the spouse of an institutionalized spouse, who remains at home in the community and is not living in a medical institution or nursing facility or participating in an HCBS waiver program.
(4) "Medical institution or nursing facility" means a hospital, [skilled] nursing facility, or [intermediate care facility (including] intermediate care facility for the mentally retarded[)].
(5) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home (or both) and may include thirty (30) consecutive days of receipt of home and community based waiver services (or a combination of both). A continuous period of institutionalization terminates when an individual has been out of a medical institution or nursing facility, or HCBS waiver program, for thirty (30) consecutive days.
(6) "Likely to remain" in an institution means a determination by the cabinet based on a physician's written statement that an individual in a medical institution, nursing facility, or HCBS waiver program is expected to remain in that setting or program for thirty (30)

consecutive days.

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

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

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

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

(11) "Resource assessment" means the assessment, at the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse upon request by either spouse, of the joint resources of a couple when a member of the couple enters a medical institution or nursing facility or becomes a participant in an HCBS waiver program.

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

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

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

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

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

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

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

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

(20) "Otherwise available income" means income to which community spouses have access and control. If the community spouse is working, the amount of mandatory deductions such as taxes is not considered available; court ordered payments and other obligations such as child support are also deducted from otherwise available income.

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

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

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

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

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

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

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

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

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

(3) Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall be [is] excluded from consideration. [Effective with regard to determinations of eligibility made on or after May 1, 1990,] The value of property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is essential for self-support for the individual or spouse, or family group in the instance of families with children, and which shall be [is] used in a trade or business or by the individual or member of the family group as an employee is excluded from consideration as a resource. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or nonincome producing) may be excluded from consideration for six (6) months if a good faith effort is

being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

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

(5) Burial reserves of up to $1,500 per individual, which may be in the form of burial agreement(s) (prepaid burials or similar arrangements), trust fund(s), life insurance policies, or other identifiable funds shall be [are] excluded from consideration. The cash surrender value of life insurance shall be [is] considered when determining the total value of burial reserves. When burial funds are commingled with other funds, the applicant has up to thirty (30) days to separately identify the burial reserve amount. [Effective with regard to determinations of eligibility made on or after August 1, 1990,] Interest or other appreciation of value of an excluded burial space shall be [is] excluded as income or a resource so long as the [such] amount is left to accumulate as a part of the burial space.

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

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

(8) The following exclusions shall be [are] also applicable as stated:

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

(b) Applicable with regard to determinations of eligibility made on or after July 1, 1991, income and resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support (PASS), Impairment Related Work Expense (IRWE) deduction, or the Blind Work Expense (BWE) deduction shall be [are] excluded from consideration.

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

(d) Disaster relief assistance shall be [is] excluded from consideration.

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

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

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

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

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

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

(j) Federal Republic of Germany reparation payments shall not be considered available in the eligibility and posteligibility treatment of income and resources of individuals in nursing facilities or hospitals or who are receiving home and community based services under a waiver.

(k) Social Security cost of living adjustments on January 1 of each year shall not be considered as available income for qualified Medicare beneficiaries until after the month following the month in which the official poverty guideline promulgated by the Department of Health and Human Services, U.S. Government, is published.

(l) Applicable with regard to determinations of eligibility made on or after July 1, 1991, any amount received from a victims compensation fund established by a state to aid victims of crime shall be excluded as income. To the extent that the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime, the amount is completely excluded as a resource; otherwise the resource shall be excluded as a resource for nine (9) months for pain and suffering.

(m) Applicable with regard to determinations of eligibility made on or after July 1, 1991 through August 31, 1991, veterans receiving the reduced ninety (90) dollars Veterans Administration (VA) benefit shall have the ninety (90) dollars excluded as income in the Medicaid eligibility determination but the ninety (90) dollar payment shall be considered

as income in the posteligibility determination process.

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

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

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

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

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

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

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

(2) The following special factors shall be [are] applicable for pregnant women, infants and children eligible pursuant to Section 1902(1) of the Social Security Act:

(a) [Effective with regard to determinations of eligibility made on or after July 1, 1990,] Pregnant women and children under age one (1) may have family income up to, but not to exceed, 185 percent and children age one (1) or over but under age six (6) may have family income up to, but not to exceed, 133 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services (DHHS), United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of March 1 of the particular state fiscal year;

(b) Applicable with regard to determinations of eligibility for periods beginning on or after July 1, 1991, children born after September 30, 1983, who have attained six (6) years of age but have not attained nineteen (19) years of age may have family income up to, but not to exceed, 100 percent of the official DHHS poverty income guidelines.

(c) [(b)] Pregnant women, infants and children who would be eligible under provisions of 42 USC 1396a(1) of the Social Security Act except for income in excess of the allowable standard shall [may] not become eligible by spending down to the official poverty guidelines;

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

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

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

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

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

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

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

(d) Resources shall be limited to no more than

twice the allowable amount for the federal Supplemental Security Income (SSI) program.

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

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

(2) Income protected for basic maintenance, effective March 1, 1991, is forty (40) dollars monthly plus any mandatory, nondiscretionary deductions from income in lieu of the figure shown in Section 4 of this regulation. Mandatory nondiscretionary deductions include such items as minimum state and federal taxes, but does not include items such as court-ordered child support, alimony, and similar payments resulting from actions by the recipient. For individuals receiving the ninety (90) dollars reduced Veterans Administration (VA) improved pension benefits, the personal needs allowance is ninety (90) dollars effective with the month that the VA payment is reduced. Applicable for determinations of patient liability on or after September 1, 1991, amounts excluded under a plan to achieve self-support (PASS), as an income related work expense (IRWE) or blind work expense (BWE) shall be considered an increased personal needs allowance for all Medicaid recipients except those for whom a quarterly spend-down process is applicable. All income in excess of the amount protected for basic maintenance is applied to the cost of care except as follows:

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

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

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

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

(5) Effective with regard to determinations of eligibility made on March 16, 1989 and thereafter, Supplemental Security Income (SSI) or state supplementation payments received by specified institutionalized Medicaid eligible individuals in accordance with 42 USC 1382(e)(1)(G) shall be excluded from consideration as either income or a resource, and such payments may not be used in the posteligibility process to increase the patient liability.

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

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

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

Section 10. Pass-through Cases. Increases in social security payments due to cost of living increases but for which the individual would be eligible for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements. Beginning on November 1, 1986, the additional amount specified in 42 USC 1383c(b) shall be disregarded, i.e., that amount of social security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) such individuals would be

eligible for federal supplemental security income benefits; eligibility as a result of such disregard shall not exist prior to July 1, 1986. To be eligible, applicants must apply by July 1, 1988.

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

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

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

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

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

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

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

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

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

(4) In cases of aged, blind, or disabled couples, living apart for any reason [other than institutionalization], both of whom are concurrently applying for or receiving MA only, income and resources are considered in relation to resource and income limitations for a family size of <u>one (1)</u> [two (2)], or if other dependents live with either spouse, the family size including such dependents <u>in the month following the month of separation.</u> [, but only for the first six (6) months after the month of separation, that such couple lives apart; however, if mutual consideration of income and resources causes the individuals to lose eligibility as a couple, eligibility for the individuals is determined in accordance with subsection (5) of this section. If the separation is due to the institutionalization of a spouse, mutual consideration of income for the institutionalized spouse ceases in the month of separation and for the community spouse in the month after the month of separation but resources are considered mutually available to each other the month of separation, and for the six (6) months following that month unless such would act to preclude eligibility of the individual in long-term care (except when the resource rule shown in Section 21 of this regulation is applicable due to a continuous period of institutionalization beginning on or after September 30, 1989).]

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

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

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

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

twenty-one (21) in September, 1980, and was MA eligible at that time.

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

(10) When a recipient (but not including a child) in a family case has income and resources considered in relation to family size and enters a long term care facility, his income and resources are considered in the same manner as previously for up to one (1) year with, effective with regard to determinations of eligibility made on or after March 1, 1991, the individual allowed the basic maintenance standard as shown in Section 6(2) of this regulation. When a child in a family case is in the long term care facility, eligibility of the child is determined in the same manner for up to a year but his liability for the cost of care is determined by allowing to the child from his own income the basic maintenance standard as shown in Section 6(2) of this regulation and considering the remainder available for the cost of care. (Note: in this situation any welfare payment made to the child is disregarded when determining liability for cost of care.) The eligibility of the individual, with regard to income and resources, shall be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

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

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

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

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

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

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

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

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

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

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

(b) When the grandparent (of a minor parent) or the stepparent (spouse of the parent with children) are to be included in the case, eligibility of the minor parent or spouse cannot be determined separately but must be determined in combination with that of the grandparent or stepparent. The combined eligibility of the minor parent and grandparent or spouse and incapacitated stepparent is determined in the

usual way including the available income of the grandparent or stepparent, the minor parent or spouse of the stepparent, and the grandchild(ren) or stepchild(ren) as appropriate. When the grandparent or incapacitated stepparent is included in the case, the amount excluded for the needs of the grandparent or stepparent in the determination of available income in subsection (1) of this section must be considered as available income for purposes of this determination of eligibility. If there is no excess, the minor parent and grandparent or spouse and incapacitated stepparent are eligible; if there is an excess, the excess amount may be spent down in the usual manner.

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

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

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

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

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

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

Section 14. Treatment of Lump-sum Income. The following policy is effective with regard to determinations of eligibility made on or after August 1, 1990: for adult related cases, lump-sum income is counted as income in the month received to the extent feasible; any portion of the income remaining is considered as a resource for the following months and considered in relation to resource limitations; the exception to the treatment of lump sum income is specified in Section 2(8)(i) of this regulation; for AFDC related cases, lump sum income is divided by the medically needy income level and prorated over the resultant number of months. Effective February 1, 1989, lump sum income for individuals eligible under the federal poverty level standards specified in Section 5(2) and (3) of this regulation would be divided by the appropriate standard for the eligible group and prorated over the resultant number of months.

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

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

(3) An individual shall not be ineligible for medical assistance or an institutional type of service by virtue of subsection (1) or (2) of this section to the extent that the conditions specified in 42 USC 1396p(c)(2)(B), (C) and (D) or Section 21 of this regulation are met, nor shall an individual be ineligible for medical assistance or an institutional type of service due to transfer of resources for less than fair market value except in accordance with this section.

(4) The disposal of a resource, including

liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual shows the transfer was in accordance with 42 USC 1396p(c)(2)(B) or (C)(i) or presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is in accordance with 42 USC 1396p(c)(2)(B) or (C)(i) or is for some reason other than to qualify for medical assistance or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value. Notwithstanding the preceding, if the assessed agricultural value is used for tax purposes the transfer is required to be for an amount equal to the fair market value.

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

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

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

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

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

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

(1) Usual institutional deeming rules shall be applicable.

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

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

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

(5) In the posteligibility determination of available income the personal needs allowance includes, effective March 1, 1991, any mandatory, nondiscretionary deductions from income (such as state and federal taxes but not including such items as court-ordered child support, alimony, and similar payments resulting from actions by the recipient).

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

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

(2) When eligibility is determined for an institutionalized monthly spend-down case, the attributed cost of care against which monthly available income of the hospice participant shall be applied shall be the hospice routine

home care per diem (for the hospice providing care) as established by the Medicare program plus the room and board rate (applicable for determinations of eligibility made on or after September 1, 1991, the private pay rate) for the nursing facility [appropriate level of care (i.e., skilled nursing or intermediate care)].

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

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

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

(6) In the posteligibility determination of available income the personal needs allowance includes, effective March 1, 1991, any mandatory, nondiscretionary deductions from income (such as state and federal taxes but not including such items as child support, alimony, and similar payments resulting from actions by the recipient).

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

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

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

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

(4) Usual institutional deeming rules shall be applicable.

(5) In the posteligibility determination of available income the personal needs allowance includes, effective March 1, 1991, any mandatory, nondiscretionary deductions from income (such as state and federal taxes but not including such items as child support, alimony, and similar payments resulting from actions by the recipient).

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

Section 20. Resource Assessment. Pursuant to 42 USC 1396r-5(c)(1)(B), an assessment of the joint resources of an institutionalized spouse and the community spouse shall be made upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon receipt of relevant documentation of resources. The cabinet shall complete the assessment within forty-five (45) days when the necessary documentation or verification is provided in a timely manner. When the resource assessment is complete, each spouse shall receive a copy of the assessment and notification that the right of appeal of such assessment shall exist at such time as the institutionalized spouse applies for medical assistance.

Section 21. Protection of Income and Resources of Couple for Maintenance of Community Spouse. 42 USC 1396r-5, provides for special treatment of income and resources for certain institutionalized spouses. The income eligibility and posteligibility provisions are effective October 1, 1989 for persons institutionalized on or after September 30, 1989. The resource provisions are effective with regard to determinations of eligibility made on or after October 1, 1989 for institutionalized persons beginning a continuous period of institutionalization on or after September 30, 1989.

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

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

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

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

(b) Attribution of income. In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined or redetermined to be eligible for medical assistance, except as otherwise provided in this section and regardless of any state laws relating to community property or the division of marital property, the provisions of 42 USC 1396r-5(b)(2)(A), (B), (C), and (D), shall be applicable.

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

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

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

1. The state spousal resource standard; and, if applicable

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

3. An additional amount designated by a hearing officer.

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

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

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

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

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

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

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

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

1. A personal needs allowance of forty (40) dollars plus, effective March 1, 1991, any mandatory, nondiscretionary deductions from income (such as court-ordered child support, alimony and similar payments resulting from actions by the recipient);

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

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

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

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

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

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

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

(b) Establishment of the community spouse resource allowance. The community spouse resource allowance is set at $60,000, to be increased for each calendar year after 1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the

calendar year involved; for an individual, the allowance may be a higher amount established by a hearing officer, or a higher amount transferred under a court order as specified in paragraph (c) of this subsection.

(c) Transfers under court orders. As specified in 42 USC 1396r-(f)(3), if a court has entered an order against an institutionalized spouse for the support of a community spouse, the usual prohibition against disposal of assets for less than fair market value shall not apply to amounts of resources transferred pursuant to such order for the support of the spouse of a family member.

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

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

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

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

a. The community spouse monthly income allowance;

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

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

d. The determination of the community spouse resource allowance.

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

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

Section 22. Effective Date. The amendments to this regulation shall be effective with regard to determinations of eligibility made on or after July [January] 1, 1991 except as specified in Sections 6 and [, 16,] 17[, 18, and 21] of this regulation.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1991
FILED WITH LRC: July 23, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:011E

This emergency administrative regulation is being amended to comply with mandates in the Omnibus Budget Reconciliation Act of 1990 which creates two (2) new eligibility groups for Medicaid. The mandated groups are children born after September 30, 1983 who have attained six (6) years of age but have not attained nineteen (19) years of age with income up to 100 percent of the federal poverty income level, and disabled widows, widowers, and disabled surviving divorced spouses, who would be eligible for SSI except for entitlement to an old-age, survivors, and disability insurance benefit resulting from a change in the definition of disability. The regulation is also being amended to comply with a federal policy clarification concerning the test for eligibility of mandatory AFDC-UP recipients. This action must be taken on an emergency basis to comply with federal mandates in a timely manner. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on January 17, 1991. This regulation contains the two new eligibility groups mandated by the Omnibus Budget Reconciliation Act of 1990 and the federal policy clarification concerning the test for eligibility of mandatory AFDC-UP recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:011E. Technical eligibility requirements.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435, 45 CFR 233.100, 42 USC 402, 416, 423, 1382c, 1395i, 1396a, b, c, d, PL 99-603
EFFECTIVE: July 23, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medical Assistance, referred to as MA, to Kentucky's indigent citizenry. This

regulation sets forth the technical eligibility requirements of the MA Program.

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

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

(2) Children in psychiatric hospitals, psychiatric residential treatment facilities, or medical institutions for the mentally retarded;

(3) Pregnant women;

(4) Children of unemployed parents;

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

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

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

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

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

(10) [Effective July 1, 1987,] Qualified severely impaired individuals as specified in 42 USC 1396a(a)(10)(A)(i)(II) and Sections 2, 3 and 4 of P.L. 99-643 (to the extent such coverage is mandatory in this state);

(11) [Effective July 1, 1987,] Individuals who lose SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in child's insurance benefits based on disability as specified in Section 6 of P.L. 99-643;

(12) [Effective February 1, 1989,] Individuals specified in Section 9116 of P.L. 100-203 who lose SSI or state supplementation payments as a result of receipt of benefits under 42 USC 402(e) or (f), would be eligible for SSI or SSP except for such benefits, and are not entitled to hospital insurance benefits under the Medicare program;

(13) [Effective with regard to determinations of eligibility for periods beginning on or after July 1, 1990,] Women during pregnancy (and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy), and infants and children under six (6) years of age, as specified in 42 USC 1396a(l)(1), subject to the following:

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

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

(14) Applicable with regard to determinations of eligibility for periods beginning on or after July 1, 1991, children born after September 30, 1983, who have attained six (6) years of age but have not attained nineteen (19) years of age as specified in 42 USC 1396a(l)(1);

(15) [(14)] Effective with regard to determination of eligibility for periods beginning on or after January 1, 1991, participants in a work supplementation program under the Title IV-A program (Aid to Families with Dependent Children (AFDC)) and any child or relative of the participating individual (or other individual living in the same household as the participating individual) who would be eligible for AFDC if there was no work supplementation program; and

(16) Applicable with regard to determinations of eligibility for periods beginning on or after January 1, 1991, disabled widows, widowers and disabled surviving divorced spouses, who should be eligible for SSI except for entitlement to an old-age, survivors, and disability insurance (OASDI) benefit resulting from a change in the definition of disability.

Section 2. The Medically Needy. Other individuals (including children as shown in Section 1(7) of this regulation), and pregnant women meeting income and resource standards of the medically needy program), meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the Cabinet for Human Resources. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy; a woman who, while pregnant, is

eligible for, has applied for, and has received medical assistance, shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated).

Section 3. Qualified Medicare Beneficiaries and Qualified Disabled Working Individuals. (1) [Effective January 1, 1989,] Coverage is extended to qualified Medicare beneficiaries as specified in 42 USC 1396a(a)(10)(E), subject to the income and resource limitations shown in 907 KAR 1:004, and for the scope of benefits specified in 907 KAR 1:006. A qualified Medicare beneficiary must be eligible for and receiving Medicare Part A benefits, and may be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made but not retroactively and not for the month in which the determination is made.

(2) [Effective July 1, 1990,] Qualified disabled working individuals as defined in 42 USC 1396i-2 and 42 USC 1396d(s) of the Social Security Act shall be eligible under Medicaid for payment of their Medicare Part A premiums as shown in 907 KAR 1:006.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) A blind individual must meet the definition of blindness as contained in 42 USC 416 and 42 USC 1382c relating to RSDI and SSI.

(7) A disabled individual must meet the definition of permanent and total disability as contained in 42 USC 423 and 42 USC 1382c relating to RSDI and SSI.

(8) Families who lose AFDC eligibility on or after October 1, 1990 solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to twelve (12) months of extended medical assistance for family members included in the AFDC grant prior to losing AFDC eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods. Each transitional benefit period has specified eligibility and reporting requirements.

(a) The first transitional six (6) month benefit period begins with the month the family became ineligible for AFDC. To be eligible for this transitional benefit period, the family shall have correctly received AFDC in three (3) of the six (6) months immediately preceding the month the family became ineligible for AFDC; have a dependent child living in the home; and

meet the reporting requirements relating to earnings and child care costs no later than the 21st day of the fourth month. When the family no longer has a dependent child living in the home, medical assistance for all family members, except the former dependent child, shall be terminated the last day of the month the family no longer includes a dependent child, with eligibility for the former dependent child(ren) determined in accordance with usual program requirements. If the reporting requirements are not met, the medical assistance benefits shall be denied for the second transitional six (6) month benefit period.

(b) To continue to receive medical assistance for the optional second transitional six (6) month benefit period, the family shall meet the following conditions: received medical assistance for the entire first transitional six (6) month period and met the reporting requirements; have a dependent child living in the home; gross income minus child care cost is less than 185 percent of the federal poverty income level; meet the reporting requirements no later than the 21st day of the fourth month, the seventh month, and the tenth month; and during the immediately preceding three (3) months the caretaker relative was employed or if unemployed in any one (1) or more months, it was due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid program. When a family no longer has a dependent child living in the home, medical assistance for all family members, except the former dependent child, shall be terminated the last day of the month the family no longer includes a dependent child, with the eligibility for the former dependent child(ren) determined in accordance with usual program requirements. If the family's income exceeds the income standard or does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid program, the medical assistance shall be terminated the last day of the appropriate reporting month.

(c) Good cause exists under the following circumstances: the specified relative was out-of-town for the reporting month; an immediate family member living in the home was institutionalized or died during the reporting month; the assistance group was the victim of a natural disaster such as flood, storm, earthquake or serious fire; or the assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form.

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

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

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

(12) The following citizenship and residency requirements shall be applicable:

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

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

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

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

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

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

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

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

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

3. Pregnant women may be eligible for

pregnancy related services only; and

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

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

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

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

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

(16) A responsible relative (but not a child) sanctioned (removed) from an AFDC or AFDC related medical assistance only case due to failure to meet a technical eligibility requirement shall not be eligible for medical assistance as a medically needy individual unless the [such] individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the [such] individual has been sanctioned.

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

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

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

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

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

Section 7. Application for Other Benefits. As a condition of eligibility for medical assistance, applicants and recipients shall [must] apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause shall be considered to exist when the [such] benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits shall include, but not be limited to, veterans' compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the federal law providing for the [such] benefits shows the benefit to be optional and that the potential applicant or recipient for the [such] benefit need not apply for the [such] benefit when to do so would, in his opinion, act to his disadvantage.

Section 8. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the Cabinet for

Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 9. Third Party Liability as a Condition of Eligibility. Any individual (except as further specified in this section) applying for or receiving medical assistance shall be required as a condition of eligibility to cooperate with the Cabinet for Human Resources in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless the [such] individual has good cause for refusing to cooperate as determined by the cabinet taking into consideration the best interests of the individuals involved. A failure of the individual to cooperate without good cause shall result in ineligibility of the individual. A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 10. Provision of Social Security Numbers. Each applicant for or recipient of medical assistance shall be required to provide a social security number as a condition of eligibility except as provided in this section. However, no one shall be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration when appropriate application for such number has been made. [Effective with regard to determinations or redeterminations of eligibility on or after June 1, 1990,] If the specified relative refuses to cooperate with obtaining a social security number for the newborn child or other dependent children, the specified relative shall be ineligible due to failure to meet technical requirements. The newborn child or other dependent may still be eligible for medical assistance if financial eligibility requirements are met.

[Section 11. Effective Date. The amendments to this regulation shall be effective with regard to determinations of eligibility made on or after January 1, 1991.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1991
FILED WITH LRC: July 23, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:012E

This emergency administrative regulation is being amended to comply with mandated requirements in the Omnibus Budget Reconciliation Act of 1991 which are effective for services provided on or after July 1, 1991 as follows: Medicaid eligible infants who have not attained the age of one (1) year are to be covered for medically necessary inpatient hospital services without limitations on length of stay or admissions; and Medicaid eligible children under the age of six (6) are to be covered in a disproportionate share hospital for medically necessary inpatient hospital services without limitations on length of stay or admissions. This action must be taken on an emergency basis to comply with federal mandates which are effective July 1, 1991. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:012E. Inpatient hospital services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.10, 42 USC 1396, a, b, d, r-4
EFFECTIVE: July 24, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to inpatient hospital services for which payment shall be made by the Medical Assistance program in behalf of both the categorically needy and the medically needy.

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

Section 2. Exceptions to Length of Stay. The following exceptions are applicable with regard to medically necessary inpatient hospital services provided on or after July 1, 1991:

(1) For infants under the age of one (1), there shall be no limits on length of stay or number of admissions; and

(2) For children under the age of six (6) in a disproportionate share hospital, there shall be

no limit on the length of stay or number of admissions.

Section 3. [2.] Covered Admissions. Admissions for which payment is made shall be limited to those primarily indicated in the management of acute or chronic illness, injury or impairment, or for maternity care that could not be rendered on an outpatient basis. Admissions relating to only observation or diagnostic purposes shall not be covered. Cosmetic surgery shall not be covered except as required for prompt repair of accidental injury or for the improvement of the functioning of a malformed or diseased body member.

Section 4. [3.] Inpatient Hospital Services not Covered by the Medical Assistance Program. (1) Those services which are not medically necessary to the patient's well-being, such as television, telephone and guest meals.

(2) Private duty nursing.

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

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

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

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

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

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

(c) Circumcision.

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

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

(f) Exam under anesthesia (pelvic).

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

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

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

(j) Hymenotomy.

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

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

(m) Myringotomy with or without tubes, otoplasty.

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

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

(p) Tenotomy hand or foot.

(q) Vasectomy.

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

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1991
FILED WITH LRC: July 24, 1991 at 9 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:013E

This emergency administrative regulation is being amended as follows: (1) to comply with mandated requirements in the Omnibus Budget Reconciliation Act of 1990, effective for services provided on or after July 1, 1991, to cover without limitations on length of stay or admissions and make a payment adjustment for medically necessary inpatient hospital services for Medicaid eligible infants who have not attained the age of one (1) year in all Medicaid participating hospitals and Medicaid eligible children under the age of six (6) in disproportionate share hospitals; (2) the HICAP methodology is revised by providing for minimum payments of 5.25 percent of operating costs with facilities to receive not less than five (5) percent of operating costs and $100,000; and (3) to make some technical policy clarifications in the incorporated by reference Inpatient Hospital Reimbursement Manual. This action must be taken on an emergency basis to comply with federal mandates which are effective July 1, 1991. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on April 18, 1991. This regulation contains the mandated requirements in the Omnibus Budget Reconciliation Act of 1991, effective for services provided on or after July 1, 1991, to cover without limitations on length of stay or admissions and make a payment adjustment for medically necessary inpatient hospital services for Medicaid eligible infants who have not attained the age of one (1) year in all participating hospitals and Medicaid eligible children under the age of six (6) in disproportionate share hospitals. This emergency administrative regulation shall be replaced by an ordinary administrative regulatio filed with the Regulations Compiler on or about July 19, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services.

RELATES TO: KRS 205.520, 205.575
STATUTORY AUTHORITY: KRS 194.050, 20 CFR

405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4

EFFECTIVE: July 24, 1991

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. 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. KRS 205.575 provides for hospital indigent care assurance program (HICAP) payments. This regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised July [April] 1, 1991, [and amended August 1, 1990,] which is incorporated by reference in this regulation. For any reimbursement issue or area not specified in the manual, the cabinet shall apply the Medicare standards and principles (excluding the Medicare inpatient routine nursing salary differential). The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

Section 3. General Description of the Payment System. (1) Use of prospective rates. Each hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate shall be all inclusive in that both routine and ancillary cost shall be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate shall not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate shall not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data shall have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments shall be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year shall be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for mental hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the mental hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, shall be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used shall be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor shall be applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) shall be peer grouped according to bed size. The peer groupings for the payment system shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up (except that the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless such facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in such a manner as to recognize the presence of the major pediatric teaching component existing outside the state university hospitals). No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up. Mental hospitals shall not be peer grouped but shall have a separate array of mental hospitals only. Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature shall not be peer grouped or arrayed.

(6) Use of a minimum occupancy factor. A minimum occupancy factor shall be applied to capital costs attributable to the Medicaid program. A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor shall apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

(7) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65)

percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to mental hospitals.

(8) Use of upper limits with regard to services provided on or after July 1, 1991 [1990].

(a) The following upper limits and payment principles shall apply to all hospitals with other limitations for disproportionate share hospitals shown in paragraph (b) of this subsection.

1. [(a)] For acute care hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. A mental hospital designated by the cabinet as a primary referral and services resource for children in the custody of the cabinet shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; the projected cost may be adjusted for usual cost of living increases using the Data Resources, Incorporated Index. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data; however the arrays or upper limits may be changed as a result of changes of agency policy. Hospitals participating in the Hospital Indigent Care Assurance Program (HICAP) shall also receive, in addition to regular program payments, amounts which are payable under HICAP. The HICAP payments shall be the product of the ratio of each hospital's Medicaid patient days compared to total Medicaid patient days as applied to total available HICAP funds (which are the hospital assessments paid minus administrative expense, hold-harmless amounts, and the contingency reserve amount and taking into consideration available federal Medicaid matching funds and upper limits on HICAP payments). The formula for determination of HICAP payment amounts is shown in the Reimbursement Manual at Section 102D.(b)(2), (3), (4), and (5). For the quarters ending March 31, 1991 and June 30, 1991, no hospital participating in HICAP shall receive less than its assessment plus $100,000 annually ($25,000 quarterly). Effective with regard to services provided on and after July 1, 1991, no hospital participating in HICAP shall receive on an annual basis less than five and one-quarter (5.25) percent of its operating costs, or five (5) percent of its annual operating costs plus $100,000, whichever amount is greater. Hold harmless amounts are computed separately for the first twenty (20) percent of the fund, for the 21st through 60th percent of the fund, and 61st through 100th percent of the fund. For hospitals which are disproportionate share hospitals the limitations shown in paragraph (b) of this subsection and subsection (9) of this section shall be applicable for HICAP payments. If a hospital which is a nondisproportionate share hospital is determined by the cabinet to be a nonparticipant in HICAP, the amounts otherwise payable under HICAP to the hospital shall not be made.

2. For medically necessary hospital inpatient services provided to infants under the age of one (1) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infants.

(b) The following upper limits and payment principles shall apply to disproportionate share hospitals as defined in subsection (9) of this section.

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or more nursing days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children [infants] under age six (6) [one (1)] (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

2. Designated state teaching hospitals and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville) shall have an upper limit set at 126 percent of the weighted median per diem cost for all other hospitals of comparable size (401 beds and up). The pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility. In addition to the per diem amount computed using the limits specified in this subparagraph, the hospitals shall be paid (as appropriate) additional amounts for services to children [infants] under age six (6) [one (1)] (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

3. Mental hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array. The per diem amount shall be computed using this upper limit or by using the disproportionate share minimum payment amount shown in subsection (9)(b)1 of this section if doing so results in a higher per diem amount.

4. All other disproportionate share acute care hospitals shall have their upper limit set at the weighed median per diem of the cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children

[infants] under age six (6) [one (1)] (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

(9) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in 42 USC 1396r-4(b) and (d) and those hospitals which may not meet such criteria but meet the criteria specified in 42 USC 1396r-4(d) and meet this additional criteria:

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and mental hospitals with Medicaid utilization of thirty-five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

4. Hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days; and

5. Effective with regard to services provided on or after July 1, 1990, hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of one-half (1/2) of one (1) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky shall be set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r-4(c), the minimum payment adjustment and actual payment adjustment shall be computed in the following manner:

1. All hospitals determined to be disproportionate share hospitals shall be entitled to a minimum payment adjustment equal to one (1) dollar as an addition to the hospital payment rate computed using usual upper limits; and for hospitals with Medicaid utilization in excess of one (1) standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, a further payment adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid utilization in the hospital which is in excess of utilization at the one (1) standard deviation level.

2. Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1991 [1990] to children [infants] under the age of six (6) [one (1)] with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children [infants] are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the children [infants].

3. Effective with regard to services provided on or after July 1, 1990 any hospital which is participating in the Hospital Indigent Care Assurance Program (HICAP) shall receive disproportionate share payments under HICAP. HICAP assessments and payments are described in 907 KAR 1:017, Hospital indigent care assurance program. If a hospital is determined by the cabinet to be a nonparticipant in the HICAP program, the hospital shall be entitled to the minimum adjustment shown in subparagraph 1 of this paragraph.

(10) Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended separately.

(11) Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(12) Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 4. Payments to Participating Out-of-state Hospitals. (1) Effective with regard to services provided on or after July 1, 1990 participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size hospital, except as specified in subsection (2) of this section.

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1991 [1990] to infants under the age of one (1), and for children under the age of six (6) in disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children [infants] are after thirty (30) days from the date of admission, participating out-of-state [disproportionate share] hospitals [(determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays)] shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1) and children under age six (6), without regard to length of stay or number of admissions of the infants and children.

(3) Effective with regard to services provided on or after February 1, 1991, professional costs (i.e., physician fees) for all covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

Section 5. Implementation [Effective] Date. Except as provided in Section 3(8) [Sections 3(9)(a)5 and 4(3)] of this regulation, the

amendments to this regulation shall be applicable [effective] with regard to services provided on or after July [January] 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 19, 1991
FILED WITH LRC: July 24, 1991 at 9 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:022E

This emergency administrative regulation is being amended to provide that high intensity patients may be covered under Medicaid only in nursing facility beds participating in the Medicare Program and that nursing facilities shall have at least thirty-five (35) percent of their Medicaid participating beds participating in the Medicare Program. This action must be taken on an emergency basis to assure adequate access to Medicaid recipients to quality medical care. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on December 17, 1990. This regulation provides for coverage of high intensity patients in Medicare participating beds only and for a minimum of thirty (30) percent Medicare participating beds for nursing facilities. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:022E. Nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396, 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s
EFFECTIVE: July 19, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to nursing facility and intermediate care facility for the mentally retarded services for which payment shall be made by the medical assistance program in behalf of both the categorically needy and medically needy.

Section 1. Definitions. The following definitions shall be applicable:
(1) "Patient status" means that the individual has care needs meeting the criteria set forth in this regulation for treatment in the institutional setting.
(2) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.
(3) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen.
(4) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. A facility which is certified to the department as meeting skilled nursing facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility until the first survey agency survey of the facility which occurs on or after October 1, 1990. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 13961 shall also be considered nursing facilities so long as the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations. Each nursing facility shall have [meet] Medicare participatory status [participation requirements] in at least thirty-five (35) [ten (10)] percent of the facility's Medicaid participating beds (but not less than ten (10) beds); if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).
(5) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency; some nursing facilities with waiver do not meet Medicare participation requirements. A facility which is certified to the department as meeting intermediate care facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility with waiver until the first survey agency survey of the facility which occurs on or after October 1, 1990. If a facility which has a Medicaid waiver chooses to participate in the Medicare Program, the facility shall be required to have Medicare participatory status in at least thirty-five (35) percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).
(6) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.
(7) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in

the Medicaid program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(8) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(9) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid program.

Section 2. Participation Requirements. Each facility desiring to participate as a nursing facility, nursing facility with waiver, or ICF-MR shall meet the following requirements:

(1) An application for participation shall be made to the cabinet using the procedures specified by the Commissioner, Department for Medicaid Services, Cabinet for Human Resources. A vendor number shall be assigned to the facility by the cabinet when participation status is achieved.

(2) Each nursing facility shall be required to have participatory status in the program of health care known as Medicare in at least thirty-five (35) [ten (10)] percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program) before the conditions of participation for Medicaid shall be deemed met.

(3) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall meet Medicare participation requirements in at least thirty-five (35) percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program.)

(4) [(3)] Each nursing facility and nursing facility with waiver shall be required to comply with the preadmission screening and annual resident review requirements specified in 42 USC 1396r, effective with regard to admissions and resident stays occurring on or after January 1, 1989. Facilities failing to comply with this requirement shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:220, Terms and conditions of provider participation; provider appeals, and federal regulations at 42 CFR 431.153 and 431.154.

(5) [(4)] A facility shall be required to be certified by the state survey agency as meeting NF, NF-W, or ICF-MR status; a facility not appropriately certified shall not participate in the Medicaid program except for appropriately certified SNFs or ICFs during the grandfathered period which ends upon the facility's first survey by the state survey agency on or after October 1, 1990.

Section 3. Provision of Service. (1) Payment for high intensity, low intensity and ICF-MR services shall be limited to those services meeting the care definitions shown in Section 1 of this regulation. A nursing facility or nursing facility with waiver may provide and receive payments for high intensity services provided to Medicaid eligible individuals meeting high intensity patient status criteria so long as the services are provided in beds also participating in the Medicare Program and a nursing facility or nursing facility with waiver may provide and receive payments for low intensity services provided to Medicaid eligible individuals meeting low intensity patient status criteria when the services are provided in any Medicaid participating beds; [a nursing facility with waiver may provide and receive payments for low intensity services only; and] an ICF-MR may provide and receive payments for ICF-MR services only.

(2) A participating nursing facility may be certified, in accordance with standards and conditions specified in 907 KAR 1:374, Incorporation by reference of the skilled nursing facility services manual, to operate a unit providing preauthorized specialized rehabilitation services for persons with brain injuries.

Section 4. Determining Patient Status. Professional staff of the cabinet, or a peer review organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet, shall review and evaluate the health status and care needs of the recipient in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services.

(1) A patient shall not qualify for Medicaid patient status unless the person is qualified for admission, and continued stay as appropriate, under the preadmission screening and annual resident review criteria specified in 42 USC 1396r with regard to admissions and resident stays occurring on or after January 1, 1989.

(2) Patients qualify for high intensity nursing care when their needs mandate high intensity nursing or high intensity rehabilitation services on a daily basis and when, as a practical matter, the care can only be provided on an inpatient basis. Where the inherent complexity of a service prescribed for a patient exists to the extent that it can be safely or effectively performed only by or under the supervision of technical or professional personnel, the patient would qualify for high intensity nursing care. A patient with an unstable medical condition manifesting a combination of care needs in the following areas shall qualify for high intensity nursing care:

(a) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

(b) Nasogastric or gastrostomy tube feedings;

(c) Nasopharyngeal and tracheotomy aspiration;

(d) Recent or complicated ostomy requiring extensive care and self-help training;

(e) In-dwelling catheter for therapeutic management of a urinary tract condition;

(f) Bladder irrigations in relation to

previously indicated stipulation;
(g) Special vital signs evaluation necessary in the management of related conditions;
(h) Sterile dressings;
(i) Changes in bed position to maintain proper body alignment;
(j) Treatment of extensive decubitus ulcers or other widespread skin disorders;
(k) Receiving medication recently initiated, which requires high intensity observation to determine desired or adverse effects or frequent adjustment of dosage;
(l) Initial phases of a regimen involving administration of medical gases;
(m) Receiving services which would qualify as high intensity rehabilitation services when provided by or under the supervision of a qualified therapist(s), for example: ongoing assessment of rehabilitation needs and potential; therapeutic exercises which must be performed by or under the supervision of a qualified physical therapist; gait evaluation and training; range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility; maintenance therapy when the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance; ultrasound, short wave, and microwave therapy treatments; hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool (in cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required); and services by or under the supervision of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

(3) An individual shall be determined to meet low intensity patient status when the individual requires intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting. In making the decision as to patient status, the following criteria shall be applicable:

(a) An individual with a stable medical condition requiring intermittent high intensity services not provided in a personal care home shall be considered to meet patient status.

(b) An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution shall be considered to meet patient status. For example, ambulatory cardiac and hypertensive patients may be reasonably stable on appropriate medication, but have intellectual deficiencies preventing safe use of self-medication, or other problems requiring frequent nursing appraisal, and thus be considered to meet patient status.

(c) An individual with a stable medical condition manifesting a significant combination of the following care needs shall be determined to meet low intensity patient status when the professional staff determines that such combination of needs can be met satisfactorily only by provision of intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting:

1. Assistance with wheelchair;
2. Physical or environmental management for confusion and mild agitation;
3. Must be fed;
4. Assistance with going to bathroom or using bedpan for elimination;
5. Old colostomy care;
6. In-dwelling catheter for dry care;
7. Changes in bed position;
8. Administration of stabilized dosages of medication;
9. Restorative and supportive nursing care to maintain the patient and prevent deterioration of his condition;
10. Administration of injections during time licensed personnel is available.
11. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of such self-care.
12. Routine administration of medical gases after a regimen of therapy has been established.

(d) An individual shall not generally be considered to meet patient status criteria when care needs are limited to the following:

1. Minimal assistance with activities of daily living;
2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch(es) or cane;
3. Limited diets such as low salt, low residue, reducing and other minor restrictive diets;
4. Medications that can be self-administered or the individual requires minimal supervision.

(4) Evaluation of patient status for persons with mental disorders or mental retardation. A person with a mental disorder or mental retardation meeting the health status and care needs specified in subsections (2) and (3) of this section shall generally be considered to meet patient status. However, these individuals shall be specifically excluded from coverage in the following situations:

(a) When the cabinet determines that in the individual case the combination of care needs are beyond the capability of the facility, and that placement in the facility is inappropriate due to potential danger to the health and welfare of the patient, other patients in the facility, or staff of the facility; and

(b) When the nursing care needs result directly and specifically from a mental disorder; i.e., are essentially symptoms of the mental disorder; and

(c) When the patient does not meet the preadmission screening and annual resident review criteria specified in 42 USC 1396r for entering or remaining in a facility.

(5) An individual shall be determined to meet patient status for an intermediate care facility for the mentally retarded and persons with related conditions when the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to patient status the following criteria shall be applicable:

(a) An individual with significant developmental disabilities and significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning, but does not necessarily require nursing facility or nursing facility with waiver

services, shall be considered to meet patient status.

(b) An individual requiring a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning shall be considered to meet patient status while:

1. Learning fundamental living skills;

2. Learning to live happily and safely within his own limitations;

3. Obtaining educational experiences that will be useful in self-supporting activities;

4. Increasing his awareness of his environment.

(c) An individual with a psychiatric primary diagnosis or needs shall be considered to meet patient status criteria only when the individual also has care needs as shown in paragraph (a) or (b) of this subsection, the mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for the mentally retarded), and the individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not be considered to meet patient status.

(e) It shall be the policy of the cabinet that no individual shall be denied patient status soley due to advanced age, or length of stay in an institution, or history of previous institutionalization, so long as the individual qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation) the illness or ailment shall have manifested itself prior to the individual's 22nd birthday.

Section 5. Reevaluation of Need for Service. Nursing facility, nursing facility with waiver, and ICF-MR services shall be provided for as long as the health status and care needs are within the scope of program benefits as described in Sections 3 and 4 of this regulation. Patient status shall be reevaluated at least once every six (6) months. If a reevaluation of care needs reveals that the patient no longer requires high intensity, low intensity, or intermediate care for the mentally retarded services and payment is no longer appropriate in the facility, payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate level of care.

Section 6. Preauthorization of Provision of Specialized Rehabilitation Services for Persons with Brain Injuries. Patients who are brain injured and meet usual high intensity nursing facility patient status criteria may be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) when the care is preauthorized by staff of the Department for Medicaid Services using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the head injury into the certified head injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

(1) Injuries within the scope of benefits shall be:

(a) Central nervous system injury from physical trauma;

(b) Central nervous system damage from anoxia or hypoxic episodes; and

(c) Central nervous system damage from allergic conditions, toxic substances and other acute medical/clinical incidents.

(2) Indications for admission and continued stay shall be as follows:

(a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;

(b) The individual shall not be in a persistent vegetative state;

(c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential;

(d) The individual requires coma management; and

(e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, encephalitis, or cardiovascular accident with rehabilitation potential.

(3) The determination as to whether preauthorization is appropriate shall be made taking into consideration the following:

(a) The presenting problem;

(b) The goals and expected benefits of the admission;

(c) The initial estimated time frames for goal accomplishment; and

(d) The services needed.

(4) The following are indicators that show it shall be inappropriate to preauthorize coverage for services provided in a certified brain injury unit:

(a) Strokes, (note: nursing facilities provide rehabilitation services that are expected to meet the needs of most stroke patients);

(b) Spinal cord injuries in which there are no known or obvious injuries to the intercranial central nervous system;

(c) Progressive dementias and other mentally impairing conditions;

(d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;

(e) Mental retardation, developmental disabilities, and birth defect related disorders of long standing; and

(f) Neurological degenerative, metabolic and other medical conditions of a chronic, degenerative nature.

Section 7. Reserved Bed Days. The cabinet shall cover reserved bed days in accordance with the following specified upper limits and criteria.

(1) Reserved bed days for nursing facilities and nursing facilities with wavier shall be covered for a maximum of fourteen (14) days per absence for a hospital stay with an overall maximum of forty-five (45) days per provider during the calendar year. Reserved bed days shall be covered for a maximum of fifteen (15) days per provider during the calendar year for leaves of absence other than for hospitalization.

(2) For intermediate facilities for the mentally retarded and persons with related conditions, reserved bed days shall be covered for a maximum of forty-five (45) days per provider within a calendar quarter. Reserved bed days for hospital stays shall not exceed fifteen (15) days per stay. No more than thirty (30)

consecutive reserved bed days (for hospital stay(s) plus leave(s) of absence, or leave of absence only) shall be approved for coverage.

(3) Coverage during a recipient's absence for hospitalization or leave of absence shall be contingent on the following conditions being met:

(a) The person shall be in Medicaid payment status in the level of care he/she is authorized to receive and shall have been a resident of the facility at least overnight. Persons for whom Medicaid is making Medicare coinsurance payments shall not be considered to be in Medicaid payment status for purposes of this policy;

(b) The person can be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

(d) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, etc.; and

(e) In the case of leaves of absence other than for hospitalization, the patient's physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

Section 8. The provisions of [amendments to] this administrative regulation shall apply [be effective with regard] to covered services provided on or after July 1, 1991 [October 1, 1990].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1991
FILED WITH LRC: July 19, 1991 at 4 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:025E

This emergency administrative regulation is being amended to provide that the minimum required Medicare participation for each nursing facility shall be thirty-five (35) percent of nursing facility's Medicaid participating beds. This action must be taken on an emergency basis to assure access of Medicaid patients to medically necessary services. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on December 17, 1990. This regulation provides that the minimum required Medicare participation for each nursing facility shall be thirty-five (35) percent of nursing facility's Medicaid participating beds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396, a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s
EFFECTIVE: July 19, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. 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 nursing care facility services and intermediate care facility for the mentally retarded services.

Section 1. Definitions. For purpose of Sections 2 through 6 of this regulation, the following definitions shall prevail unless the specific context dictates otherwise:

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the cabinet in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the cabinet, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which except for ventilator therapy services and brain injury unit services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Physical, occupational and speech therapy.

(b) Laboratory procedures.

(c) X-ray.

(d) Oxygen and other related oxygen supplies.

(e) Respiratory therapy (excluding the routine administration of oxygen).

(f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only).

(g) Ventilator therapy services, subject to the coverage limitations shown in the reimbursement manual.

(3) "Nursing facility (NFs)" means a facility certified to the Medicaid program by the state survey agency as meeting all nursing facility requirements, and in at least thirty-five (35) [ten (10)] percent of the facility's beds (but not less than ten (1) beds meeting all conditions of participation in the Medicare program. The phrase "nursing facility" also includes a nursing facility with waiver unless the context specifies otherwise.

(4) "Nursing facilities with waiver (NFs/W)" means facilities certified to the Medicaid program by the state survey agency as meeting all NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.

(5) "Hospital based nursing facilities" means those nursing facilities in the same building with or attached to an acute care hospital and which share common administration, nursing staff, and ancillary services with the hospital; however, those facilities classified as hospital based skilled nursing facilities on June 30, 1989 shall remain classified as hospital based nursing facilities.

(6) "Nursing services costs" are the direct costs associated with nursing services.

(7) "All other costs" are other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(8) The "basic per diem cost" for each major cost category (nursing services costs and all other costs) is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(9) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(10) "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

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

(12) "Upper limit" means the maximum level at which the cabinet shall reimburse, on a facility by facility basis, for routine services.

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

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

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

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

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

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

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

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

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

(16) "Nursing facility with a mental retardation specialty (NF/MRS)" means a skilled nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

Section 2. Reimbursement for Nursing Facilities (NFs) (Including Nursing Facilities with Waiver) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). All nursing facilities (NFs) (including nursing facilities with waiver) or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022, Nursing facility and intermediate care facility for the mentally retarded services. A nursing facility desiring to participate in Medicaid shall be required to have at least thirty-five (35) [ten (10)] percent of its beds (but not less than ten (10) beds; for a facility with less than ten (10) beds, all beds) participate in the Medicare program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, is prohibited from participation in Medicare. If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least thirty-five (35) percent of its beds (but not less than ten (10) beds; if the facility has less than ten (10) beds, all beds) participate in the Medicare Program. The Medicaid program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility [must participate in Medicaid as the same type of bed (i.e., NF or NF with waiver)].

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

and quality and safety standards.

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Nursing Facility Reimbursement Manual, revised July 1, 1991 [dated October 1, 1990] which is hereby incorporated by reference) and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medical Assistance Program Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

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

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section, including the provisions contained in subsections (13) and (14) of this section. Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit). The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available [audited or desk reviewed] cost data which is available as of May 16 of each year and trending the facility costs to July 1 of the rate year with prospective rates based on cost reports which are not audited or desk reviewed subject to adjustment when the audit or desk review is completed. Appropriate cost report adjustments will be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990. ([Unaudited,] Partial year, or budgeted cost data may be used if a full year's [audited] data is unavailable. Unaudited reports are subject to adjustment to the audited amount. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

(a) Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF/MRs, NF/IMDs, and NF/pediatric facilities) shall be divided into urban and rural arrays. The urban array shall include all facilities within a standard metropolitan statistical area (SMSA). The rural array shall include all facilities in non-SMSA counties. For purposes of arraying, current multilevel facilities (i.e., SNF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey). The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

(b) Nursing facility upper limits. The following NF upper limits shall be applied:

1. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable).

2. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities.

3. The upper limit for NF/MRS shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

(c) Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

1. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost.

2. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year; the swing bed rates shall change effective January 1, 1991 and each January 1 thereafter.

3. Hospital dual licensed beds shall be paid at the hospital based facility upper limits.

4. Facilities recognized as providing ventilator dependent care shall be paid at an all-inclusive fixed rate which shall be equal to projected costs.

5. Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive fixed rate which shall be set at $360 per diem.

(d) Other factors relating to costs and upper limit determination.

1. When the cabinet has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the cabinet shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors is to avoid paying the facilities twice for the same costs. When the trending and indexing factors include costs related to a minimum wage increase, the cabinet shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

2. The allowable per diem cost for NFs (excluding swing beds, dual licensed hospital beds, and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

3. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphlococcus aureaus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immunodeficiency virus (HIV).

4. The maximum payment amounts for the prospective uniform rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

5. For purposes of administrative ease in computations, normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data except as specified in this subsection.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it meets these additional criteria:

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

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

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

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

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

facility is transacted with persons and organizations other than the facility and its related organizations.

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

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

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

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

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

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

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

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

(10) Notwithstanding the provisions contained in subsection (9) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (9)(e) of this section) shall be determined in accordance with the methodology set forth herein for the reevaluation of assets of skilled nursing and intermediate care facilities.

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

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

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

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

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

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

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

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

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

(13) The cabinet shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost shall be conducted as needed.

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

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

(b) Incorrect payments have been made due to misrepresentation on the part of the facility

(whether intentional or unintentional).

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

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

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

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

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

(18) Qualifying nursing facilities (but not including swing beds, dual licensed hospital beds, IMDs, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive (CSI). Facilities qualifying for the CSI (except for NF/MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array. The CSI shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array. NF/MRSs shall qualify for the CSI when the NF/MRS has costs less than the NF/MRS upper limit, and the CSI shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. No return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 10-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$96.99 & below	$1.38	$.87
97.00 -102.99	1.29	$.75
103.00 -108.99	1.18	$.62
109.00 -114.99	1.06	$.47
115.00 -120.99	.92	$.31
121.00 -126.99	.76	$.13
127.00 -133.49*	.53	-

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

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992. This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system. For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, IMDs, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high-intensity, low-intensity, or neither. For patients meeting patient status (high or low-intensity), the PRO will then determine the case weight). The average case weight thereafter shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report

is not available). The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the CSI adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs. Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost. Upon authorization by the Medicaid agency, the cost shall be allowable. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the CSI factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost). Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment. Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform. Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs. The special nursing home reform rate adjustment shall be requested using forms and methods specified by the agency. A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed. No interim rate adjustments for nursing home reform shall be allowed for periods after June 30, 1992.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this regulation and the case mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

(1) The adjusted allowable cost for the facility;

(2) Adjustments to allowable cost related to occupancy;

(3) Adjustments to allowable cost related to application of upper limits;

(4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;

(5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual; however, the cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;

(6) Adjustments as appropriate for costs shifted from ancillary to routine;

(7) Nursing home reform adjustments; and

(8) Hold harmless adjustments.

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

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

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

Section 7. Implementation Date. The provisions of this <u>administrative</u> regulation shall be effective with regard to payments for services provided on or after <u>July 1, 1991</u> [October 1, 1990.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1991
FILED WITH LRC: July 19, 1991 at 4 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:044E

This emergency administrative regulation is being amended to show that additional outpatient services may be provided off site by the mental health center and technical revisions have been made for clarification. This action must be taken on an emergency basis to ensure adequate access to medical services for Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary regulation filed with the Regulations Compiler on or about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:044E. Mental health center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.130, 42 USC 1396a-d
EFFECTIVE: July 29, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to services provided by Mental Health Centers for which payment shall be made by the Medical Assistance Program to both the categorically needy and the medically needy.

Section 1. Definition of Psychiatric Nurse. (1) For the purpose of providing Medical Assistance Program reimbursable services, registered nurses employed by participating mental health centers shall be considered psychiatric or mental health nurses when they meet any of the following criteria:

(a) Master of Science in Nursing (MSN) with specialty in psychiatric/mental health nursing; additional experience is not required; or

(b) Graduate of a four (4) year nursing educational program, with a Bachelor of Science in Nursing (BSN) and with a minimum of one (1) year of experience in a mental health setting; or

(c) Graduate of a three (3) year nursing educational program (diploma graduate), and with a minimum of two (2) years of experience in a mental health setting; or

(d) Graduate of a two (2) year nursing educational program, with an Associate Degree in Nursing (ADN) and with a minimum of three (3) years of experience in a mental health setting; or

(e) Effective July 1, 1989, any level of education with American Nursing Association (ANA) certification as a psychiatric and mental health nurse.

(2) Notwithstanding the preceding, any registered nurse employed by a participating mental health center in Kentucky on June 30, 1981 shall be considered a psychiatric nurse so long as their employment with the center continues, for the purpose of providing Medical Assistance Program reimbursable services.

Section 2. Covered Services. The following services provided by participating mental health centers shall be considered covered when rendered within Kentucky Medical Assistance Program guidelines:

(1) Inpatient services, as defined in 902 KAR 20:091, when a center based psychiatrist renders the service, or when the psychiatrist deems it appropriate for the psychologist (including psychological associates), psychiatric nurse, master degree social worker, or individuals with equivalent professional education (as determined by the cabinet) to provide therapy for the patient.

(2) Outpatient services, as defined in 902 KAR 20:091, but not including the noncovered services listed in this section and Section 3 of this regulation, if rendered by a mental health professional from one (1) of the four (4) principal disciplines (psychiatrist, psychologist (including psychological associate), psychiatric nurse, or master degree social worker), or individuals with equivalent professional education (as determined by the cabinet). Services rendered by a staff member other than one of the above shall be covered only if the service is delivered in accordance with a plan of treatment approved by the psychiatrist when delivered under the supervision of a mental health professional from one (1) of the four (4) principal disciplines or an individual with equivalent professional education (as determined by the cabinet). Outpatient services include both on-site and off-site services.

(3) Therapeutic rehabilitation (partial hospitalization), as defined in 902 KAR 20:091, if:

(a) The psychiatrist is present in the therapeutic rehabilitation [partial hospitalization] unit on a regularly scheduled basis (at least monthly) and assumes clinical responsibility for all patients; and

(b) The program has direct supervision by a psychiatrist, psychologist (psychological associate), psychiatric nurse, master degree social worker, or individuals with equivalent professional education (as determined by the cabinet).

[(4) Home visits, defined as visits by center staff to recipients in their homes, if:]

[(a) Certified as a medical necessity by the psychiatrist or if the patient is homebound; and]

[(b) Provided by a mental health professional from one (1) of the four (4) principal disciplines, or individuals with equivalent professional education (as determined by the cabinet), and in accordance with an approved treatment plan.]

(4) [(5)] Detoxification services, when rendered by a center based psychiatrist in a detoxification unit.

(5) [(6)] Psychological testing, if the tests are administered and evaluated by a licensed psychologist, certified [clinical] psychologist, or psychological associate.

(6) [(7)] Emergency services, as defined in 902 KAR 20:091, if the eligible recipient is

seen in an emergency situation by any professional or paraprofessional member of the mental health staff.

(7) [(8)] Personal care home services, if rendered by a mental health professional from one (1) of the four (4) principal disciplines (psychiatrist, psychologist, psychiatric nurse, or master degree social worker) or individuals with equivalent professional education (as determined by the cabinet) to eligible recipients in personal care homes, and including resocialization and remotivation services rendered to personal care home groups, if [such] group services are rendered.

(8) [(9)] Diagnosis deferred, diagnostic category, limited to the initial three (3) visits [only if provided by the psychiatrist or psychologist].

(9) [(10)] Speech disturbance, diagnostic category, only if provided by a psychiatrist or psychologist.

Section 3. Noncovered Services. The following mental health center services shall not be covered [are noncovered]:

(1) Services of an educational or supervisory nature;

(2) Speech therapy;

(3) Alcohol and drug services:

(4) Consultation (except consultation among direct staff of the center);

(5) Collateral therapy for age twenty-one (21) and over (except that immediate family members may participate in joint therapy sessions when the client is present and the client's plan of care as approved by the psychiatrist requires that treatment modality);

(6) Residential treatment for alcoholism;

(7) Services rendered to residents or patients of [intermediate care facilities and skilled] nursing facilities; and

(8) Field trips, recreational and social activities.

Section 4. The provisions of this regulation shall be applicable for services provided on or after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 1, 1991
FILED WITH LRC: July 29, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:045E

The emergency administrative regulation is being revised for an improvement in payment rates for mental health centers; to adjust the funding adjustment from $.78 per outpatient unit to $.52 per outpatient unit; to amend the incorporated reimbursement manual to show the payment rate improvements and a change in the composition of the rate review panel; and to show KRS Chapter 13A regulations drafting changes. This action must be taken on an emergency basis to implement rate changes in a timely manner and assure adequacy of payment to the mental health centers. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:045E. Payments for mental health center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447.325, 42 USC 1396a-d
EFFECTIVE: July 29, 1991
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 contractural arrangements as the cabinet may require of this class of provider) set by the cabinet, on the following basis:]

(1)(a) Payment rates for the rate year beginning July 1, 1991 shall be based on the following principles:

1. Interim (not final) rates for the nine (9) direct service cost centers shall be set based on the latest available cost and statistical data from the mental health centers.

2. Costs used in setting the interim rates shall be trended to the beginning of the rate year and indexed for inflation to the end of the rate year.

3. Direct service costs shall be arrayed (the "interim" array) and the interim rate upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable, reasonable cost for each service unit or the upper limit, whichever is less.

5. A retrospective final settlement shall be made after the end of the rate year based on the fiscal year ending June 30, 1992 annual cost report. All costs shall be rearrayed (the final array) for the final settlement. For purposes of determining costs in excess of the upper limit, the upper limit shall be the higher of the maximum derived from the interim array or the final array.

6. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit based on the final array.

7. A funding adjustment of fifty-two (52) cents shall be added to the interim outpatient per unit rates, and the same funding adjustment (i.e., the same fifty-two (52) cents) shall be allowed as a part of the final outpatient per unit rates (without regard to upper limits) to

improve compensation of service providers and encourage provision of additional services.

(b) Payment rates for the rate year beginning July 1, 1992 shall be based on the following principles:

1. Interim (not final) rates for the nine (9) direct service cost centers shall be set based on mental health center cost reports submitted for the six (6) month period ending December 31, 1991.

2. Costs used in setting the rates shall be trended to the beginning of the rate year and indexed for inflation to the end of the rate year.

3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable reasonable cost for each service unit or the upper limit, whichever is less.

5. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit.

6. A funding adjustment amount (derived by dividing $1.3 million by the number of outpatient units of service) shall be added to the interim rate (without regard to upper limits) to improve compensation of service providers and encourage provision of additional services.

7. The interim rate shall be adjusted to final propsectively determined rates based on the audited or desk reviewed annual cost reports for the period ending June 30, 1992 with the cost reports indexed for inflation, the upper limits previously determined remaining in effect, and the same funding adjustment allowed.

(c) Payment rates for rate years beginning on or after July 1, 1993 shall be based on the following principles:

1. Final prospectively determined rates for the nine (9) direct service cost centers shall be set based on each mental health center's audited annual cost report for the prior year; if an audited cost report is not available, the most recent unaudited annual cost report shall be the basis for the rate with the rate adjusted as necessary at the time of audit or desk review of the cost center used in setting the rate. Costs shall be actual, reasonable, and allowable costs.

2. Costs used in setting the rates shall be trended to the beginning of the rate year and indexed for inflation.

3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable reasonable cost for each service unit or the upper limit, whichever is less.

5. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit.

6. A funding adjustment amount (derived by dividing $1.3 million by the total number of outpatient units of service) shall be added to the rate (without regard to upper limits) to improve compensation of providers and encourage provision of additional services.

[(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 July 1, 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 reimbursable departmental cost centers are on-site psychiatrist, on-site individual, off-site psychiatrist, off-site individual, group, personal care, therapeutic rehabilitation, inpatient hospital psychiatrist, and inpatient hospital other. [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: July 1, 1991
FILED WITH LRC: July 29, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:340E

This emergency administrative regulation is being amended to provide that the room and board add-on for hospice patients in nursing facilities will be paid at ninety-five (95) percent of the Medicaid rate for the facility instead of ninety-five (95) percent of the upper limit for that type of care. This action must be taken on an emergency basis to comply with federal requirements with regard to room and board payments and avoid loss of federal financial participation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d
EFFECTIVE: July 23, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of medical assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the policies of the cabinet with regard to payments for hospice services.

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

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

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

Section 4. Copayments. (1) The Medicaid program shall pay the Medicare copayments if the Medicaid recipient qualifies for and has elected Medicaid hospice benefits as specified in 907 KAR 1:330.

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

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

Section 6. Effective Date. The amendments to this regulation shall be applicable [effective] for hospice services provided on or after July 1, 1991 [April 1, 1990].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1991
FILED WITH LRC: July 23, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:505E

This emergency administrative regulation is being proposed to implement the coverage of Medicaid recipients under age 21 in psychiatric residential treatment facilities effective July 1, 1991. This action must be taken on an emergency basis to implement the coverage in a timely manner and assure access by Medicaid recipients to medically necessary services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department For Medicaid Services

907 KAR 1:505E. Psychiatric residential treatment facility services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 447.325, 42 CFR 440.160, 42 USC 1396a-d
EFFECTIVE: July 23, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. 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 provisions relating to coverage of psychiatric residential treatment facility services.

Section 1. Definition. "Psychiatric residential treatment facility" (PRTF) means an appropriately licensed PRTF participating in the Medicaid Program.

Section 2. Covered Admissions. Covered admissions must be preauthorized and shall be limited to those for children age six (6) through twenty (20) years of age meeting patient status criteria. Coverage may continue, based on medical necessity, for an individual in a PRTF on his 21st birthday so long as he has not reached his 22nd birthday. Services shall not be covered if appropriate alternative services are available in the community.

Section 3. Durational Limitations. Patient stays are subject to utilization review by the cabinet.

Section 4. Determining Patient Status. The cabinet or its designated agent shall review and evaluate the health status and care needs of the recipient in need of inpatient psychiatric care using the same standards as set forth for inpatient psychiatric hospital care in 907 KAR 1:016. The care needs of the patient shall meet PRTF patient status criteria only when the individual meeting the patient status criteria in 907 KAR 1:016 requires long-term inpatient psychiatric care or crisis stabilization more suitably provided in the PRTF rather than a psychiatric hospital; the individual must require PRTF services on a continuous basis as a result of a severe mental or psychiatric illness (including severe emotional disturbances).

Section 5. Reevaluation of Need for Services. Patient status shall be reevaluated for PRTF patients at thirty (30) day intervals. If a reevaluation reveals the patient no longer requires PRTF care, payment shall continue only through the last day for which the stay is certified unless an appeal is made in a timely manner.

Section 6. Reconsideration and Appeals. Reconsiderations and appeals shall be handled in the same manner as specified in 907 KAR 1:016, Section 6.

Section 7. Exclusions from Coverage. Chemical dependency treatment services shall be excluded from coverage when the need for the services is the primary diagnosis of the patient. Chemical dependency treatment services shall be covered as incidental treatment related to the primary diagnosis if minimal chemical dependency treatment is necessary for successful treatment of the primary diagnosis.

Section 8. Reserved Bed Days. The cabinet will cover reserved bed days in accordance with the following specified upper limits and criteria:
(1) The following upper limits (applied per provider) shall be applicable for reserved bed days:
(a) A maximum of fourteen (14) days per admission for an acute care hospital stay;
(b) A maximum of fourteen (14) days per calendar year for admissions to a mental hospital or a psychiatric bed of an acute care hospital;
(c) A maximum of twenty-one (21) days per six (6) months during a calendar year for other leaves of absence; and
(d) A maximum of thirty (30) consecutive days for hospital and other leaves of absence combined.
(2) The following criteria must be met for reserved bed days to be covered:
(a) The person is in Medicaid payment status in the PRTF and has been a resident of the facility at least overnight;
(b) The person can be reasonably expected to return to the same level of care;
(c) Due to the demand at the facility for PRTF care, there is likelihood the bed would be occupied by some other patient were it not reserved;
(d) Hospitalization must be in Medicaid participating hospitals with the admission appropriately approved by the cabinet or its designated agency; and
(e) For leaves of absence other than for hospitalization, the patient's physician orders and plan of care provide for such leaves; leaves of absence include visits with relatives and friends.

Section 9. Implementation Date. The provisions shown in this regulation shall be applicable with regard to services provided on or after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: July 23, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:510E

This emergency administrative regulation is being promulgated to establish reimbursement methodology for psychiatric residential treatment facility services, effective for services provided on or after July 1, 1991. The reimbursement rate shall be set at $225 per patient day with the cost of drugs not included. This action must be taken on an emergency basis to implement reimbursement methodology for psychiatric residential treatment facility services in a timely manner and assure access by Medicaid recipients to medically necessary services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department For Medicaid Services

907 KAR 1:510E. Payments for psychiatric residential treatment facility services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.160, 42 USC 1396a-d
EFFECTIVE: July 23, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. 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 provisions relating to payments for psychiatric residential treatment facility services.

Section 1. Definition. "Psychiatric residential treatment facility" (PRTF) means an appropriately licensed PRTF participating in the Medicaid Program.

Section 2. Payment Rates. Covered inpatient psychiatric facility services for individuals under twenty-two (22) years of age provided in PRTFs of sixteen (16) beds or less shall be paid for in accordance with the following:

(1) The PRTFs shall be paid a fixed rate of $225 per diem or usual and customary charge if less; however, the payment shall not exceed prevailing charges in the locality for comparable services provided under comparable circumstances.

(2) The fixed rate (or usual and customary charge, if less) covers total facility costs for covered PRTF services (except for the cost of drugs), including specifically the following:

(a) All care and treatment costs;
(b) Costs for all ancillary services (except for the cost of drugs which shall be reimbursed through the pharmacy program);
(c) Capital costs; and
(d) Room and board costs.

Section 3. Cost Reports and Audits. PRTFs shall file a cost report annually using a uniform cost report form prescribed by the single state agency. The cabinet may audit the cost reports as determined necessary by the cabinet.

Section 4. Access to PRTF Fiscal and Services Records. The cabinet shall have access to PRTF fiscal and services records to the extent determined necessary by the cabinet to assure accuracy of the cost report, that services are provided in accordance with the standards shown in this regulation and in 907 KAR 1:505, and that the PRTF is complying with all terms and conditions of the provider agreement between the cabinet and PRTF. Representatives of the United States Department of Health and Human Services, Inspector General's Office, and Attorney General's Office shall have access to PRTF records to the extent necessary to perform their functions which relate to the Medicaid Program.

Section 5. Implementation Date. The provisions of this regulation shall be applicable for services provided on or after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 24, 1991
FILED WITH LRC: July 23, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:515E

This emergency administrative regulation is being promulgated to implement coverage of targeted case management services for adults with chronic mental illness effective July 1, 1991. This action must be taken on an emergency basis to ensure adequate access for Medicaid recipients to quality medical care. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department For Medicaid Services

907 KAR 1:515E. Targeted case management services for adults with chronic mental illness.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d, n
EFFECTIVE: July 23, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. 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 provisions relating to the coverage of targeted case management services for adults with chronic mental illness.

Section 1. Definition. (1) "Case management services" means services necessary to assist the targeted recipient in gaining access to needed medical, social, educational, and other services.
(2) "Chronic mental illness" means that clinically significant symptoms of mental illness have persisted in the individual for a continuous period of at least two (2) years, or that the individual has been hospitalized for mental illness more than once in the last two (2) years, and that the individual is presently significantly impaired in his ability to function socially or occupationally.
(3) "Target group" means the group of Medicaid eligible individuals that are chronically mentally ill (as defined in KRS 210.005) adults, with a diagnosis of a major mental disorder (other than substance abuse or mental retardation as the sole diagnosis) included in the DSM-III R classification.
(4) "Targeted recipient" means a recipient within the target group of chronically mentally ill adults for whom case management services are provided.

Section 2. Case Management Services. The following services shall be covered as case management services when provided by a qualified case manager to a Medicaid eligible recipient in the target group:
(1) Assessment of the client;
(2) Participation in development of the client's service plan;
(3) Referrals, linkage, and coordination of Medicaid and non-Medicaid services;
(4) Advocacy;
(5) Monitoring;
(6) Reassessment and follow-up;
(7) Establishment and maintenance of case record; and
(8) Crisis assistance planning.

Section 3. Excluded Activities. The following activities shall not be considered case management activities:
(1) The actual provision of mental health or other Medicaid covered services or treatments;
(2) Outreach to potential recipients;
(3) Administrative activities related to Medicaid eligibility determinations; and
(4) Institutional discharge planning.

Section 4. Provider Qualifications. Provider participation shall be limited to the fourteen (14) regional mental health mental retardation centers, licensed in accordance with 902 KAR 20:091.

Section 5. Case Manager Qualifications and Supervision Requirements. (1) Case management qualifications. Each case manager shall be required to meet the following minimum requirements:
(a) Have a bachelor of arts or bachelor of science degree in any of the behavioral sciences, from an accredited institution; and
(b) Have one (1) year of experience in performing case management or working with chronically mentally ill (except that a master's degree in a human services field may be substituted for the one (1) year of experience); and
(c) Have completed a case management certification program (within six (6) months) offered or approved by the Department for Mental Health and Mental Retardation Services; and
(d) Have supervision by a mental health professional (psychiatrist, psychologist, master's degree social worker, psychiatric nurse, or professional equivalent as determined by the cabinet) for a minimum of one (1) year.
(2) Case manager supervision requirement. For one (1) year, each case manager shall have supervision performed at least once a month, both individually (per case plan) and in group (resource development).

Section 6. Implementation Date. The provisions of this regulation shall be applicable with regard to services provided on or after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1991
FILED WITH LRC: July 23, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:520E

This emergency administrative regulation is being promulgated to implement reimbursement methodology for targeted case management services for adults with chronic mental illness effective July 1, 1991. Providers of targeted case management services for adults with chronic mental illness shall be paid an interim rate based on projected cost with a settlement to cost at the end of the fiscal year. This action must be taken on an emergency basis to ensure adequate access for Medicaid recipients to quality medical care. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department For Medicaid Services

907 KAR 1:520E. Payments for targeted case management services for adults with chronic mental illness.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d, n
EFFECTIVE: July 23, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. 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 provisions relating to payments for targeted case management services for adults with chronic mental illness.

Section 1. Provision of Service. Payment for services shall be limited to those case management services provided in accordance with 907 KAR 1:515.

Section 2. Reimbursement Methodology. Payments shall be based on cost. An interim rate based on projected cost may be used as necessary with a settlement to cost at the end of the fiscal year.

Section 3. Other Reimbursement Factors. The following factors shall be considered when making payments:
(1) The billable unit of service shall be one (1) month.
(2) The interim (or prospective final) rate shall be payable when at least four (4) service contracts have occurred during a month; at least two (2) of the contacts shall be face-to-face with the recipient, and the balance of the contacts may be by telephone or face-to-face, with the recipient or with others on his behalf.

Section 4. Nonduplication of Services. Payments shall not be made for case management services to the extent that payments have been made by the Medicaid Program as a part of other program elements for the same purposes.

Section 5. Implementation Date. The provisions of this regulation shall be applicable with regard to services provided on or after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1991
FILED WITH LRC: July 23, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:525E

This emergency administrative regulation is being promulgated to implement coverage of targeted case management services for severely emotionally disturbed children effective July 1, 1991. This action must be taken on an emergency basis to ensure adequate access for Medicaid recipients to quality medical care. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department For Medicaid Services

907 KAR 1:525E. Targeted case management services for severely emotionally disturbed children.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d, n
EFFECTIVE: July 23, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. 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 provisions relating to provision of targeted case management services for severely emotionally disturbed children.

Section 1. Definition. (1) "Case management services" means services necessary to assist the targeted recipient in gaining access to needed medical, social, educational, and other services.
(2) "Severely emotionally disturbed child" means a child that meets the following conditions and circumstances:
(a) The child has a clinically significant disorder of thought, mood, perception, orientation, memory, or behavior that is listed in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (excluding those children who are singularly diagnosed as chemically dependent, mentally retarded, or developmentally delay); and
(b) The child presents one (1) of the following conditions:
1. The child shows substantial limitations that have persisted for at least one (1) year or is judged by a mental health professional to be at risk of continuing for one (1) year without professional intervention in at least two (2) of the following five (5) areas:
a. Self-care: defined as the ability to provide, sustain, and protect himself at a level appropriate to his age;
b. Interpersonal relationships: defined as the ability to build and maintain satisfactory relationships with peer and adults;
c. Family life: defined as the capacity to live in a family or family type environment;
d. Self direction: defined as the child's ability to control his behavior and to make decisions in a manner appropriate to his age; and
e. Education: defined as the ability to learn social and intellectual skills from teachers in an educational setting; or
2. Is a Kentucky resident and is receiving treatment for emotional disturbance through the interstate compact; or
3. The Department for Social Services has removed the child from the child's home and has been unable to maintain the child in a stable setting due to behavioral or emotional disturbance; or
4. The child presents impairment/behavior of short duration yet of high intensity. Included are severe emotional problems such as suicidal or psychotic trauma reactions where prognosis regarding duration of symptoms cannot be accurately assessed; and
(c) The child has been identified by a regional interagency council (RIAC) as a severely emotionally disturbed child in need of case management services.
(3) "Target group" means the group of Medicaid eligible children that are severely emotionally disturbed.
(4) "Targeted recipient" means a recipient within the target group of severely emotionally disturbed children for whom case management services are provided.

Section 2. Case Management Services. The following services shall be covered as case management services when provided by a qualified case manager to Medicaid eligible recipients in the target group:

(1) A written comprehensive assessment of the child's needs;
(2) Arranging for the delivery of the needed services as identified in the assessment;
(3) Assisting the child and his family in accessing needed services;
(4) Monitoring the child's progress by making referrals, tracking the child's appointments, performing follow-up on services rendered, and performing periodic reassessments of the child's changing needs;
(5) Performing advocacy activities on behalf of the child and his family;
(6) Preparing and maintaining case records documenting contacts, services needed, reports, the child's progress, etc.;
(7) Providing case consultation (i.e., consulting with the service providers/collateral's in determining child's status and progress); and
(8) Performing crisis assistance (i.e., intervention on behalf of the child, making arrangements for emergency referrals, and coordinating other needed emergency services).

Section 3. Excluded Activities. The following activities shall not be considered case management activities:
(1) The actual provision of mental health or other Medicaid covered services or treatments;
(2) Outreach to potential recipients;
(3) Administrative activities related to Medicaid eligibility determinations; and
(4) Institutional discharge planning.

Section 4. Provider Qualifications. Provider participation shall be limited to the Department for Social Services and the fourteen (14) regional mental health mental retardation centers, licensed in accordance with 902 KAR 20:091.

Section 5. Case Manager Qualifications and Supervision Requirements. (1) Case manager qualifications. Each case manager shall be required to meet the following minimum requirements:
(a) Have a bachelor of arts or bachelor of science degree in any of the behavioral sciences from an accredited institution; and
(b) Have one (1) year of experience working directly with children or performing case management services (except that a master's degree in a human services field may be substituted for the one (1) year of experience); and
(c) Have received training within six (6) months designed and provided by each participating provider directed toward the provision of case management services to the targeted population; and
(d) Have supervision for a minimum of one (1) year by provider staff with at least a master's degree in a human services field.
(2) Case manager supervision requirement. For at least one (1) year, each case manager shall have supervision performed at least once a month for each case plan.

Section 6. Implementation Date. The provisions of this regulation shall be applicable with regard to services provided on or after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1991
FILED WITH LRC: July 23, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:530E

This emergency administrative regulation is being promulgated to implement reimbursement methodology for targeted case management services for severely emotionally disturbed children effective July 1, 1991. Participating providers shall be paid an interim rate based on projected cost with a settlement to cost at the end of the fiscal year. This action must be taken on an emergency basis to ensure adequate access for Medicaid recipients to quality medical care. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department For Medicaid Services

907 KAR 1:530E. Payments for targeted case management services for severely emotionally disturbed children.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d, n
EFFECTIVE: July 23, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. 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 provisions relating to payments for targeted case management services for severely emotionally disturbed children.

Section 1. Provision of Service. Payment for services shall be limited to those case management services provided in accordance with 907 KAR 1:525.

Section 2. Reimbursement Methodology. Payments shall be based on cost. An interim rate based on projected cost may be used as necessary with a settlement to cost at the end of the fiscal year.

Section 3. Other Reimbursement Factors. The following factors shall be considered when making payments:
(1) The billable unit of service shall be one (1) month.
(2) The interim (or prospective final) rate shall be payable when at least four (4) service contracts have occurred during a month; at least two (2) of the contacts shall be face-to-face, at least one (1) contact with the recipient, while the second may be with the recipient's parent, guardian or other person exercising custodial control and supervision, and the balance of the contacts may be by telephone or

face-to-face, with the recipient or with others on his behalf.

Section 4. Nonduplication of Services. Payments shall not be made for case management services to the extent that payments have been made by the Medicaid Program as a part of other program elements for the same purposes.

Section 5. Implementation Date. The provisions of this regulation shall be applicable with regard to services provided on or after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1991
FILED WITH LRC: July 23, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:535E

This emergency administrative regulation is being proposed to provide for the implementation of the tax assessment schedule for mental health centers as provided for by House Bill 21 of the 1991 Special Session of the General Assembly. For each mental health center the tax shall be one-half (1/2) of the increase in revenues realized by the mental health center which results from the July 1, 1991 fee schedule update but not to exceed fifteen (15) percent of the mental health center's gross Medicaid revenues. This action must be taken on an emergency basis to provide funds necessary for the operation of the Medicaid Program and for a payment improvement for the mental health centers. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:535E. Tax assessment schedule for mental health centers.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.576
EFFECTIVE: July 29, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance under Title XIX of the Social Security Act. This regulation sets forth provisions relating to the tax assessment of mental health centers as authorized by KRS 205.576.

Section 1. Tax Assessments. (1) The tax assessment for each Medicaid participating mental health center for each calendar quarter shall be one-half (1/2) of the increase in revenues realized by the mental health center which results from the July 1, 1991 fee schedule update but not to exceed fifteen (15) percent of the mental health center's gross Medicaid revenues for the calendar quarter.

(2) Due date for tax assessments.

(a) The tax assessment for each mental health center shall be due by the 45th day following the end of each calendar quarter.

(b) A mental health center may request a delay in its assessment payment due date based on unforeseeable circumstances affecting its ability to pay in a timely manner. Unforeseeable circumstances may include, but are not limited to, substantial disruptions of management or operations from occurrences such as fire, flood, storm, bankruptcy or other demonstrated financial hardship. Simple inability to pay, unless combined with a filing of bankruptcy or other demonstrated financial hardship by the mental health center, shall not constitute justification for a delayed payment schedule. If a delay is granted, the delay shall not exceed sixty (60) days. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be justification for a delay in payment of the assessment until the court case is resolved.

Section 2. Waiver of the Late Payment Penalties. The Commissioner of the Department for Medicaid Services shall waive the late payment penalty specified in KRS 205.576 only when good cause exists. Good cause shall be determined to exist only when an unforeseeable circumstance occurs affecting timely payments. Unforeseeable circumstances may include substantial disruptions of management or operations from occurrences such as fire, flood, storm or similar events. Failure to pay due to insufficient funds shall not be good cause for a waiver of the penalty unless combined with a bankruptcy filing of the provider. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be considered to meet the criteria for good cause.

Section 3. The provisions of this regulation shall be applicable for calendar quarters beginning on and after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 1, 1991
FILED WITH LRC: July 29, 1991 at 2 p.m.

REGULATIONS AS AMENDED BY THE PROMULGATING AGENCY AND THE REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following regulations were amended by the promulgating agency and the Administrative Review Subcommittee at its August 5-6, 1991 meeting.

FINANCE AND ADMINISTRATION CABINET
Kentucky Infrastructure Authority
(As Amended)

200 KAR 17:020. Guidelines for solid waste revolving fund and solid waste grant program.

RELATES TO: KRS Chapter 224A
STATUTORY AUTHORITY: KRS 224A.011, 224A.040, 224A.070, 224A.113, 224A.164, 224A.270, 224A.280
NECESSITY AND FUNCTION: KRS 224A.070(1) and 224A.113 authorize the Kentucky Infrastructure Authority to promulgate regulations in accordance with KRS Chapter 13A, to govern the application for and provision of financial assistance from the solid waste revolving fund and the solid waste grant program to governmental agencies for the construction or acquisition of solid waste projects. It is the intent of the Kentucky Infrastructure Authority to implement a joint application and funding process for loans to be made from the solid waste revolving fund and grants to be made from the solid waste grant program. The solid waste grant program shall be used to lower renovation or acquisition of solid waste facilities to be owned by low income communities.

Section 1. Definitions. For the purposes of this regulation the words and terms shall have the same meaning as in KRS 224A.011, with the following additions:

(1) "Applicant" shall mean, as applicable, a governmental agency that has submitted an application for financial assistance from the solid waste revolving fund or any county, waste management district, city, urban-county government, area development district or other political subdivision of the Commonwealth which has submitted an application for financial assistance from the solid waste grant program, including any agency or instrumentality of the foregoing.

(2) "Application" shall mean an application submitted by an applicant for a loan from the solid waste revolving fund and/or a grant from the solid waste grant program.

(3) "Application period" shall mean a period of time announced by the authority for review of applications which shall occur at least once each year that funds are available.

(4) "Authority staff" means the Office for Financial Management and Economic Analysis.

(5) "Cabinet" shall mean the Kentucky Natural Resources and Environmental Protection Cabinet.

(6) "Conditional commitment letter" shall mean a letter delivered to an applicant by the authority stating the authority's commitment to provide financial assistance, which commitment may require that certain conditions be met by the applicant by a specific date.

(7) "Closing date" shall mean the date on which a project is substantially complete, with all amendments to the assistance agreement having been executed.

(8) "Hardship" shall mean one (1) or more of the following factors that exist which prohibit the applicant from complying with the mandates of the solid waste management plan:

(a) Need for financial assistance;

(b) Lack of access to marketing of recyclables;

(c) Status of economic development considering such factors as business closings, and disruptions, low or declining household income in relation to the state's average, and low or declining new housing starts;

(d) Higher levels of unemployment in relation to the state's unemployment average;

(e) Repercussions from natural disasters;

(f) Inadequacy [Availability] of transportation infrastructure; and

(g) Other factors as may be considered by the cabinet if sufficient documentation is provided [proved] by the applicant.

(9) "Index rate" shall mean the average of the Bond Buyer's Index of twenty (20) G.O. Bonds as published weekly in the Bond Buyer (a financial newspaper circulated in New York) calculated based on the weeks following within each calendar quarter. This average shall be rounded to the nearest one-tenth (.1) of one (1) percent.

(10) "Interest rate" shall mean the rate of interest charged an applicant for financial assistance from the solid waste revolving fund.

(11) "Preclosing date" shall mean the date of execution of an assistance agreement with an applicant who has met the conditions of the conditional commitment letter, and shall be the first date release of funds is permitted under the terms of the financial assistance provided.

(12) "Project" shall mean for purposes of the solid waste revolving fund the construction[, renovation] or acquisition of a solid waste facility (as defined in KRS 224A.011(25)), and shall mean for purposes of the solid waste grant program, the foregoing as well as the promotion of recycling, universal collection, and other similar solid waste management activities.

(13) "State clearinghouse review" shall mean a review conducted within the department of local government pursuant to federal or state law or regulations.

(14) "Local contribution" shall mean that portion of the applicant's share of funding a project which enables an applicant to be eligible for financial assistance from the solid waste grant program and which is derived solely from available funds of the applicant not representing loan grants from federal or state agencies.

(15) "Extreme health hazard" shall mean such documented existing conditions concerning the storage, treatment, transportation, disposal or other management of solid waste which significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating irreversible illness or which otherwise, if left unattended, pose a substantial present or potential hazard to human health or safety within the applicant's service area.

(16) "Service area" shall mean the area designated [for solid waste disposal service] in the solid waste plan and approved by the cabinet.

(17) "Solid waste revolving fund" shall mean the solid waste revolving fund established by

KRS 224A.270.

(18) "Solid waste grant program" shall mean the solid waste grant program established by KRS 224A.280.

(19) "Special depreciation fund" shall mean the special depreciation fund required to be established by an applicant by Section 8 of this regulation in connection with a loan from the solid waste revolving fund.

Section 2. General Eligibility Requirements and Conditions to Financial Assistance. Except as may be expressly prohibited by law, each applicant shall satisfy the following requirements:

(1) Applications shall be submitted only by applicants for projects.

(2) Each applicant shall have the legal authority to construct or acquire, operate and maintain the project for which financial assistance is sought from the authority and if the application is for funding under the solid waste revolving fund, the applicant shall have the legal authority to incur a pledge to repay any loan assistance provided by the authority.

(3) If applying for a loan from the solid waste revolving fund, the applicant shall participate in or implement a universal collection program. If the applicant is applying for a grant under the solid waste grant program, the grant shall be contingent upon the adoption of an approved universal collection program.

(4) Unless otherwise exempted by KRS Chapter 224[A], the solid waste system of which the applicant's project is to be a part, shall provide solid waste collection services to at least a county-wide area.

(5) The applicant shall have access to a solid waste disposal facility which has all necessary operating permits, or is expected to have all necessary permits upon completion of the project, and which has adequate projected capacity and resources to provide disposal services through the final maturity date of the proposed loan or the termination date of the assistance agreement relating to any grant.

(6) The applicant shall retain ownership of the project until the final repayment of any authority loans.

(7) The applicant shall, upon completion of the proposed project, be in compliance with all state or federal laws or regulations with regard to financial accountability, personnel management, and solid waste management activities and shall certify such compliance to the authority and the cabinet.

(8) The applicant shall implement and maintain a system for collection of a service fee, dedicated tax or appropriation, which shall be used to support the funded project.

(9) The applicant shall have an approved solid waste management plan.

(10) Other eligibility requirements or conditions to financial assistance that may be established and announced as authority policy or that may be included in the assistance agreement or conditional commitment letter.

Section 3. Additional Eligibility Requirements for a Grant From the Solid Waste Grant Program. (1) Only those applicants whose projects meet each of the following requirements shall be eligible for a grant from the solid waste grant program:

(a) A hardship shall exist.

(b) An extreme health hazard shall exist.

(2) No more than seventy-five (75) percent of the cost of a project may be funded by the solid waste grant program.

(3) Each applicant shall provide other funding equal to at least twenty-five (25) percent of the cost of the project, which may consist of the local contribution, or may consist of funds derived from:

(a) An authority loan or other loan;

(b) A grant from other sources; or

(c) The provision of services or property in kind, if the value of such services or property can be documented to the authority's satisfaction.

(4) In order to qualify for a rebate under KRS 224A.280(13) a county which is an applicant shall document, to the satisfaction of the cabinet, the scheduled cleanup of all illegal open dump sites located within its jurisdiction, including all costs incurred, in accordance with the requirements of KRS 224.888(1)(g)4 and the cabinet shall certify to the authority when successful cleanup is complete. Costs incurred in the cleanup shall be fully documented and reviewed by the cabinet. The amount to be rebated shall be limited to the lesser of the costs incurred for the cleanup or the local contribution to the project. The authority may reserve grant funds for the purpose of rebate, if the required amount can be reasonably estimated.

(5) If applications for grants exceed the available funds in the solid waste grant program for the highest priority projects, a loan from the solid waste revolving fund may be offered as a substitute source of project funding if the applicant meets the requirements for a loan established by Section 2 of this regulation.

Section 4. Solid Waste Revolving Fund and Solid Waste Grant Program Limitations and Terms. [(1) Grants shall not exceed $50,000 per county during any application period.]

[(2) Loans shall not exceed $200,000 per county during any application period.]

(1) Interest shall be paid at an annual rate equal to the index rate less two (2) percent as shall be established by the authority for a calendar quarter, calculated on the actual funds received by the applicant.

[(3) Interest shall be paid at an annual rate equal to the index rate less two (2) percent or such other rate as may be established by the authority for a calendar quarter, calculated on the actual funds received by the applicant.]

(2) [(4)] Interest shall be payable to the authority at such times as shall be established in the assistance agreement.

[(5) Principal shall be paid at such times as shall be established in the assistance agreement, provided that the total term of principal repayment shall not exceed the lesser of thirty (30) years of the useful life of the project.]

Section 5. Application Submission Requirements and Review Process. (1) The application form[, substantially] as in effect on April 15, 1991, which is incorporated by the reference and is made a part hereof as if fully set forth herein, may be obtained from the Division of Waste Management, Natural Resources and Environmental Protection Cabinet, 18 Reilly Road, Frankfort, Kentucky 40601.

(2) One (1) original application and four (4) copies shall be submitted to the Division of Waste Management on the date set for submission of applications during an application period, with summary copies submitted for state clearinghouse review.

(3) A single application form shall be used for a loan from the solid waste revolving fund, a grant from the solid waste grant program or a combination of the two (2).

(4) An applicant shall submit or be a part of only one (1) application per application period.

(5) Applications may be withdrawn at any time, and applications for unfunded projects may be resubmitted during the next application period.

(6) The cabinet shall review and prioritize applications during the first sixty (60) days of the application period, which review period may be extended by an additional thirty (30) days if additional application information is needed. State clearinghouse review may run concurrently with cabinet review. The authority shall review applications for credit quality and financial feasibility in the order or priority determined by the cabinet during the sixty (60) day period after prioritization is completed by the cabinet, which review may be extended by thirty (30) days if additional information is needed.

Section 6. Criteria for Prioritizing Project Applications. (1) The cabinet shall prioritize all applications received in an application period using a scoring system which measures the degree to which the proposed project satisfies each criteria.

(2) The criteria used by the cabinet to prioritize project applications shall **reflect the preferences set forth in KRS 224A.830(3) and the following criteria** [be as follows]:

(a) The extent to which the project shall promote waste reduction and recycling efforts, prevention of illegal open dumps, or shall provide convenient and accessible solid waste collection methods.

(b) The extent to which the project shall comply with goals and objectives of the approved solid waste management plan for the applicable solid waste management area.

(c) The extent to which the project shall satisfy the identified solid waste management needs of the service area and the Commonwealth.

(d) The extent to which the project shall serve the service area geographically and by population in the most effective and efficient manner.

[(e) Whether the proposed project cost estimates are reasonable and attainable given the geographic location of the project, current pricing trends, required professional services, and any other factors that may have a bearing on the project.]

(e) [(f)] The extent to which the project design shall achieve the proposed service level.

(f) [(g)] Whether the applicant can assure continued operation and maintenance of the project.

[(h) Whether the proposed source of revenue from the project shall be sufficient to operate the project and to repay any debt financing associated with the project.]

(g) [(i)] The degree to which the applicant has enforced KRS Chapter 224 and 401 KAR Chapters 47, 48, and 49.

(h) [(j)] Whether the application is properly completed and accurate.

(i) [(k)] Whether the service is needed and otherwise unavailable within the proposed service area.

(j) [(l)] Whether the project promotes any additional policies of the authority or the cabinet.

(3) The cabinet, after reviewing all eligible applications using the above criteria, shall submit a list of all projects recommended for funding in priority order to the authority staff, with all application information attached.

Section 7. Financial/Credit Review. (1) Authority staff shall review applications to determine those projects that are financially feasible and credit worthy for a loan from the solid waste revolving fund. For project applications requesting only a grant under the solid waste grant program, only the financial feasibility of the continued operation and maintenance of the project shall be reviewed.

(2) The financial review shall consider, among other things, the following:

(a) Adequacy and quality of the type of revenues pledged for repayment of the proposed loan, the funding of the local portion of a project financed with a grant and the operation and maintenance costs of the project.

(b) Validity of the assumptions used to project any revenues to be used to fund the project or the repayment of indebtedness incurred with respect to the project.

(c) Assurance that revenues to be used to fund the project or to repay indebtedness incurred with respect to the project shall be collected.

(d) Security of all other sources proposed to fund the project costs.

(e) Credit history of the applicant and compliance with existing debt covenants.

(f) Reasonableness of projections for operation and maintenance costs of the applicant's solid waste system.

(g) Any legal restrictions on:

1. The applicant;

2. The ability of the authority to fund the type of project proposed;

3. The applicant's ability to pledge the proposed revenues for repayment of an authority loan; or

4. The operation and maintenance of the project.

(h) If the project is to be operated, maintained or managed by a third party, the review of the audited financial information regarding the third party.

(i) Whether the proposed project cost estimates are reasonable and attainable given the geographic location of the project, current pricing trends, required professional services, and any other factors that may have a bearing on the project.

(j) Whether the proposed source of revenue from the project shall be sufficient to operate the project and to repay any debt financing associated with the project.

(3) Authority staff shall determine which applicants satisfy the above review, and shall make funding recommendations to the authority for all applications within the available funding limits of the solid waste revolving fund and solid waste grant program. Authority staff shall report any proposed substitutions of loans for grants requested, given limitations on available funds.

Section 8. Funding Process. (1) The authority shall consider the recommendations of the authority staff and the cabinet, and shall make the selection of those projects which are to be funded. [and shall establish a priority list for approval of additional applications if adequate funds are not available to fund all projects determined to be eligible.] For properties of equal priority under Section 6 of this regulation, the decision rests with the governing body of the authority.

(2) For the projects approved, a conditional commitment letter shall be sent to the applicant stating the type, terms and conditions of the project funding approved.

(3) The applicant shall be granted thirty (30) days to sign and return the conditional commitment letter indicating acceptance of the terms and conditions of the assistance offered, unless an extension for good cause is granted by the authority. Failure to respond shall result in forfeiture of the funds offered, and such funds shall then be made available to other applicants in the order of priority established by the authority.

(4) Upon completion of all conditions of the conditional commitment letter, the applicant shall execute an assistance agreement establishing the terms and conditions of the loan or grant. Execution of the assistance agreement shall generally coincide with award of construction or acquisition contracts for the project. No monies shall be released to the applicant until the assistance agreement has been executed.

(5) Upon determination of the actual bid cost of a project, the funding awarded by the authority may, at staff discretion, without further action of the authority, be increased by up to ten (10) percent of the proposed funding contained in the conditional commitment letter. Ten (10) percent of the funds committed from both the solid waste revolving fund and the solid waste grant program shall be reserved for this purpose, until assistance agreements for the funded projects are executed.

(6) Unless otherwise agreed to by the authority staff, funds shall be released to the applicant no more than once each month, for actual project costs incurred. A completed request for payment with adequate supporting documentation shall be submitted to the cabinet for review and approval. The cabinet shall forward the request and their written recommendation for payment to the authority.

(7) Upon substantial completion of the project and determination of the exact completion costs, a supplemental assistance agreement, including any necessary amendments and adjustment of the funding amounts and a final repayment schedule shall be executed, if any amendments or adjustments are necessary.

(8) To assure adequate funds for major maintenance and replacement of the project funded through the solid waste revolving fund, the applicant shall be required to set aside semiannually from current revenues, into a special depreciation fund, an amount which shall be determined by the authority and set forth in the assistance agreement. Monies may be withdrawn from the fund when major maintenance or replacement of equipment in excess of budgeted amounts is required. Applicants who receive a grant from the authority shall be required to set aside funds for major maintenance and replacement of the project in an amount determined by the authority and set forth in the assistance agreement.

Section 9. Loan and Grant Closing and Extensions. An applicant shall meet all conditions for loan and grant closing and take bids for the project within eleven (11) calendar months after the date of the conditional commitment letter, otherwise, the loan or grant commitment shall expire. One (1) extension of up to six (6) months may be granted upon a determination by the authority staff that circumstances so warrant. If the extension is denied, the loan or grant offer shall be rescinded. If a request for a time extension is granted, but all the conditions still cannot be met during the extension period, the loan or grant commitment **may** [shall] be rescinded. The applicant may reapply for any project for which the loan or grant commitment has expired or has been rescinded under this section.

Section 10. Authority to Administer the Program. The authority shall monitor the assistance agreement and require that financial reports be made available to the authority by the applicant at such intervals deemed necessary by the authority. The cabinet shall monitor the project and perform all actions that may be required to assure that the agreements continuously meet the program standards established by these regulations. There shall be an annual administrative fee of two-tenths (.2) of one (1) percent charged on the unpaid balance of all loans.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: April 15, 1991
FILED WITH LRC: April 15, 1991 at noon

FINANCE AND ADMINISTRATION CABINET
Kentucky Infrastructure Authority
(As Amended)

200 KAR 17:030. Guidelines for [drinking] water resources loan fund.

RELATES TO: KRS Chapter 224
STATUTORY AUTHORITY: KRS Chapter 13A, 224A.070(1), 224A.113, **Part I, OPERATING BUDGET, Section E. - Finance and Administration Cabinet, 44. a. General Administration, Part II, CAPITAL PROJECTS BUDGET, Section D. - Finance and Administration Cabinet, 4. a. Kentucky Infrastructure Authority of Chapter 514 of the 1990 Kentucky Acts, provides for funds to administer the Water Resources Loan Fund**
NECESSITY AND FUNCTION: KRS 224A.070(1) and 224A.113 authorize the Kentucky Infrastructure Authority to promulgate regulations in accordance with KRS Chapter 13A, to govern the application for and provision of financial assistance to governmental agencies for the construction or acquisition of [drinking] water **resources** projects from the drinking water loan fund.

Section 1. Definitions. For the purposes of this regulation the words and terms used shall have the same meaning as in KRS 224A.011, with the following additions:

(1) "Applicant" shall mean any governmental agency that has submitted an application to the

authority for a loan from the [drinking] water **resources** loan fund.

(2) "Application" shall mean the application submitted by an applicant for a loan from the [drinking] water **resources** loan fund.

(3) "State clearinghouse review" shall mean a review conducted within the Department of Local Government pursuant to federal or state law or regulations.

(4) "Authority staff" shall mean the Office of Financial Management and Economic Analysis.

(5) "Conditional commitment letter" shall mean a letter delivered to the applicant issuing the authority's commitment to provide a loan under specific terms and subject to the satisfaction of certain conditions by the applicant on or before the closing date.

[(6) "Drinking water project" shall mean the acquisition, rehabilitation or construction of water treatment works, water distribution facilities, or water resources projects instituted by a governmental agency which is approved by the authority or, if required, by the Natural Resources and Environmental Protection Cabinet, Public Service Commission or other agency; or any other public water utility or public water service project.]

(6) [(7)] "Department" shall mean the Department of Local Government.

(7) [(8)] "Closing date" shall mean the date established by the authority for execution of the assistance agreement upon satisfaction of the conditions contained in the conditional commitment letter.

(8) "Water resources loan fund" shall mean the water resources loan fund established pursuant to the authority of KRS Chapter 224A.

[(9) "Drinking water loan fund" shall mean the drinking water loan fund established pursuant to KRS Chapter 224A.]

(9) [(10)] "Capital investment plan" shall mean the plan developed by the applicant for investment in capital projects as required by KRS 224A.112(6)(b).

(10) [(11)] "Index rate" shall mean the average of the Bond Buyer's Index of twenty (20) G.O. Bonds as published weekly in the Bond Buyer (a financial newspaper published in New York) calculated based on the weeks falling within each calendar quarter. This average shall be rounded the nearest one-tenth (.1) of one (1) percent.

(11) [(12)] "Special depreciation fund" shall mean the special depreciation fund required to be established by an applicant by Section 6 of this regulation in connection with a loan from the [drinking] water **resources** loan program.

Section 2. General Eligibility Requirements and Conditions to Financial Assistance. (1) Applications shall only be submitted by applicants for [drinking] water **resources** projects located in the Big Sandy, Cumberland Valley, Kentucky River, or Gateway Area Development Districts.

(2) Only applicants that certify in writing that they are unable to finance **the** [an] entire [drinking] water **resources** project from their own resources shall be eligible for a loan. Documentation evidencing such inability shall include the following:

(a) Letters from local lending institutions.

(b) Letters from financial advisors, accountants or fiscal agents, if applicable.

(c) If the applicant is in an area which qualifies for assistance through the Farmer's Home Administration, (FmHA), a statement stating either:

1. The applicant will not qualify for funding;

2. The applicant has previously applied for FmHA funding and has failed to receive assistance in two (2) consecutive attempts; or

3. The applicant needs to supplement the FmHA funds with [drinking] water **resources** loan funds.

(d) Statements from any other sources or other certifications having a bearing on the application which the authority in its discretion deems relevant for purposes of making the determination that an applicant is unable to finance the entire [drinking] water **resources** project from its own resources.

(3) Each applicant shall have or shall attain the legal authority necessary for constructing, operating and maintaining the proposed [drinking] water **resources** project.

Section 3. Eligible [Drinking] Water **Resources** Projects. Monies in the [drinking] water **resources** loan fund shall be used for [drinking] water **resources** projects which **shall** [will] enhance the health, safety and welfare, and encourage economic development opportunities in local communities as determined by the authority based upon each application.

Section 4. Submission Requirements and Review Process. (1) The original and two (2) copies of each application shall be submitted to: Department of Local Government, Capital Plaza Tower, 2nd Floor, Frankfort, Kentucky 40601, Attention: Director, Division of Community Programs.

(2) The application form, substantially in the form as in effect on April 15, 1991, which is incorporated by reference and is made a part hereof as if fully set forth herein, may be obtained at the Department of Local Government from 8 a.m. to 4:30 p.m., Monday through Friday. Only a completed application, including all supporting documentation, shall be submitted before an application will be considered for assistance from the [drinking] water **resources** loan fund.

(3) Applications shall be subject to Kentucky state clearinghouse review, [and] shall be reviewed by the Department of Local Government, and shall be subject to authority credit review. Extensions of any review periods that are established may be necessary if the applicable reviewing agency determines that additional time is required for a more thorough review, or if any such agency determines that additional information or clarification is required to complete review of the application. Applicants may supplement their applications during the review process to:

(a) Clarify or explain the [drinking] water **resources** project scope;

(b) To provide additional information or clarification concerning the funds pledged as repayment of the loan; or

(c) To make adjustments in the application to enhance the programmatic or financial feasibility of the [drinking] water **resources** project.

Section 5. Criteria for Selecting Eligible [Drinking] Water **Resources** Projects. (1) The Department of Local Government shall select and determine eligible [drinking] water **resources** projects for loans. The department shall take into consideration the following:

(a) Unemployment data, which shall be specific to the county or counties from which the application originates and shall reflect the most recent figures available from each county.

(b) The extent to which the [drinking] water **resources** project fits into the economic development strategy of the community. A [drinking] water **resources** project which relates to economic development is one that stimulates the potential for economic growth. A [drinking] water **resources** project shall be considered based on the degree to which it enhances economic development efforts and its level of priority in the community's capital investment plan.

(c) The extent of the need for the [drinking] water **resources** project and the impact which the [drinking] water **resources** project will have on the local economic development efforts.

(d) Whether the proposed costs of completing the [drinking] water **resources** project are reasonable given the geographic location of the [drinking] water **resources** project, current pricing trends, required professional services, and any other factors that may have a bearing on the [drinking] water **resources** project. Cost figures submitted in the application will be reviewed to determine whether the proposed budget is sound. Any costs considered questionable will be analyzed to determine whether the integrity of the [drinking] water **resources** project is suspect.

(e) Whether, based upon the department's evaluation of the overall [drinking] water **resources** project effectiveness, the most beneficial [drinking] water **resources** project has been designed for the use of the [drinking] water **resources** loan fund.

(2) The department shall review applications and assign a priority ranking based on the selection criteria. [Drinking] Water **resources** projects shall be ranked as Priority I, Priority II, or Priority III.

(a) A Priority I ranking shall be assigned when, having considered all of the criteria, the [drinking] water **resources** project will have a significant economic impact on the community; is well designed; cost effective; and, generally, determined by the department to be the most suitable solution to the community's needs.

(b) Priority II shall be assigned when one (1) or more factors exist which would limit the success or feasibility of the [drinking] water **resources** project.

(c) Priority III shall be assigned when, having considered all the criteria, the department finds that the [drinking] water **resources** project is premature, is not feasible, or is inappropriate for assistance from the [drinking] water **resources** loan fund.

(d) The department shall recommend Priority I rankings to the authority's staff for financial review.

(3) Authority staff shall conduct a financial review of the Priority I designated [drinking] water **resources** project applications.

(a) The financial review shall include an analysis of:

1. The adequacy and quality of the revenues pledged for the repayment of the loan;

2. The validity of the assumptions used to project new revenues resulting from the [drinking] water **resources** project;

3. Whether monies other than the [drinking] water **resources** loan have been committed and shall be available to fund the cost of the [drinking] water **resources** project;

4. The ability of the applicant to provide for maintenance and operations cost of the [drinking] water **resources** project and related public service system;

5. The ability of the applicant to service existing debt of the system related to the [drinking] water **resources** project;

6. The nature of any funds pledged or committed by entities, other than the applicant, to repay the [drinking] water **resources** loan; and

7. The ability of the authority to finance the applicant's [drinking] water **resources** project using the financing programs permitted by Kentucky and federal laws or regulations.

(b) At any time during the financial analysis, an **applicant** [application] may be notified of a deficiency. If the problem cannot be resolved through negotiation, the authority may remove the application from consideration.

Section 6. Loan Process. (1) Upon completion of the credit review by the authority's staff, the application shall be submitted to the authority for final action.

(2) If the authority approves the application, a conditional commitment letter shall be issued to the applicant. This letter shall set forth the conditions and documentation required by the authority prior to execution of an assistance agreement. No funds shall be provided until the assistance agreement is fully executed. The commitment shall be made upon the authority's satisfaction that the [drinking] water **resources** project proposed is financially feasible, the applicant is credit worthy and that the [drinking] water **resources** project will comply with all technical and program requirements set forth in state and federal laws and regulations.

(3) The authority shall establish the interest rate quarterly based on prevailing market conditions. The rate of interest on each loan shall be set forth in the conditional commitment letter. There shall be one (1) rate of interest offered which will be the index rate less four (4) percent. If the nature of a [drinking] water **resources** project financed by the authority's loan causes interest on any authority bonds issued to fund the [drinking] water **resources** project to become taxable, the authority may consider adjustments in the interest rate to reflect the additional costs of authority funds.

(4) **Loan repayment shall not exceed thirty (30) years, and principal shall be payable annually and interest semiannually unless the authority establishes a more frequent payment schedule due to credit concerns. The loan repayment period may be less than thirty (30) years upon election of the authority. Loan**

repayment shall commence within six (6) months after the start of construction, unless repayment is dependent upon revenues generated from the specific water resources project. In such cases, loan repayment shall begin within six (6) months after the water resources project is operational, and interest to cover the authority's cost of money during the construction period may be added to the amount of the loan. [Loan repayments shall not exceed thirty (30) years. Loan repayments shall commence within six (6) months after the start of construction, unless repayment is dependent on revenues generated from the specific drinking water project. In such cases, loan repayment shall begin within six (6) months after the drinking water project is operational, and interest to cover the authority's cost of money during the construction period may be added to the amount of the loan.]

(5) The principal amount of each loan shall be equal to the amount approved by the authority. The final loan amount may be adjusted by up to ten (10) percent of the commitment without further action by the authority, subject to availability of funds to service the debt.

(6) Upon certification by the [drinking] water resources project engineer of construction of the [drinking] water resources project as eighty (80) percent complete, and submission by the applicant of evidence of the exact cost of the [drinking] water resources project, an inspection shall be conducted by the authority staff to provide for any adjustments in the loan amount.

(7) To assure adequate funds for major maintenance and replacement of the [drinking] water resources projects funded by this program, the applicant shall be required to set aside annually, to a special depreciation fund, from current revenues, after taking into account costs of operations and maintenance and debt service requirements, an amount to be determined by the authority. Monies may be withdrawn from the account when major maintenance or replacements of equipment in excess of budgeted amounts are required.

(8) The assistance agreement between the authority and applicant shall contain such terms and conditions as the authority deems necessary to maintain the integrity of the [drinking] water resources loan fund according to the circumstances of each [drinking] water resources project.

Section 7. Applicant's Management Capacity. The department and the authority's staff shall require as a condition of any loan that the applicant perform any or all of the following:

(1) Document compliance with statutory mandates for financial accountability and personnel management.

(2) Demonstrate the ability to operate, as well as maintain, the [drinking] water resources project in a proper manner through the final maturity date of the loan.

(3) Document compliance with any other state or federal laws or regulations.

Section 8. Loan Closing and Extensions. An applicant shall meet all conditions of the conditional commitment letter and take bids for the [drinking] water resources project within not more than eleven (11) calendar months after the date of the conditional commitment letter, otherwise, the loan commitment shall expire. (For example, if an application was approved on January 1, 1992, bids for the project must be accepted and the assistance agreement signed by November 30, 1992.) One (1) extension period of up to six (6) months may be granted upon request of the applicant, if the authority determines that circumstances warrant the granting of the extension. If the extension is denied, the loan commitment [offer] shall be rescinded. If a request for a time extension is granted, but all the conditions still cannot be met during the extension period, the loan commitment may [shall] be rescinded. The applicant may reapply for any [drinking] water resources project for which the loan commitment has expired or been rescinded under this section.

Section 9. Authority to Administer the Program. The authority shall monitor the assistance agreements and require that financial reports be made available to the authority by the applicant at such intervals as shall be deemed necessary by the authority. The authority shall monitor the economic impact on the community, the cash flows of the project, and perform all actions that shall be required to assure that the agreements continuously meet the program standards established by this regulation. There shall be an annual administrative fee of two-tenths (.2) of one (1) percent charged on the unpaid balance of all loans. This fee shall be applied to the servicing costs of the loans and necessary operating expenses of the program.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: April 15, 1991
FILED WITH LRC: April 15, 1991 at noon

FINANCE AND ADMINISTRATION CABINET
Kentucky Infrastructure Authority
(As Amended)

200 KAR 17:040. Guidelines for [drinking] water resources grant fund.

RELATES TO: KRS Chapter 224A
STATUTORY AUTHORITY: KRS Chapter 13A, 224A.070(1), 224A.113, Part I, OPERATING BUDGET, Section E. – Finance and Administration Cabinet, 44. a. General Administration, Part II, CAPITAL PROJECTS BUDGET, Section D. – Finance and Administration Cabinet, 4. a. Kentucky Infrastructure Authority provides funds to administer the Water Resources Grant Fund
NECESSITY AND FUNCTION: KRS 224A.070(1) and 224A.113, authorize the Kentucky Infrastructure Authority to promulgate regulations in accordance with KRS Chapter 13A, to govern the application for and provision of financial assistance to governmental agencies for the construction of drinking water projects from the [drinking] water resources grant fund.

Section 1. Definitions. For the purposes of this regulation the words and terms used shall have the same meaning as in KRS 224A.011, with the following additions:

(1) "Applicant" shall mean any governmental agency that has submitted an application to the authority for a grant from the [drinking] water resources grant fund.

(2) "Application" shall mean the application submitted by an applicant for a grant from the [drinking] water **resources** grant fund.
(3) "State clearinghouse review" shall mean a review conducted within the Department of Local Government pursuant to federal or state law or regulations.
(4) "Authority staff" shall mean the Office of Financial Management and Economic Analysis.
(5) "Financial hardship" shall mean the inability of an area to support debt due to socio-economic factors limiting the ability of the applicant to generate revenue.
(6) "Extreme health hazard" shall mean such documented existing conditions pertaining to the quality or absence of drinking water which significantly contribute to an increase in illness or which otherwise endanger human health or safety within the proposed project's service area.
(7) "Conditional commitment letter" shall mean a letter delivered to the applicant issuing the authority's commitment to provide a grant under specific terms and subject to the satisfaction of certain conditions by the applicant on or before the closing date.
(8) "Department" shall mean the Department of Local Government.
(9) "Closing date" shall mean the date established by the authority for execution of the assistance agreement upon satisfaction of the conditions contained in the conditional commitment letter.
(10) "[Drinking] Water **resources** grant fund" shall mean the [drinking] water **resources** grant fund established pursuant to **the provisions of** KRS Chapter 224A.
[(11) "Drinking water project" shall mean the acquisition, rehabilitation or construction of water treatment works, water distribution facilities, or water resources projects instituted by a governmental agency which is approved by the authority or, if required, by the Natural Resources and Environmental Protection Cabinet, Public Service Commission or other agency; or any other public water utility or public water service project.]
(11) [(12)] "Capital investment plan" shall mean the plan developed by the applicant for investment in capital projects as required by KRS 224A.112(6)(b).

Section 2. General Eligibility Requirements and Conditions to Financial Assistance. [(1) Applications for drinking water projects shall be submitted only by applicants.]
(1) [(2)] Only applicants that certify in writing that they are unable to finance the entire [drinking] water **resources** project from their own resources shall be eligible for a grant. Documentation evidencing such inability shall include the following:
(a) Letters from local lending institutions.
(b) Letters from financial advisors, accountants or fiscal agents, if applicable.
(c) If the applicant is in an area which qualifies for assistance through the Farmer's Home Administration, ("FmHA"), a statement stating either:
1. The applicant will not qualify for funding;
2. The applicant has previously applied for FmHA funding and has failed to receive assistance in two (2) consecutive attempts; or
3. The applicant needs to supplement the FmHA funds with [drinking] water **resources** grant funds.
(d) Statements from any other sources or other certifications having a bearing on the application, which the authority in its discretion deems relevant for purposes of making the determination that an applicant is unable to finance the entire [drinking] water **resources** project from its own resources.
(2) [(3)] Each applicant shall have or shall attain the legal authority necessary for constructing, operating and maintaining the proposed [drinking] water **resources** project.

Section 3. Eligible [Drinking] Water **Resources** Projects. Monies in the [drinking] water **resources** grant fund shall be used for [drinking] water **resources** projects designed to encourage development opportunities within or among local communities and address serious drinking water needs.

Section 4. Submission Requirements and Review Process. (1) The original and two (2) copies of each application shall be submitted to: Department of Local Government, Capital Plaza Tower, 2nd Floor, Frankfort, Kentucky 40601; Attention: Director, Division of Community Programs.
(2) Application forms **in the form as in effect on May 15, 1991, which is incorporated by reference and made a part hereof as is fully set forth herein,** may be obtained from the Department of Local Government, and a complete application including all supporting documentation shall be submitted before an application will be considered for assistance from the [drinking] water **resources** grant fund.

Section 5. Criteria for Selecting Eligible [Drinking] Water **Resources** Projects. (1) The Department of Local Government shall select and determine eligible [drinking] water **resources** projects for grants. The department shall take into consideration the following:
(a) Unemployment data, which shall be specific to the county or counties from which the application originates and shall reflect the most recent figures available from each county.
(b) The degree to which a [drinking] water **resources** project enhances development efforts in the community and its level of priority in the community's capital investment plan.
(c) The extent of the need for the [drinking] water **resources** project. Primary factors to be considered are both financial hardship and extreme health hazard as well as the extent of [drinking] water **resources** deficiencies on the community.
(d) Whether proposed costs of completing the [drinking] water **resources** project are reasonable given the geographic location of the [drinking] water **resources** project, current pricing trends, required professional services, and any other factors that may have a bearing on the [drinking] water **resources** project. The cost figures presented with the application **shall** [will] be reviewed to ensure the budget is sound. Any costs considered questionable **shall** [will] be analyzed to determine whether the integrity of the [drinking] water **resources** project is suspect.

(e) Whether the most beneficial [drinking] water **resources** project has been designed for the use of [drinking] water **resources** grant funds. Factors that shall be considered include the amount of funds requested, drinking water [project] need, development impact, local effort in terms of monetary participation and management, and program design. These factors **shall** [will] be used to determine the significance and impact of program accomplishments once the [drinking] water **resources** project is complete.

(2) The department shall review applications and assign a priority ranking based on the selection criteria. [Drinking] Water **resources** projects shall be ranked as Priority I, Priority II, or Priority III.

(a) A Priority I ranking shall be assigned when, having considered all of the criteria, the [drinking] water **resources** project addresses a significant need, is well designed, cost effective, and, generally, is determined by the department to be the most suitable solution to the community's needs.

(b) Priority II shall be assigned when one (1) or more factors exist which would limit the success or feasibility of the **water resources** project.

(c) Priority III shall be assigned when, having considered all the criteria, the department finds that the [drinking] water **resources** project is premature, is not feasible, or is inappropriate for assistance from the [drinking] water **resources** grant fund.

(d) The department shall recommend Priority I rankings to the authority for approval.

(3) Authority staff shall conduct a financial review of the Priority I designated [drinking] water **resources** project applications.

(a) The financial review shall include an analysis of:

1. The validity of the assumptions used to project new revenues resulting from the [drinking] water **resources** project;
2. Whether monies other than the [drinking] water **resources** grant **fund** have been committed and shall be available to fund the cost of the [drinking] water **resources** project;
3. Ability of the applicant to provide for maintenance and operations cost of the [drinking] water **resources** project and related public service system;
4. Ability of the applicant to service existing debt of the system related to the **water resources** project;
5. Ability of the authority to finance the applicant's [drinking] water **resources** project using the financing programs permitted by Kentucky and federal laws or regulations.

(b) At any time during the financial analysis, an applicant may be notified of a deficiency. If the problem cannot be resolved through negotiation, the authority may remove the application from consideration.

Section 6. Grant Process. (1) Upon completion of the credit review by the authority's staff, the application shall be submitted to the authority for final action.

(2) If the authority approves the application, a conditional commitment letter shall be issued to the applicant. This letter shall set forth the conditions and documentation required by the authority prior to execution of an assistance agreement. No funds shall be provided until the assistance agreement is fully executed. The commitment shall be made upon the authority's satisfaction that the [drinking] water **resources** project proposed is financially feasible, the applicant is credit worthy and the **water resources** project shall comply with all technical and program requirements set forth in state and federal laws and regulations.

Section 7. Applicant's Management Capacity. The department and the authority's staff shall require as a condition of any grant that the applicant perform any or all of the following:

(1) Document compliance with statutory mandates for financial accountability and personnel management.

(2) Demonstrate the ability to operate, as well as maintain, the **water resources** project in a proper manner over the life of the [drinking] water **resources** project.

(3) Document compliance with any other state or federal laws or regulations.

Section 8. Grant Execution and Extensions. An applicant shall meet all conditions of the conditional commitment grant letter and take bids for the [drinking] water **resources** project within not more than eleven (11) calendar months after the date of the conditional commitment letter, otherwise, the grant commitment shall expire. One (1) extension period of up to six (6) months may be granted upon request of the applicant, if the authority determines that circumstances warrant the granting of the extension. If the extension is denied, the grant **commitment** [offer] shall be rescinded. If a request for a time extension is granted, but all the conditions still cannot be met during the extension period, the grant commitment **may** [will] be rescinded. The applicant **may** [shall] reapply for a grant for any project from which the grant commitment has expired or been rescinded under this section.

Section 9. Authority to Administer the Program. The authority shall monitor the assistance agreements and require that **audited annual financial reports and such other reports as may be required by the authority** [periodic reports] be made available to the authority by the governmental agency at such intervals as shall be deemed necessary by the authority. The authority shall perform all actions that shall be required to assure that the agreements continuously meet the program standards established by this regulation.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: April 15, 1991
FILED WITH LRC: April 15, 1991 at noon

FINANCE AND ADMINISTRATION CABINET
Kentucky Infrastructure Authority
(As Amended)

200 KAR 17:050. Guidelines for federally assisted wastewater revolving fund.

RELATES TO: KRS Chapter 224A
STATUTORY AUTHORITY: KRS Chapter 13A, 224A.070(1), 224A.113

NECESSITY AND FUNCTION: KRS 224A.070(1) and 224A.113 authorize the Kentucky Infrastructure Authority to promulgate regulations in accordance with KRS Chapter 13A, to govern the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from the federally assisted wastewater revolving fund.

Section 1. Definitions. For the purposes of this regulation the words and terms used shall have the same meaning as in KRS 224A.011, with the following additions:

(1) "Applicant" shall mean any governmental agency that has submitted an application to the authority and the cabinet for a loan from the federally assisted wastewater revolving fund.

(2) "Application" shall mean an application submitted by an applicant for a loan from the federally assisted wastewater revolving fund.

(3) "Authority staff" shall mean the Office of Financial Management and Economic Analysis.

(4) "Cabinet" shall mean the Natural Resources and Environmental Protection Cabinet.

(5) "Closing date" shall mean the date established by the authority for execution of the assistance agreement upon satisfaction of the conditions contained in the conditional commitment letter.

(6) "Conditional commitment letter" shall mean a letter delivered to the applicant stating the authority's commitment to provide a loan under specifications and subject to the satisfaction of certain conditions by the applicant on or before the closing date.

(7) "Index rate" shall mean the average of the Bond Buyer's Index of twenty (20) G.O. Bonds as published weekly in the Bond Buyer (a financial newspaper published in New York) calculated based on the weeks falling within each calendar quarter. This average shall be rounded to the nearest one-tenth (.1) of one (1) percent.

(8) "Requisition for funds" shall mean the form identified in and attached to the assistance agreement to be used by the governmental agency for obtaining disbursements of the loan from the authority as construction of the wastewater project progresses.

(9) "State clearinghouse review" shall mean a review conducted by the Department of Local Government which has been designated as the single point of contact pursuant to federal and state laws or regulations.

(10) "Special depreciation fund" shall mean the special depreciation fund required to be established by an applicant by Section 7 of this regulation in connection with a loan from the federally assisted wastewater revolving fund.

(11) "Wastewater project" shall mean a wastewater project described in Section 3 of this regulation.

(12) "Project construction [project] priority list" shall mean the list developed annually by the cabinet containing all eligible wastewater projects in priority order.

Section 2. Eligible Applicants. Any applicant[, as defined in KRS 224A.011,] shall be eligible to apply for financial assistance for planning, design and construction of eligible wastewater projects described [set forth] in Section 3 of this regulation.

Section 3. Eligible Wastewater Projects. (1) Funds in the federally assisted wastewater revolving fund shall be used for planning, design and construction of wastewater collection, conveyance, and treatment facilities and for the implementation of nonpoint source pollution control management programs. Wastewater projects may include: wastewater treatment facilities, interceptor sewers and pump stations, collector sewers, inflow/infiltration corrections, sewer rehabilitation and combined sewer overflow.

(2) Only projects identified on the state's construction project priority list shall be considered for funding.

Section 4. Submission Requirements and Review Process. (1) The original and one (1) copy of each application shall be submitted to the address listed below or if different, to the address listed on the application: Kentucky Division of Water, Facilities Construction Branch, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601, Attention: Branch Manager, and one (1) copy of each application shall be simultaneously submitted to: Kentucky Infrastructure Authority, Room 075, Capitol Annex Building, Frankfort, Kentucky 40601, Attention: Executive Director.

(2) The application form, substantially in the form as in effect on April 15, 1991, which is incorporated by reference and is made a part hereof as if fully set forth herein, may be obtained at the Division of Water from 8 a.m. to 4:30 p.m., Monday through Friday. Only a completed application,including all supporting documentation, shall be considered for assistance from the federally assisted wastewater revolving fund.

(3) Financial information contained in the application shall be consistent with the estimates contained in the cost effective alternative selected in the facilities' planning process. Prior to issuance of a binding commitment by the authority, the application and facilities planning document shall be routed through state clearinghouse review.

Section 5. Criteria for Selecting Eligible Wastewater Projects. (1) The cabinet shall select and determine eligible wastewater projects from the project construction priority list for loans and recommend such projects to the authority for consideration. Wastewater projects which meet all the requirements stated in this regulation, shall have priority for funding as indicated herein. Priority points shall be given each applicant based upon factors which consider:

(a) The ratio of proposed wastewater treatment costs to wastewater transportation costs;

(b) The impact the wastewater project has on any existing drinking water supply;

(c) Outstanding resource waters in the area as defined by 401 KAR 5:029, Section 1(v);

(d) The operational, municipal performance ratings received by the applicant from the Division of Water;

(e) Populations to be served that presently do not have sewer systems available;

(f) The ratio of stream flow upstream to the existing or proposed discharge;

(g) The ability to comply with the required discharge perimeters for various pollutants for the applicant.

(2) The authority shall take into consideration the following factors in

recommending wastewater projects for funding: [The cabinet shall take into consideration the following:]

(a) Whether the cost of completing the wastewater project is reasonable given the geographic location of the project, current pricing trends, required professional services, and any other factors that may have a bearing on the wastewater project. Cost figures submitted in the application shall be reviewed to determine whether the proposed budget for the wastewater project is feasible.

(b) Whether the most beneficial and effective project has been planned for the use of the federally assisted wastewater revolving fund.

[(c) Wastewater projects funded, which have met all the requirements stated in this regulation, shall have priority for funding as indicated herein. Priority points shall be given each applicant based upon factors which consider:]

[1. The ratio of proposed wastewater treatment cost to wastewater transportation costs;]

[2. The impact the project has on any existing drinking water supply;]

[3. Outstanding resource waters in the area as defined by 401 KAR 5:029, Section 1(v);]

[4. The operational municipal performance ratings received by the applicant from the Division of Water;]

[5. Populations to be served that presently do not have sewer systems available;]

[6. The ratio of streamflow upstream to the existing or proposed discharge;]

[7. The ability to comply with the required discharge parameters for various pollutants for the applicant.]

Section 6. Wastewater Project Requirements. (1) In addition to other requirements stated in this regulation, the following specific requirements shall be met:

(a) The wastewater project shall use the best practicable waste treatment technology.

(b) Alternative technologies shall have been considered in wastewater project planning.

(c) The related sewer collection system shall not be subject to excessive inflow/infiltration.

(d) Innovative and alternative treatment technologies shall have been studied in an effort to construct revenue producing facilities and to make more efficient use of energy and resources.

(e) Potential recreation and open space opportunities have been analyzed in the planning of the proposed facility.

(f) The wastewater project is included in the statewide plans developed under Sections 208 and 303(e) of the Federal Clean Water Act.

(g) The applicant has developed an adequate user charge system and the applicant has the legal, institutional, managerial and financial capability to construct, operate and maintain the wastewater project.

(h) The applicant shall agree, one (1) year after the date of completion of construction and initiation of operation, to certify to the cabinet that the facility meets design specifications and effluent limitations included in the discharge permit.

(i) The treatment system is cost effective and a value engineering review will be conducted for wastewater projects having construction costs over $2,000,000; provided that the foregoing engineering review shall not be required for collector sewers and minor sewer rehabilitation.

(j) The wastewater project has undergone appropriate reviews to ensure compliance with the National Environmental Policy Act.

(k) The applicant shall ensure that wages paid for the construction of the facilities shall conform to the prevailing wage rates established for the locality by the United States Department of Labor under the Federal Davis-Bacon Act or state wage rates, whichever rates are higher.

(l) The applicant shall ensure compliance with all applicable federal laws and regulations.

(m) Certification by the applicant that it has complied with the procurement requirements as described in the application by the cabinet [contained in KRS Chapter 45A].

(n) Construction contracts shall be awarded to the lowest responsive responsible bidder.

Section 7. Loan Process. (1) Upon completion of the credit review by the authority's staff, the application shall be submitted to the authority's board of directors for final action.

(2) If the authority approves the application, a conditional commitment letter shall be issued to the applicant. This letter shall set forth the conditions and documentation required by the authority prior to execution of an assistance agreement. No funds shall be provided until the assistance agreement is fully executed. The commitment shall be made upon the authority's satisfaction that the wastewater project proposed is financially feasible, the applicant is credit worthy and that the wastewater project will comply with all technical and program requirements set forth in state and federal laws and regulations.

(3) The authority shall establish interest rates quarterly based on prevailing market conditions. The rate of interest on each loan shall be set forth in the conditional commitment letter. There shall be two (2) rates of interest offered, the above median income interest rate and the below median income interest rate. The above median income interest rate shall be the index rate less three (3) percent. The above median interest rate shall apply to applicants whose jurisdiction lies within a county whose median family income level is above or equal to the statewide median household income level. The below median interest rate shall be the index rate less five (5) percent. The below median interest rate shall apply to applicants whose jurisdiction lies within a county whose median family income is below the statewide median family income. The most recent statistics on family income as published by the Urban Studies Center, University of Louisville, shall apply. If an applicant's jurisdiction lies within more than (1) one county, the average of the median family income of all the counties covered by the applicant's jurisdiction shall determine the applicable interest rate. If the median family income level of an applicant's community differs significantly from that of the applicant's county, the authority may consider adjustments of the interest rate to the below median income rate. If the nature of a wastewater project financed by the authority's loan causes interest on any authority bonds issued to fund the wastewater project to become taxable, the authority may consider adjustments in the interest rate to reflect the additional costs of authority funds.

(4) Principal on any loan shall be repaid over a period not to exceed twenty (20) years. Repayment of principal shall commence within one (1) year of the completion date of the wastewater project or upon such other date as may be set forth in the assistance agreement. Principal shall be payable annually, unless the authority establishes a more frequent payment schedule due to credit concerns. The loan repayment period may be less than twenty (20) years upon election of the authority. [Loan repayments shall not exceed twenty (20) years, and principal and interest shall be paid semiannually, unless the authority establishes a more frequent payment schedule due to credit concerns. The loan repayment period may be less than twenty (20) years upon election of the authority. Loan repayments shall commence within six (6) months after the start of construction, unless repayment is dependent on revenues generated from the specific infrastructure project. In such cases, loan repayments shall begin within six (6) months after the wastewater project is operational, and interest to cover the authority's cost of money during the construction period may be added to the amount of the loan.]

(5) Interest payments on the outstanding principal amount of the loan shall be paid semiannually and shall commence within six (6) months of initial disbursement of loan proceeds, unless such interest payments are dependent upon revenues generated from the wastewater project. In the event interest payments are deferred as provided above, interest payments shall begin within six (6) months after the wastewater project is completed, and interest to cover the authority's cost of money during the construction period may be added to the amount of the loan.

(6) [(5)] The principal amount of each loan shall be equal to the amount approved by the authority. The final loan amount may be adjusted by up to ten (10) percent of the amount stated in the conditional commitment letter without further action by the authority, subject to the availability of funds to service the debt.

(7) [(6)] To ensure adequate funds for major maintenance and replacement of the wastewater projects funded by this program, the applicant shall be required to set aside annually to a special depreciation fund from current revenues, after taking into account costs of operations and maintenance and debt service requirements, an amount to be determined by the authority. Monies may be withdrawn from the account when major maintenance or replacement of equipment in excess of budgeted amounts are required.

(8) [(7)] The assistance agreement between the authority and applicant shall contain such terms and conditions as the authority deems necessary to maintain the financial integrity of the federally assisted wastewater revolving fund according to the circumstances of each wastewater project.

Section 8. Applicant's Management Capacity. The cabinet and the authority's staff may require as a condition of any loan that the applicant perform any or all of the following:

(1) Document compliance with the statutory mandates for financial accountability and personnel management.

(2) Demonstrate the ability to operate, as well as maintain, the project in a proper manner through the final maturity date of the loan or the useful life of the project, whichever is greater.

(3) Document compliance with any other state or federal requirements.

Section 9. Submission and Review of Requisition for Funds. (1) The original and one (1) copy of each requisition for funds with the required invoices attached shall be submitted to the authority and one (1) copy of each requisition for funds with the required invoices attached shall be submitted to the Kentucky Division of Water at the address set forth in Section 4 of this regulation.

(2) The cabinet shall review requisitions for funds for compliance with federal and state requirements as defined in the conditional commitment letter and assistance agreement before approving payment by the authority.

Section 10. Loan Closing and Extensions. An applicant shall meet all conditions for loan closing and take action to award contracts for the wastewater project within not more than eleven (11) calendar months after the date of the conditional commitment letter, otherwise, the loan commitment shall expire. One (1) extension period of up to six (6) months may be granted upon request of the applicant, if the authority, after consultation with the cabinet, determines that circumstances warrant the granting of the extension. If the extension is denied, the loan commitment [offer] shall be rescinded. If a request for a time extension is granted, but all the conditions still cannot be met during the extension period, the loan commitment may be rescinded. The applicant may [shall] reapply for a loan for any wastewater project for which the loan commitment has expired or has been rescinded under this section.

Section 11. Authority to Administer the Program. The authority shall monitor the assistance agreements and require that financial reports be made available to the authority by the governmental agency at such intervals as shall be deemed necessary by the authority. The authority shall monitor the cash flows of the wastewater project, and perform all actions that shall be required to assure that the agreements continuously meet the program standards established by this regulation. There shall be an annual administrative fee of two-tenths (.2) of one (1) percent charged on the unpaid balance of all loans. This fee shall be applied to the servicing costs of the loans and necessary operating expenses of the program.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: April 15, 1991
FILED WITH LRC: April 15, 1991 at noon

TOURISM CABINET
Department of Fish & Wildlife Resources
(As Amended)

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

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.175, 150.305, 150.330, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation pertains to the deer gun and archery season and the turkey season on special [deer] areas. This regulation is necessary for the continued protection of the species listed herein, and to insure a permanent and continued supply of the wildlife resource for present and future residents of the state. The function of this regulation is to provide for the prudent taking of deer and turkey within reasonable limits based upon an adequate supply. This amendment is necessary to establish current season dates and hunting rules.

Section 1. Deer and turkey Season on Special [Deer] Areas. Unless otherwise stated, the provisions of 301 KAR 2:170 and 301 KAR 2:140 apply. These areas are open only on the dates specified below for deer or turkey hunting [hunters]. [Except on the Westvaco hunting area,] Hunters on these areas shall produce the signature portion of a valid deer permit. [and shall be issued] A special purpose tag to place on the deer shall be issued except on the Westvaco area.

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

(a) Deer archery hunts: Any [deer:] white-tailed [or fallow] deer. The last Saturday in September through October 24 [25], October 29 [30] through November 7 [8] and December 14 [15] through December 31.

(b) Quota deer hunts.

1. Quota gun hunts: white-tailed or fallow deer and sex of deer as specified on permit. November 16-17, 19-20, and 23-24 [17-18, 20-21, and 24-25].

2. Quota archery hunts: any white-tailed [or fallow] deer in that portion of the Environmental Education Area designated as hunt area 17. October 26-27 [27-28], November 16-17 [17-18] and 23-24 [24-25].

(c) Turkey archery hunts: one (1) turkey of either sex during the deer archery hunts as specified in subsection (1)(a) of this section. Each hunter shall have a valid wild turkey permit in possession, and when a turkey is taken, it shall be tagged with the fall [yellow] portion of the state permit.

(d) Quota deer gun hunt for youths only: one (1) white-tailed deer or fallow of either sex as specified on permit on October 26-27 [27-28]. Hunting is restricted to persons at least ten (10) years of age but who have not reached their 16th birthday. Each youth shall be accompanied by an adult and shall have a valid Kentucky hunting license and [, a] state deer permit, an LBL Youth Hunt Permit and a state approved Hunter Safety Certificate.

(e) Bag limits. The deer bag limit for the Kentucky portion of LBL is two (2) deer; except that no more than one (1) deer shall be taken during any quota gun or quota archery hunt [at LBL].

(f) Areas open and closed to hunting. State line to Barkley Canal is open to hunting except for developed public use areas (unless posted as open), safety zones and areas posted as closed.

(g) Youth and quota hunt applications. Hunters shall be selected by a drawing. Application forms are available from, and shall be submitted to, Quota Deer Hunt, Land Between the Lakes, Golden Pond, Kentucky 42231. Completed applications shall be postmarked [received by the wildlife staff at the Land Between the Lakes Administrative Office] no later than 3:30 p.m. on the last Wednesday in July. If unfilled quotas exist after the regular drawing, quotas shall be filled by issuing permits on a first-come, first-served basis at the Land Between the Lakes administrative office.

(h) Checking in and out.

1. Quota gun hunters. All hunters, including those camping in LBL, shall check in prior to hunting, but shall not be required to check out unless a deer is harvested. Hunters shall check in between 8 a.m. and 6 p.m. the day before the hunt, or after 4 a.m. on hunt days. Check stations will be open from 4 a.m. to 6:30 p.m. (CST) on hunt days.

2. Archery hunters. Archery hunters are not required to check in or out except on quota hunts. All deer and turkey harvested shall be checked out.

(i) Permits and tagging requirements.

1. Permits. An LBL hunter use permit shall be required for each hunter participating in the deer and turkey archery season and an LBL computer card permit is required for each hunter participating in the quota gun or quota archery deer hunts.

2. Tags. All harvested deer and turkey shall be tagged with an LBL permanent game tag before being removed from the area. Permanent LBL game tags shall be attached to all harvested deer and turkey at LBL check stations. The LBL permanent game tag shall be used in place of the Kentucky Department of Fish and Wildlife Resources official game check card as proof of check in and for taxidermy purposes.

(j) Prohibited weapons: crossbows [are prohibited].

(k) The taking of coyotes. Hunters participating in the quota gun hunts may take coyotes if hunters have not yet taken their deer and have a valid deer tag.

(l) For LBL general hunting rules refer to 301 KAR 2:050.

(2) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties. There will be no hunting on Tuesdays and Wednesdays except when Tuesday or Wednesday is a federal holiday or as follows: December 16-17, 23-24, 26, and 30-31, [18-19 and 26,] then hunting shall be permitted. There will be no hunting on December 25 and January 1.

(a) Deer archery and muzzle-loading rifle season. Any deer: September 28 [22] through October 11 [5].

(b) Youth deer shotgun season: September 28-29 and October 5-6 [22 through October 5] on selected areas. Any deer. For persons aged ten (10) through sixteen (16) who shall be accompanied by an adult. Each youth shall have a valid hunter safety certificate. Shotguns twenty (20) gauge or larger shall be used.

(c) Deer gun and archery season. Any deer: October 12 through 25 [6 through November 19] and December 14 [8] through December 31 on selected areas.

(d) Wild turkey archery season: Any turkey. Statewide season limits apply. September 28 [22] through October 11 [5]. Only those turkey hunters who possess valid unfilled deer and turkey hunting permits may hunt turkey at this time.

(e) Wild turkey shotgun only season: any turkey. October 26 [27] through November 4 [9].

(f) White turkey season: any white turkey. The

post bag limit is one (1) white turkey [per deer gun season]. Statewide and post season limits and tagging requirements on wild [white] turkey do not apply to the taking of white [other] turkey. White turkey may be taken during any open hunting season on Ft. Campbell. Only those hunters who possess valid unfilled deer tags may hunt white turkey during deer season and only those possessing turkey hunting permits may hunt white turkey during turkey season. [Only those turkey hunters who possess valid unfilled deer tags and turkey hunting permits are permitted to hunt turkey at this time.]

(g) Deer bag limits. The bag limit for Kentucky license holders hunting on Fort Campbell shall be two (2) [antlered or antlerless] deer taken by either gun or bow. Prior to November 15 [24], once a hunter has taken his first deer on Fort Campbell, he shall be ineligible for weekend drawings (i.e., he may only hunt on Mondays, Thursdays, or Fridays or on weekend standby) until the reopening of deer hunting on December 14 [8]. Then if he has not harvested his limit he shall be eligible for the weekend drawing until he has taken his limit.

(h) Permits and tagging requirements.

1. Deer hunters shall purchase a fifteen (15) dollar post hunting and fishing permit which includes a Fort Campbell deer tag, at building #6645. All Fort Campbell deer hunters shall also have the signature portion of a valid Kentucky deer permit in their possession. Persons sixty-five (65) years of age or older are not required to purchase a post hunting and fishing permit.

2. All deer taken on post by Kentucky hunters shall have a valid special purpose Kentucky deer tag attached to the carcass. All successful hunters shall fill out an official game check card to be kept in possession until the deer is processed.

(i) Prohibited and permitted weapons. Handguns and crossbows are prohibited. Rifles shall be permitted only in areas west of Palmyra Road. All rifles shall be equipped with telescopic sights. Hunting arrows shall not be [not] less than twenty-four (24) inches in length, equipped with broadhead barbless blades not less than seven-eighths (7/8) inch nor more than two (2) inches wide for single two (2) edged blades, or not more than three (3) or more blades. The minimum weight for all broadheads is 100 grains.

(j) Hunter safety certificate. All deer hunters between the ages of ten (10) and eighteen (18) shall possess a valid hunter safety certificate.

(3) Fort Knox Wildlife Management Area located in Hardin, Bullitt and Meade Counties.

(a) Deer archery hunt [(any deer)]: any deer. First Saturday in October through November 17 [18].

(b) Deer gun hunt [(any deer)]: any deer. November 30-December 1, December 7-8, and December 14-15. [23-24, November 30-December 1, December 7-13.] [24-25, December 1-2, December 8-9 and December 15-16.]

(c) Bag limits. The [post] bag limit is two (2) deer [of either sex], only one (1) deer shall be taken by gun and one (1) [taken] by bow.

(d) Applications. Separate applications are required for archery and gun hunts.

1. Archery hunts. Civilians not working on post may [shall] apply for weekend archery hunts by mail. No more than five (5) hunters shall apply on any one (1) application. Applications shall not be postmarked earlier than the second [third] Saturday in August or later than August 31 to be considered for the drawing for weekend archery hunts. Applicants drawn shall be assigned one (1) weekend of archery hunting. Weekday archery hunting shall be on a first-come, first-served basis. Sign-up for weekday hunts shall be made at least forty-eight (48) hours in advance at Hunt Control Headquarters Building 1060.

2. Gun hunts. Civilians not working on post may [shall] apply by mail for a two (2) day gun hunt. No more than five (5) hunters shall apply on any one (1) application. Applications shall not be postmarked earlier than the second [third] Saturday in August or later than August 31 to be considered for a random drawing. Hunters shall be assigned one (1), two (2) day hunting period. [Any hunter desiring to hunt December 7 through December 13 shall be accepted on a first-come first-served basis.]

3. Application procedure. All applications shall contain the type of hunt (gun or bow), names and addresses of each hunter, a self-addressed stamped envelope and a fifteen (15) [twenty-two (22)] dollar money order, certified check or cashier's check for each hunter, made payable to Treasurer of the United States. Mail applications to Directorate of Engineering and Housing [Community Recreation Division], Hunt Control Office, Attn: ATZK-EHE, Fort Knox, Kentucky 40121-5000.

(e) Check station. All deer taken during the archery season shall be checked in at Building 112 [1060]. Deer taken during the gun hunts shall be checked in at Building 7331 on 9th Avenue. Successful hunters shall have the completed hunter portion of their game check card in their possession.

(f) Hunting hours: one-half (1/2) hour before sunrise until 5 p.m. local prevailing time. Hunters shall clear hunt control by 7 p.m.

(g) Weapons. Only breech-loading and muzzle-loading shotguns of twelve (12) gauge maximum and twenty (20) gauge minimum firing a single projectile, and muzzle-loading rifles of .38 caliber to .58 caliber firing a single projectile shall be permitted. Magazined shotguns shall be plugged to a three-shot capacity. Hunters shall have no more than ten (10) rounds of ammunition in possession for any one (1) hunting day. [Crossbows are prohibited.]

(h) Hunter safety certificates. All deer hunters under the age of forty (40) [thirty-seven (37)] shall possess a valid hunter safety certificate.

(i) Special clothing requirements. Gun hunters shall wear a solid hunter orange vest, jacket or coveralls and a hunter orange hat.

(j) Special equipment. All hunters shall possess a Fort Knox special hunting and fishing map and a flashlight.

(k) Intoxicants. Intoxicants are prohibited in vehicles and hunting areas.

(l) Licenses, deer tags, and post permits. All persons deer hunting on the Fort Knox Military Reservation shall possess a valid Kentucky Hunting License, deer permit and a Fort Knox Deer Permit.

(4) Bluegrass Ordnance Depot Activity located in Madison County.

(a) Deer archery hunts: during the month of October and November.

(b) Deer gun hunts: during the month of November and December.

(c) Bag limits. The post bag limit is one (1) deer of the sex announced on the day of the hunt.

(d) Applications. Hunters may submit applications for archery or gun hunts[, but not for both]. Applications for the drawings shall be made on a three (3) inch by five (5) inch card [postcard] with only one (1) applicant [hunter] allowed per card. More than one (1) [post]card per individual shall disqualify the applicant. When a maximum of two (2) people desire to hunt together, the required information shall be written on individual three (3) inch by five (5) inch cards, stapled together, and mailed in an [one (1)] envelope. The upper right corner of each card shall state the name of the person the applicant desires to hunt with. Each applicant shall furnish name and address (including zip code), [social security number,] date of birth, telephone number and specify first and second choice for [whether] gun and [or] archery hunting [is desired]. Hunters, their hunting dates and areas shall be selected by a drawing. All [cards or] envelopes shall be postmarked no earlier than September 1 [July 1] or later than September 30 [August 1] to be eligible for the drawing. Improper applications shall be discarded. A fifteen (15) dollars per person fee shall be charged for hunting payable on the assigned hunting date. Mail all applications to: Lexington-Bluegrass Depot, Attention: Land Manager, Lexington, Kentucky 40511-5010.

(e) Age limit. No one under the age of twelve (12) [fourteen (14)] shall [be allowed to] hunt.

(f) Weapons. Only breech-loading shotguns are permitted. Only longbows, recurve and compound bows having a pull weight of forty (40) pounds or greater are permitted. Crossbows are prohibited.

(g) Harvest quota. Hunting shall be discontinued whenever the designated deer harvest quota is reached or upon the direction of the Activity Commander.

(h) Hunter safety certificates. All deer hunters born after January 1, 1970 shall possess a valid hunter safety certificate.

(5) Reelfoot National Wildlife Refuge located in Fulton county.

(a) [Deer] Quota hunts: any deer beginning the last Saturday in October and the first and second Saturday in November and lasting for two (2) consecutive days each.

(b) Drawing. Only those persons selected by a drawing may participate in the quota hunts. If unfilled quotas exist after the regular drawings, quotas shall be filled by issuing permits on a first-come, first-served basis. Hunters shall hunt for a maximum of one (1) day only.

(c) [Deer] Archery hunt: any deer October 11-20 [16-26].

(d) Bag limits. The refuge bag limit is two (2) deer [of either sex]. Only one (1) deer shall be taken by gun.

(e) Check stations. All gun deer hunters shall check in and out at designated refuge check stations.

(f) All deer hunters must have purchased a ten (10) dollar refuge hunting permit.

(6) Westvaco public hunting areas. All persons hunting shall possess a valid Westvaco hunting permit.

(a) Persons shall not operate vehicles off designated roads.

(b) No person shall hunt from or build a tree stand on Westvaco property that is within fifty (50) yards of a property line.

(c) No person shall build an open fire on the area.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
RONALD E. GENTRY, Secretary
APPROVED BY AGENCY: July 2, 1991
FILED WITH LRC: July 2, 1991 at 2 p.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Chief State School Officer
(As Amended)

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 **nonvoting** [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 **nonvoting** [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.

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

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.]

(2) [(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.

(3) [(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.

Section 6. 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.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(As Amended)

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 provided a supportive social and emotional climate which:
(a) Enhances children's understanding of themselves as individuals, and in relation to others, by providing for individual, small group, and large group activities; 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 he cultural and ethnic background of the children;

3. Geared to the age, ability, and developmental needs of the children;

4. Safe, durable, and kept in good condition;

5. Stored in a safe and orderly fashion when not in use;

6. Accessible, attractive, and inviting to the children; and

7. Designed to provide a variety of learning experiences and to encourage experimentation and exploration.

(16) Space shall be arranged so that children 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.

Section 10. 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.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(As Amended)

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 **twenty-five (25) feet of** 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 were 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°+2° 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_mD_m = 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 x 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_mD_m 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 $inch^2$ (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 $inch^2$ (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 **shall apply** [applies] to industrial fire departments and private, public or contractual type fire departments. This section **shall** [does] not apply to volunteer fire departments.

(2) Persons riding on fire apparatus. **Beginning September 1, 1991, a person** [All persons] riding on fire apparatus shall be secured to the vehicle by seat belts or safety harnesses **when** [at any time] the vehicle is in motion.

(3) Inspection, maintenance, and repair of vehicles. **Beginning January 1, 1992:**

(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.

(b) A [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.

(c) [(b)] The inspection shall include:

1. Tires, brakes, warning lights and devices, headlights and clearance lights, windshield wipers and mirrors;

2. Starting the apparatus, and verification of the operation of pumps and other equipment; and

3. Inspection of the safety equipment carried on fire department vehicles. [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.]

(d) A [(c) The] fire department shall maintain inspection, maintenance, repair, and service records for all vehicles and equipment used for emergency operations.

(4) Facility safety. **Beginning July 1, 1993:**

(a) [All] Sleeping areas in fire stations shall:

1. Be separated from vehicle storage areas by at least one (1) hour fire resistive assemblies; or

2. [shall] Have operable fire suppression [and/]or operable smoke detection systems.

(b) A fire **station** [stations] shall **have a system capable of ventilating.** [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.

COMPILER'S NOTE: The figures referred to in this regulation may be viewed in Volume 5 of both the 1990 or 1991 bound volumes of the Kentucky Administrative Regulations.

OTIS REED, Jr., Chairman
APPROVED BY AGENCY: June 12, 1991
FILED WITH LRC: June 14, 1991 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended)

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 **in the form of the quarterly statements prescribed by the National Association of Insurance Commissioners (life and accident and health and fire and casualty, as revised in 1990, incorporated by reference and available from the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-1875, 8 a.m. - 4:30 p.m. (ET)).** [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 PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Securities
(As Amended)

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 **(revised July 1988)**; Application for Registration as Broker-Dealer.
(2) Form U-4 **(revised April 1990)** Application for Registration as Agent or Transfer of an Agent.
(3) Form P-7 **(revised July 1991)**; 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 **(revised October 1990)**; Application for Renewal of Issuer Agents.
(5) Form ADV **(revised August 1988)**; 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 **(revised October 1990)** [(Rev. 10/1/82)]; Application for Renewal of Investment Adviser's License.
(7) Form 34 **(revised July 1990)**; Report to be Filed by an Issuing Company Registered for the Purpose of Selling Its Own Securities.
(8) Form 35-a **(revised July 1990)**; Application for Registration by Notification (Nonissuer Distribution).
(9) Form U-1 **(revised July 1990)**; Application for Registration of Securities by Notification or Coordination.
(10) Form ICURA (Investment Company Uniform Report and/or Application) **(revised July 1990)**; Application for Annual Renewals of Investment Company Registrations.
(11) Form 37 **(revised July 1990)** (amended); Application for Registration of Securities by Qualification.
(12) Form 38-a **(revised July 1990)**; Impounding Agreement.
(13) Form U-2 **(revised July 1990)**; Consent to Service of Process and Jurisdiction (Investment Adviser, Broker-Dealer or Issuer).
(14) Form U-2A **(revised July 1990)**; Resolution (Investment Adviser, Broker-Dealer or Issuer).
(15) Form BDW **(revised May 1987)**; 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.

CABINET FOR PUBLIC PROTECTION AND REGULATION
Department of Financial Institutions
Division of Securities
(As Amended)

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 advisors **who have been continuously employed by registered investment advisors since** 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 PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Securities
(As Amended)

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.

Section 2. The Memorandum of Understanding, dated May 1991, between the North American Securities Administrators Association, Inc. and the CBOE referred to in Section 1 of this regulation is hereby incorporated by reference. A copy of the memorandum may be obtained by writing or calling the Kentucky Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky 40601. The memorandum may be inspected and copied at the Department of Financial Institutions, Division of Securities, 911 Leawood Drive, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday except for state holidays.

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.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Community Safety
(As Amended)

902 KAR 55:075. Sale of seized and forfeited controlled substances.

RELATES TO: KRS Chapter 218A
STATUTORY AUTHORITY: KRS 194.050, 218A.250, 218A.420(2)
NECESSITY AND FUNCTION: KRS 218A.420(2) directs the Cabinet for Human Resources to promulgate regulations to determine a proper buyer for controlled substances which are seized and forfeited under this chapter. The purpose of this regulation is to prevent the sale of controlled substances that may be adulterated or misbranded.

Section 1. Sale of Seized and Forfeited Controlled Substances. A [No] person shall not sell or purchase controlled substances which have been seized and forfeited under KRS Chapter 218A unless, prior to the sale:
(1) A written request for permission to sell or purchase such controlled substances is made to the Cabinet for Human Resources, Drug Control Branch; and
(2) The controlled substances are inspected by a pharmacist of the Cabinet for Human Resources, Drug Control Branch; and
(3) If a pharmacist of the Cabinet for Human Resources, Drug Control Branch, has made a written determination that tests or assays are necessary in order to determine whether the controlled substances have been adulterated or misbranded under the provisions of KRS 217.055 and 217.065, the person who submitted the request:
(a) Has had such tests or assays performed at his expense;
(b) Certified and submitted the results of such tests or assays to the pharmacist; and
(c) Has taken action required by the pharmacist after his review of the results of tests or assays that have been certified and submitted; and [All terms and conditions required by the cabinet are met, which may include but are not limited to tests or assays, payment for which shall be the responsibility of the person who submitted the request; and]
(4) The person who submitted the request specifies the buyer and certifies that the buyer is:
(a) Licensed under the provisions of applicable statutes of the Commonwealth of Kentucky to perform the following acts related to controlled substances:
1. Administer;
2. Conduct chemical analysis;
3. Conduct research;
4. Dispense;
5. Distribute;
6. Manufacture;
7. Prescribe; or
8. Repackage; and
(b) Registered with the Drug Enforcement Administration, U.S. Department of Justice; and
(5) Permission is granted, in writing, by the Cabinet for Human Resources.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: April 19, 1991
FILED WITH LRC: April 25, 1991 at 11 a.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

TOURISM CABINET
Department of Fish and Wildlife Resources
(Amended After Hearing)

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 **and Public Involvement**. (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.

(f) An evaluation of the proposed acquisition site to determine whether or not hazardous materials or substances or underground storage tanks of any type are present on or immediately adjacent to the proposed project site.

(g) A project management plan detailing how the proposed project will be managed and maintained.

(h) An indication as to whether or not the surface and mineral rights are intact or separated. If separated, the applicant should provide an analysis of the probable impacts of eventual exploitation on the natural attributes of the site which the applicant seeks to protect or manage.

(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.

(3) Public involvement. The board shall accept both written and oral comments either for or against any grant proposal. Such comments shall be made a part of the meeting record and shall be considered in the evaluation process of the board.

Section 3. Balloting, Scoring Projects, Project Funding, Project Approvals, [and] Project Life **and Project Reranking**. (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 **total** 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 **composite** [total] score for a proposed project shall be calculated by **determining the average of** [summing] all **total** scores given by **participating** board members. [Positive] Scores **above zero** 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 **according to provisions of subsection (6) of this section**.

(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 **or the applying agency requests that the project be reranked according to subsection (6) of this section.**

(6) Project reranking. State agencies applying for grants may request that any grant proposal submitted for approval and evaluated and ranked by the board be reevaluated and reranked by the board at any time for any reason either at a regular or special meeting of the board. If a project is submitted for reranking, the agency doing so shall update the proposal to reflect any changes that have occurred on the site or verify that all conditions or circumstances at the site are unchanged from the original proposal.

Section 4. Meeting Summary, Annual Report and Annual Report Publication. (1) Meeting summary. A summary of each meeting of the board shall be prepared by the Department of Fish and Wildlife Resources. Meeting summaries will be available for review by interested parties as requested.

(2) Annual report. The Department of Fish and Wildlife Resources shall prepare an annual report of the previous year's board activities and submit it to the Legislative Research Commission (LRC) by February 1 of each year. The report shall include a cumulative list of all approved projects and a brief status report of all areas acquired through the fund.

(3) Annual report publication. Upon receipt of the annual report, LRC may publish it in the Legislative Record or other appropriate publication.

RONALD E. GENTRY, Secretary
DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
APPROVED BY AGENCY: June 11, 1991
FILED WITH LRC: August 7, 1991 at 3 p.m.

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

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(a)(3) [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(a)(3) [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: August 9, 1991
FILED WITH LRC: August 9, 1991 at 11 a.m.

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

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 Charactaristic 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, **waste pile, underground injection well, or other disposal 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:]

$$[\text{Percent solids} = \frac{(\text{weight of pad + solid}) - (\text{tare weight of pad}) \times 100}{\text{initial weight of sample}}]$$

[(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, chronium, lead, mercury, selenium, silver, endrin, lindane, methozychlor, 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: August 9, 1991
FILED WITH LRC: August 9, 1991 at 11 a.m.

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

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 EPA 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 **after the generation of hazardous waste ceases. This notification shall be submitted on DEP form 7086, entitled Request to be Removed from the**

Hazardous Waste Handler List, which is herein incorporated by reference. This form became effective August 1991, and is available for copying and inspection at the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601. The normal business hours of the division are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: August 9, 1991
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

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 requirements of this subsection shall apply with respect to all waste received after issuance of the permit for units for which the Part B of the permit application was received by the cabinet after November 8, 1984.** 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 x 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 x 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: August 9, 1991
FILED WITH LRC: August 9, 1991 at 11 a.m.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION
(Amended After Hearing)

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 **submitted to** [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 **hearing** [panel review] as set forth in **Section 4 of this regulation** [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. Requests for Hearings. Any person aggrieved by the actions of the commission may by written notice request that a hearing be conducted by the commission. The hearing may be conducted by the commission or a hearing officer designated by the commission. The right to demand such a hearing shall be limited to a period of thirty (30) days after the applicant has had actual notice of the action, or could reasonably have had such notice. Unless the request is frivolous, the commission shall schedule a hearing before the commission not less than twenty-one (21) days after notice of demand for such a hearing, unless the person complained against waives in writing the twenty-one (21) day period. The notice of hearing shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and regulations involved; and a short statement of the reason for the granting of the hearing.

Section 5. Prehearing Conference. Prior to the formal hearing, and upon seven (7) days written notice to all parties, delivered personally or by certified mail with return receipt requested, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of fact and documents which will avoid unnecessary proof, limitations of the number of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference by stipulation agreed settlement, consent order, or default for nonappearance.

Section 6. Administrative Hearing Procedure. (1) Any party to a hearing may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing in accordance with reasonable administrative practice.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies of excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts.

(3) It will be within the hearing officer's discretion to require official transcripts or to set up other procedures of taking evidence including but not limited to the use of mechanical recording devices for recording the testimony. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon completion of the hearing process upon payment of the actual cost of reproducing the original except as provided in KRS 224.035 or 224.036. The commission may cause the mechanical recording of the testimony to be transcribed. When certified as a true and correct copy of the testimony by the hearing officer, the transcript shall constitute the official transcript of the evidence.

(4) The hearing officer shall within thirty (30) days of the closing of the hearing record, make a report and a recommended order to the commission. The order shall contain the appropriate findings of fact and conclusions of law. If the commission finds upon written request of the hearing officer that additional time is needed, then the commission may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within seven (7) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The commission shall consider the report and recommended order and exceptions. The commission may remand to the hearing officer the matter for further deliberation, adopt the opinion of the hearing officer or issue their own written order based on the report and recommended order.

(5) After completion of the hearing and filing of exceptions, the commission shall notify the applicant in writing, certified mail with return receipt requested, of the final decision of the commission. If any extension of time is granted by the commission for a hearing officer to complete his report, the commission shall notify all parties at the time of the granting of the extension.

(6) The commission shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(7) A final order of the commission shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the commission and the facts and law upon which the decision is based.

(8) There shall be no ex parte communications between a hearing officer and parties to the action.

(9) Any person aggrieved by a final order of the commission may have recourse to the courts of jurisdiction.

Section 7. [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: August 5, 1991
FILED WITH LRC: August 6, 1991 at 4 p.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(Amended After Hearing)

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 **timelines and procedures for IEP development and service initiation set forth in** 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 **prior to the child's third birthday**, referral procedures shall:

(a) Include district collaboration in the development of the **Individual Family Service Plan (IFSP)** transition plan prepared by the early intervention agency **if the child is receiving early intervention services**; 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; **or**

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 **and** [or] service coordination as [a] related services 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 **or more** 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) **or more** hours 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) **or more** hours of instruction per week for three (3) year olds or ten (10) **or more** 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.]

(4) [(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.

(5) [(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.

(6) [(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.

(7) [(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.

(8) [(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.

(9) [(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.

(10) [(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.

(11) [(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: July 30, 1991
FILED WITH LRC: August 7, 1991 at noon

WORKFORCE DEVELOPMENT CABINET
Board for Proprietary Education
(Amended After Hearing)

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: August 8, 1991
FILED WITH LRC: August 9, 1991 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, AUGUST 15, 1991

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:070. Allocation of special appropriation for military service credit.

RELATES TO: KRS 16.645(26), 61.555, 78.545(6) [16.505 to 16.652, 61.510 to 61.692, 78.510 to 78.852]
STATUTORY AUTHORITY: KRS 61.645(9)(e) [61.555]
NECESSITY AND FUNCTION: KRS 61.555(4) permits eligible members to receive current service in the retirement systems for up to four (4) years of military service. The cost of such service credit is calculated by the board with the member paying thirty-five (35) percent of the cost and the remaining sixty-five (65) percent is to be paid from funds specifically appropriated for this purpose. If no funds are available in the special appropriation account, the board may not accept employee payments. From time to time, when funds are appropriated for this provision, such funds may not be adequate to accommodate all members who may wish to purchase current service for military time. The board believes that all eligible members should have an equal chance to utilize appropriated funds and this regulation is necessary to define the administrative procedures that will be followed when such funds are not sufficient to satisfy the demand from eligible members.

Section 1. When a special appropriation is made to permit purchase of current service in the Kentucky Retirement Systems for time in the military service, the [following procedures will apply:
(1) The] board will announce at least two (2) weeks in advance the period of time during which applications to purchase current service for military service may be submitted to the Kentucky Retirement Systems. The period of time for accepting applications shall not be less than four (4) weeks. Applications must be submitted in writing by the member [on forms suppled by the Kentucky Retirement Systems].

Section 2. [(2)] At the close of the application period, an independent accounting firm will be engaged to determine the pro rata share of the funds available for each eligible applicant which shall be used to determine the amount of military service the applicant may purchase. [supervise a drawing that will identify those applicants that will be permitted to purchase such credit. Applications shall be processed in the order they are drawn until the special appropriation has been exhausted.]

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 20, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson
(1) Type and number of entities affected: Vested members with active duty military service for which they have not received credit at the time an appropriation is made.
(a) Direct and indirect costs or savings to those affected:
1. First year: No cost to any agency. The administrative regulation requires that any special appropriation for military service be evenly divided among all eligible applicants.
2. Continuing costs or savings: There is no additional cost.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are none.
(b) Reporting and paperwork requirements: This administrative regulation does not affect paperwork requirements for military purchase.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: All cost, if any, would be absorbed within existing budget.
2. Continuing costs or savings: No additional cost.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: This administrative regulation would not increase paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: This administrative regulation does not affect revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is intended to assure all eligible members would receive an equal share of a special appropriation for the purchase of military service.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or administrative regulation in conflict with this administrative regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The language in this amendment provides for an equal share of funds appropriated in place of a

random drawing in the previous language.

TIERING: Was tiering applied? Yes. The amendment allows each eligible applicant to purchase a portion of his military service based on his salary and age and his equal portion of the total appropriation. The old language allowed only for a random drawing that would not have allowed all eligible applicants to participate.

DEPARTMENT OF LOCAL GOVERNMENT
(Proposed Amendment)

109 KAR 10:010. Local government economic assistance fund grants.

RELATES TO: KRS 42.450 to 42.495

STATUTORY AUTHORITY: KRS 42.455(5)

NECESSITY AND FUNCTION: As directed by KRS 42.455(5) the Department of Local Government [Finance and Administration Cabinet], by this regulation, establishes rules and requirements relating to implementation of a system of grants from the Local Government Economic Assistance Fund (hereafter referred to as the Fund) and, in addition, sets forth procedures for reporting with respect to Fund grants to the Department of Local Government [Finance and Administration Cabinet] as required by statute.

Section 1. As used in this regulation, the terms, "local government," "local government unit," "recipient government," or similar descriptive terms, shall mean the fiscal courts of coal-producing, coal-impact and mineral-producing counties, and the governing bodies of incorporated cities within such counties who may be eligible for fund grants.

[Section 2. Proposed Use Hearing. Commencing with fiscal year 1981, each recipient local government shall have at least one (1) public hearing annually to solicit proposals for grants from the fund. At the hearing, citizens of the recipient government shall have the opportunity to provide the executive authority written and/or oral comments and suggestions respecting the possible uses of grants from the fund. From this hearing actual proposed uses will be determined (hereafter referred to as the proposed use hearing).]

[(1) Each recipient shall notify the Finance and Administration Cabinet in writing of the date, time, and location of each proposed use hearing at least ten (10) days prior to the date it is held.]

[(2) Notice of the proposed use hearing shall be published in a newspaper of general circulation and made available to local radio and television stations serving the geographic area of the recipient no later than ten (10) days prior to the scheduled date of the proposed use hearing. This notice may appear concurrently with other legal notices placed by the recipient local government. The notice shall state the date, time, and location of the public hearing and the amount of money anticipated from the fund for the fiscal year. The notice shall include a statement that citizens who attend the proposed use hearing have the right to provide written and/or oral comments and to ask questions concerning proposals.]

[(3) The proposed use hearing may be held concurrently with other meetings for public purposes held by the recipient, provided the notice specifically identifies the fund.]

[(4)(a) The Finance and Administration Cabinet may waive the requirement for a proposed use hearing in any year for which the estimated amount to be received from the fund is less than $5,000, or if deemed in the best public interest.]

[(b) The recipient local government requesting a waiver shall state in writing the reasons for the waiver. The request shall be signed by the chief executive of the recipient government. The waiver shall be granted if it appears to be in the public interest.]

Section 2. [3.] Budget Hearings. Each [Commencing with] fiscal year, any [1981 each] recipient local government that proposes to expend[s] money from the fund in any fiscal year shall hold at least one (1) public hearing on specific proposed projects the government intends to fund (hereafter referred to as the budget hearing).

(1) At the budget hearing, all citizens of the recipient local government shall have a reasonable opportunity to provide written and oral comments, and to ask questions concerning the allocation of local government assistance funds.

(2) At least seven (7) [ten (10)] days prior to the budget hearing the recipient local government shall make available for public inspection during normal business hours, at the principal office of the local government, a summary of the [projects] proposed expenditures from [to be funded by] the fund. This summary shall be submitted as a part of the county's annual budget to the Department of Local Government [Finance and Administration Cabinet]. This summary shall identify each expenditure [project] according to eligible categories and [in the statute and shall contain a narrative description of each project,] the amount of money to be allocated to each category [and the relative priority of each project].

(3) A notice of the budget hearing shall be published in a newspaper of general circulation serving the geographic area of the recipient local government no later than seven (7) but not more than twenty-one (21) [ten (10)] days prior to the scheduled date of the hearing. The notice shall contain the following: Date, place and time of the public budget hearing; a statement of the amount anticipated from the fund for the fiscal year; the amount of such funds to be expended in each eligible category; a statement advising when and where a summary of projects and a summary of the entire budget for all income and expenditures of the recipient government is available for public inspection; a statement that citizens attending the public budget hearing have the right to provide written and/or oral comments and ask questions concerning the allocation of local government assistance funds.

(4) The public budget hearing may be held concurrently with budget hearings of the recipient local government provided the notice specifically identifies the fund and includes all information required by subsection (3) of this section.

Section 3. [4.] Annual Use Report. Each local government that receives grant money from the fund shall file an annual report with the

Department of Local Government [Finance and Administration Cabinet] within sixty (60) days after the end of the fiscal year in which the funds were received.

[(1) The annual use report shall be on a part of the annual budget submitted to the Finance and Administration Cabinet and shall contain the following information: The status of each project funded in whole or in part by a grant from the fund; the amount of money from the fund actually expended on each project during the fiscal year; the manner in which each project affected local and regional plans.]

[(2)] The annual use report shall be certified by the chief executive official and contain a statement that the recipient government's general tax effort has not been reduced below the level of fiscal year 1980.

Section 4. [5.] Records. [Each recipient government shall maintain an official project file for each capital expenditure which shall be subject to inspection by the Finance and Administration Cabinet, the Attorney General or the Auditor of Public Accounts at any time from the date of grant approval and for a period of five (5) years after date of the final expenditure.]

[(1) The project file shall contain complete records and information including deeds, contracts, change orders; and documents which shall prove that the local government complied with any and all federal and state laws and regulations pertaining to bid advertisement and award, prevailing wage, nondiscrimination, licensing and permits and other such laws and regulations applicable to the expenditure.]

[(2)] The Department of Local Government [Finance and Administration Cabinet] shall establish uniform audit requirements which shall be used by each recipient unit of local government required to submit an audit report under provisions of KRS 42.460.

[(3) Each recipient government shall maintain financial records for each expenditure which shall be subject to state initiated audit for a period of five (5) years after date of the final expenditure. Financial records shall include all earnings from investment of funds in accordance with KRS 42.455(4).]

(1) [(4)] No additional funds from the fund shall be transferred to the local government unit after the date required for submission to the Department of Local Government [Finance and Administration Cabinet], which is eighteen (18) months after the end of each fiscal year, until an acceptable audit report has been submitted to the Department of Local Government [Finance and Administration Cabinet].

(2) [(5)] Each recipient government shall maintain a separate financial account for the receipt of any funds from the fund. Any expenditures or transfers shall be made from this account. Financial records shall include all earnings from investment of funds in accordance with KRS 42.455(4).

[(6) Each recipient government shall submit to the Finance and Administration Cabinet, before the close of a fiscal year in which assistance has been granted under this Act, a copy of the agreement that an independent annual audit shall be conducted in accordance with KRS 42.460.]

[(7) Any grant proposal that includes a subgrant to another agency shall include an agreement executed by the recipient and the subgrantee which provides that:]

[(a) Thirty (30) days prior to the close of each fiscal year and upon completion of a project, the subgrantee shall furnish the entitlement recipient a report of all expenditures and all activities of any project funded by the subgrant.]

[(b) The subgrantee shall pay the cost of any audit of the subgrant required by the entitlement recipient.]

LEE TROUTWINE, Commissioner
APPROVED BY AGENCY: July 24, 1991
FILED WITH LRC: July 26, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 1991, at 2 p.m. at Department of Local Government Conference Room. Individuals in being heard at this hearing shall notify this agency in writing by September 21, 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: Junie Tutterow, Dan Tuttle, Department of Local Government, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Tuttle and Junie Tutterow

(1) Type and number of entities affected: 101 county governments, 341 city governments.

(a) Direct and indirect costs or savings to those affected: $132,600

1. First year: $132,600

2. Continuing costs or savings: $132,600

3. Additional factors increasing or decreasing costs (note any effects upon competition): No effect involved - there are no competitive entities.

(b) Reporting and paperwork requirements: A deletion of 442 public notices.

(2) Effects on the promulgating administrative body: Staff paperwork processing time reduced.

(a) Direct and indirect costs or savings: Paperwork processing time reduction will save 36 hours per year.

1. First year: Paperwork processing time reduction will save 36 hours per year.

2. Continuing costs or savings: Paperwork processing time reduction will save 36 hours per year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Local governments will collectively save $133 in postage per year.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative would be to continue present procedure. This was

rejected as redundant and only used initially as a requirement of Federal Revenue Sharing Program model.

(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. It applies equally to each entity.

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. Administrative branch.

3. State the aspect or service of local government to which this administrative regulation relates. Administrative procedures pertaining to public notices.

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 (+/-): No change.

Expenditures (+/-): -$300

Other Explanation:

DEPARTMENT OF LOCAL GOVERNMENT
(Proposed Amendment)

109 KAR 11:010. Reimbursable revenues of local courts.

RELATES TO: KRS [Chapter] 24A.190 to 24A.193

STATUTORY AUTHORITY: KRS 24A.193

NECESSITY AND FUNCTION: KRS [Chapter] 24A.193 requires the Department of Local Government [Finance and Administration Cabinet] to promulgate regulations to carry out the provisions of KRS 24A.191 and 24A.192 [establishing the method of determining the number of dollars to be reimbursed to each city or county, which had a local court as of June 30, 1976, as well as outlining the method for distributing such payments]. This regulation is to outline the method for distributing such payments [provide for the uniform determination of the amounts reimbursable under the provisions of KRS Chapter 24A].

[Section 1. Definitions. An expansion of definitions offered by KRS Chapter 24A and additional definitions required by this regulation follow:]

[(1) "Local court" means any of the following which sit as a judicial body: municipal police court, justices' or magistrates' court, quarterly court or county court.]

[(2) "Net court revenue" means the gross revenue collected by a local government from fees or fines, and forfeitures assessed by a local court, less the amount expended for court-related operating costs. This definition does not include any fees, fines, or forfeitures from parking violations unless that fee, fine, or forfeiture was collected as a result of action taken in the local court.]

[(3) "Court-related operating costs" means the amount expended for the operation and maintenance of a local court for:]

[(a) Personnel;]

[(b) Equipment;]

[(c) Office supplies;]

[(d) Operating expenses; and]

[(e) Any other expenses borne by a city or county or paid from fines, fees, and forfeitures of a local court, which will be assumed by the state in connection with the operation of the unified court system after January 1, 1978.]

[(4) "Base court revenue" means the net court revenue less the net amount received by the city or county from any new or existing source as a result of implementation of the district court.]

[(6) "Cabinet" means the Finance and Administration Cabinet.]

[Section 2. Notification, Implementation. Following are the actions required during the next year to implement the provisions of KRS Chapter 24A:]

[(1) Correspondence required by subsections (2) and (3) of this section shall be by certified letter.]

[(2) The cabinet shall notify the mayor of each city, the mayor of each urban county government, and the judge of each county of the creation and implementation date of the unified court system and of the necessity for determining the base court revenue.]

[(3) Each unit of local government receiving the notification required by subsection (2) of this section shall respond to the cabinet on or before July 15, 1977. Such response shall be by one (1) of the following three (3) forms:]

[(a) Correspondence indicating that the unit of government did not have a local court as of June 30, 1976; or]

[(b) The local government's determination of base court revenue prepared in accordance with the procedures outlined in this regulation; or]

[(c) Correspondence indicating that the administrative and financial officers of the unit of government realized that the court system was operating at a deficit and that no reimbursement is available under the provisions of KRS Chapter 24A.]

[(4) In the event a unit of local government does not respond to the notification required by subsection (2) of this section, the cabinet will take no further action until such response has been received and acted upon.]

[(5) All submitted computations of base court revenue are subject to audit. Independent certified public accounting firms will be engaged by the cabinet to conduct the audit of submitted base court revenue determinations. The program, plans, and schedule for such audits will be approved by the cabinet to achieve a comprehensive economical audit with a timely completion. Each firm will be required to participate in appropriate training programs in preparation for these assignments. All adjustments to the computation of base court revenue proposed by the auditor will be subject to appeal to the secretary of the Finance and Administration Cabinet in accordance with subsection (7) of this section. The costs of all

audits will be paid by the cabinet. Additional costs incurred in the performance of the audits resulting from failure by the submitting governmental entity to comply with this regulation will be the responsibility of the submitting entity.]

[(6) Each base court revenue determination will be subject to a review by the cabinet. Each unit of local government will be notified of the result of such review.]

[(7) If any unit of government believes that unusual circumstances and/or audit adjustments have adversely affected the resulting computation of base court revenue, that unit of government may appeal to the secretary of the Finance and Administration Cabinet. Such appeal must be filed within thirty (30) days after notification of base court revenue. A time and place will be set for the representative(s) of each appealing unit of government to present their appeal to the representative(s) of the secretary of the Finance and Administration Cabinet. The secretary will have the authority to adjust the base court revenue determined for any unit of government.]

[(8) The cabinet will acquire from both the Administrative Office of the Courts and the Office of the Attorney General a listing of payments, if any, for the rental of court and court related facilities. These amounts and any income from a new or existing source generated as a result of the implementation of the unified court system will be subtracted from the base court revenue computation to determine the amount of net reimbursement. Each unit of local government will be notified of its net reimbursement.]

[Section 3. General Procedure. The following procedure shall be followed to determine net court revenue:]

[(1) An item of revenue or expense shall be included in the computation of net court revenue if the item will be assumed by the state in connection with the operation of the court after January 1, 1978.]

[(2) All revenues generated by the local courts deposited in the treasury of the local government, except parking fines collected without action of a local court, are to be reflected in the computation. In addition, the excess fees over statutory maximum earned by the county attorney, county judge, and circuit court clerk during the calendar year ending in each of the three (3) fiscal years are to be reflected in the computation submitted by the counties.]

[(3) All direct expenses borne by the local government in the operation and maintenance of local courts are to be reflected in the computation. In addition, any expenses paid by the county for the office of county attorney and circuit court clerk and any expenses that are related to the office of county judge's judicial function are to be included.]

[(4) General administrative costs such as the cost of the personnel recruitment, purchasing, payroll, accounting, and auditing, and financial data processing functions will not be included unless such expense is easily identifiable as a court related cost.]

[(5) The computation of net court revenue is to be made independently of the local government's historical classification of revenues and expenses. The determination of amounts includable in the computation will require a detailed analysis of various operating accounts. If the individual identification of court related usage is not readily determinable, an allocation of the respective accounts should be made.]

[(6) An item of revenue or expense is to be included in the computation regardless of the fund or account in which it has been historically accounted for if the item is related to the operation of the courts.]

[(7) Each submitting entity must adjust the applicable accounts so as to provide for the inclusion of twelve (12) months of activity in each of the fiscal years.]

[Section 4. Forms. The cabinet shall prescribe forms to be used for submitting computations of base court revenue unless prior approval to do otherwise is granted by the cabinet. Each municipality, each county, and each urban county government, shall submit detail schedules as provided by the cabinet in support of the computation of net court revenue. Each submitting governmental entity shall adhere to instructions provided by the cabinet for the proper completion of forms. Each submitting governmental entity shall retain, for a period of five (5) years, all work sheets, analyses, and records utilized in determining the amounts reported.]

Section <u>1.</u> [5. Distribution of Funds.] Net reimbursement authorized under KRS Chapter 24A will be paid quarterly. The amount of each distribution shall not exceed twenty-five (25) percent of the net reimbursement. The first distribution will be made on or about January 31, 1978, and distributions will continue each quarter thereafter.

LEE TROUTWINE, Commissioner
APPROVED BY AGENCY: July 24, 1991
FILED WITH LRC: July 26, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 1991, at 2 p.m. at Department of Local Government Conference Room. Individuals in being heard at this hearing shall notify this agency in writing by September 21, 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: Junie Tutterow, Dan Tuttle, Department of Local Government, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Tuttle and Junie Tutterow

(1) Type and number of entities affected: No entities are affected. This is a housekeeping measure due to recodifying regulations to the proper administrative agency and deleting all

superfluous language.
(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: No change.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative was to leave as is. Alternative was rejected due to redundancy.
(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. It applies equally to each entity.

DEPARTMENT OF LOCAL GOVERNMENT
(Proposed Amendment)

109 KAR 11:020. Reimbursement to law enforcement officers for certain expenses.

RELATES TO: KRS 29A.180
STATUTORY AUTHORITY: KRS 29A.180
NECESSITY AND FUNCTION: KRS 29A.180[, as amended by the 1978 General Assembly,] requires the Department of Local Government [Finance and Administration Cabinet] to promulgate regulations establishing the method of reimbursing law enforcement officers for expenses incurred for sequestered jurors, for transporting jurors or other authorized persons to views of the scene, for providing specialized security personnel, equipment, or services to the court.

Section 1. For expenses incurred for sequestered jurors, as authorized by KRS 29A.180(1), [The sheriff, city police or city marshal, as appropriate, shall be responsible for meals, housing, and other incidental needs of grand jurors and petit jurors in circuit court and in district court when the jurors are kept overnight or otherwise sequestered when ordered to do so by the judge of the court for which the jurors were summoned.] each officer, upon presenting the Department of Local Government [Finance and Administration Cabinet] an order of the court requiring such service, shall be reimbursed as follows:
(1) For the actual cost of meals, tips, and delivery service upon the presentation of an invoice for such expense. This includes those meals for jurors and for the sheriff, city police, city marshal, and deputies, as appropriate, or any guards employed.
(2) For the actual cost of housing upon the presentation of an invoice for such expense. This includes housing for jurors and for the sheriff, city police, city marshal, and deputies, as appropriate, or any guards employed.
(3) For any other expense incurred in service to sequestered grand or petit jurors upon the presentation of an invoice for such expense. This includes those expenses for jurors and for the sheriff, city police, city marshal, and deputies, as appropriate, or any guards employed.

Section 2. For expenses incurred in transporting jurors and other authorized persons as authorized by KRS 29A.180(2), [The sheriff, city police or city marshal, as appropriate, shall be responsible for the transportation of jurors and other authorized persons to views of the scene or other locations authorized by the court pursuant to KRS 29A.310. In criminal cases, cases conducted under the Eminent Domain Act of Kentucky, and civil cases in which the Commonwealth requests the viewing,] each officer, upon presenting the Department of Local Government [Finance and Administration Cabinet] an order of the court requiring such service, shall be reimbursed for each vehicle used at the rate set forth in KRS 64.070 for transporting a prisoner to the penitentiary.

Section 3. For expenses incurred in providing specialized security personnel, equipment or services as authorized by KRS 29A.180(3), [The sheriff, city police or city marshal, as appropriate, shall be responsible for providing any specialized security personnel, equipment and services which the judge, with the consent of the Chief Justice shall deem necessary for the conduct of a trial in which the judge believes that special security precautions are necessary or desirable.] each officer, upon presenting the Department of Local Government [Finance and Administration Cabinet] an order of the court requiring such service and a copy of any correspondence of the Chief Justice consenting to such service, shall be reimbursed as follows:
(1) For specialized security personnel the rate authorized by KRS 64.092 [64.348] for court attendance.
(2) For equipment and services requested by the judge, a reasonable rate to be fixed by the judge and entered upon the order book of the court.

LEE TROUTWINE, Commissioner
APPROVED BY AGENCY: July 24, 1991
FILED WITH LRC: July 26, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 1991, at 2 p.m. at Department of Local Government Conference Room. Individuals in being heard at this hearing shall notify this agency in writing by September 21, 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: Junie Tutterow, Dan Tuttle, Department of Local Government, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Tuttle and Junie Tutterow

(1) Type and number of entities affected: All 120 county sheriffs.

(a) Direct and indirect costs or savings to those affected: None - this is merely a housekeeping measure identifying proper administrative agency.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on revenues. None.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None needed.

(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. It applies equally to each entity.

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. No government units will be affected since this is merely housekeeping.

3. State the aspect or service of local government to which this administrative regulation relates. Administrative identification.

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 (+/-): No change.

Expenditures (+/-): No change.

Other Explanation:

DEPARTMENT OF LOCAL GOVERNMENT
(Proposed Amendment)

109 KAR 11:030. Allocation of driving under the influence service fees.

RELATES TO: KRS [Chapters 44 and] 189A.050

STATUTORY AUTHORITY: KRS 189A.040, 189A.050 [13A.350]

NECESSITY AND FUNCTION: In addition to all other penalties authorized by law, KRS 189A.050 imposes a $150 service fee upon persons convicted of driving under the influence of alcohol or other substance impairing one's driving ability. This fee is to be used to fund enforcement, education and treatment programs provided for under the driving under the influence laws, for recordkeeping, and for the support of jails[, as authorized by Senate Bill 20, Chapter 165 of the Acts of the 1984 General Assembly]. This regulation provides for the allocation of the fee for the purposes specified in the act. This regulation also provides the procedure for implementing KRS 189A.040(4).

Section 1. Circuit clerks shall report to the Department of Local Government [Finance and Administration Cabinet] and pay into the state treasury the fee imposed by KRS 189A.050 upon persons convicted of driving under the influence of alcohol or other substance impairing driving ability at the time other fees, fines, and forfeitures adjudged in the courts of their counties, are reported and paid into the treasury, as provided in KRS 30A.190.

Section 2. Circuit clerks shall remit $100 of the service fee to the Department of Local Government [Finance and Administration Cabinet] for each person convicted of a first offense of driving under the influence. The offender shall be advised that the remaining fifty (50) dollar service fee will be probated contingent upon utilization by the offender of such sum to pay for approved education and/or treatment services provided for first offenders. Any charges for such services in excess of the fifty (50) dollars shall be paid by the offender. The fifty (50) dollars shall be collected from the offender and paid into the state treasury if the offender declines to participate in an education and/or treatment program.

Section 3. Circuit clerks shall remit the full amount of the service fee to the Department of Local Government [Finance and Administration Cabinet] for second and subsequent offenders. The offender shall be responsible for all treatment costs.

Section 4. The fees shall be allotted quarterly, on a percentage basis, to the agencies, and for the purposes, hereinafter indicated:

(1) Transportation Cabinet - four (4) percent for furnishing copies of driver history records to courts for use in driving under the influence cases.

(2) Cabinet for Human Resources - forty-five (45) percent for costs of treatment programs for indigent offenders.

(3) Justice Cabinet - twenty-six (26) percent for enforcement activities under the provisions of KRS 189A.010.

(4) Department of Local Government [Finance

and Administration Cabinet] – twenty-five (25) percent for distribution to counties in which drunk driving convictions are adjudged to assist in expense of maintaining jails, and which shall be in addition to other jail costs allowed by the state.

Section 5. Fees collected and paid into the State Treasury prior to the effective date of this regulation shall be allocated as provided in Section 4 of this regulation.

LEE TROUTWINE, Commissioner
APPROVED BY AGENCY: July 24, 1991
FILED WITH LRC: July 26, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 1991, at 2 p.m. at Department of Local Government Conference Room. Individuals in being heard at this hearing shall notify this agency in writing by September 21, 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: Junie Tutterow, Dan Tuttle, Department of Local Government, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Tuttle and Junie Tutterow
(1) Type and number of entities affected: There will be no entities affected since this is merely a housekeeping measure consisting of identifying the proper administrative agency.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: No change.
1. First year: No change.
2. Continuing costs or savings: No change.
3. Additional factors increasing or decreasing costs: No change.
(b) Reporting and paperwork requirements: No change.
(3) Assessment of anticipated effect on state and local revenues: No change.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None considered for this housekeeping procedure.
(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. It applies equally to each entity.

DEPARTMENT OF LOCAL GOVERNMENT
(Proposed Amendment)

109 KAR 12:020. Application form; information required.

RELATES TO: KRS Chapter 64
STATUTORY AUTHORITY: KRS 64.140(1)
NECESSITY AND FUNCTION: This regulation sets forth the requirements for implementing the advancement procedure to be followed by a sheriff when requesting funds to defray expenses together with a list of documents to accompany the application.

Section 1. A sheriff desiring to receive advancements of funds from the State Treasury to defray the costs of operating his office will make application therefore in the form of a letter addressed to the Commissioner of the Department of Local Government [Secretary of the Finance and Administration Cabinet], Attention: Supervisor of County Fee Systems, Division of County and Municipal Accounting. The letter of application shall state:
(1) That the fees received by the sheriff are insufficient to provide the necessary funds for the operation of the office.
(2) That the sheriff desires to receive advancements of funds from the State Treasury for the purpose of defraying the said office expenses.
(3) That the sheriff agrees to comply with the regulations of the department relating to sheriff's advancements in the event that he is granted an advance of monies for operating his office.
(4) That the documents filed with the application are true and correct statements of fact.

Section 2. The letter of application shall be signed by the sheriff, and his signature shall be notarized by a notary public in and for the Commonwealth of Kentucky.

Section 3. The following documents shall accompany the letter of application:
(1) A copy of the sheriff's settlement with the fiscal court of his county for the year immediately preceding the year in which the advance is made, certified as true and correct by the county court clerk. If the sheriff's settlement with the fiscal court has not been filed, the sheriff may substitute an affidavit setting out the actual fees of the office for the immediate preceding year.
(2) A copy of the last quietus from the state, certified by an authorized representative of the Revenue Cabinet, Commonwealth of Kentucky.
(3) A detailed statement of the sheriff's personal assets and liabilities.
(4) A detailed budget for the sheriff's office for the year in which the advancements are to be made. (This budget statement shall contain detailed breakdowns of monthly expenditures.)
(5) A detailed statement of the amount to be advanced in each month. (This statement must be

approved by the fiscal court.)
(6) If a sheriff first requests an advance in a month other than January, he shall, in addition to the documents set out above, file an affidavit setting out his receipts for the year up to and including the last day of the previous month and his actual expenses to the last day of the same month.
(7) A bond in favor of the Commonwealth for an amount not to exceed the total advance requested for the year. The said bond shall be conditioned upon the full repayment by the sheriff of all monies advanced to him by the Commonwealth. This bond shall be in addition to the other bonds required by statute and if the bond is executed with a corporate surety, the premium thereon shall be an expense of the office. the bond shall be approved by the county court and prepared in duplicate, original [one (1) copy] to be filed with the department and one (1) copy with the county court clerk of the sheriff's county. No other official shall be a surety for a sheriff on his bond.
(8) Any other document, report, or information deemed necessary by the commissioner [secretary] to enable the department to adequately evaluate the advisability of making an advancement.

LEE TROUTWINE, Commissioner
APPROVED BY AGENCY: July 24, 1991
FILED WITH LRC: July 26, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 1991, at 2 p.m. at Department of Local Government Conference Room. Individuals in being heard at this hearing shall notify this agency in writing by September 21, 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: Junie Tutterow, Dan Tuttle, Department of Local Government, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Tuttle and Junie Tutterow
(1) Type and number of entities affected: 114 sheriffs' offices – proper administrative designation change in regulation.
(a) Direct and indirect costs or savings to those affected: No change.
1. First year: No change.
2. Continuing costs or savings: No change.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No change.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: No change.
1. First year: No change.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None needed.
(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. It applies equally to each entity.

109 KAR 12:030. Initial advancement; procedure.

RELATES TO: KRS Chapter 64
STATUTORY AUTHORITY: KRS 64.140(1)
NECESSITY AND FUNCTION: The advance of funds procedure available to sheriffs is established by KRS 64.140. This regulation sets forth the considerations to be viewed by the supervisor of county audit before making his recommendations to the Commissioner of the Department of Local Government [Secretary of the Executive Department for Finance and Administration].

Section 1. Upon receipt of a letter of application for an advancement to a sheriff, the supervisor of county fee systems shall examine the application and satisfy himself that the application and its supporting documents are in order. If he finds that the requests and supporting documents are in proper order, he will recommend to the Commissioner of the Department of Local Government [Secretary of the Finance and Administration Cabinet] that an advance be made. This recommendation will include a suggested amount to be advanced. In making his recommendation to the commissioner [secretary] the supervisor of county fee systems will be guided by the following considerations:
(1) If the first advance is requested for the month of January, the county audit supervisor will recommend that the department issue a warrant for the lesser of:
(a) The sheriff's request; or
(b) The estimated expenditures for the month of January as set out in the sheriff's budget; provided, however, that the monthly advance may not exceed the lesser of $30,000 or one-twelfth (1/12) of the sheriff's receipts for the previous year.
(2) If the first advance request is for a month other than the month of January, the county fee systems supervisor will add the expenses of the sheriff for the months of the year preceding the application as set out in the affidavit to the estimated expenses for the month the advance is requested, subtract the receipts of the office and recommend that a warrant be issued for the lesser of:
(a) The figure representing the difference between the sum of the aforementioned actual expenses and the estimated expenses for the month of the advance and the receipts of the office; or

(b) The amount requested; provided, however, that in no event shall the said recommendation exceed $30,000 or one-twelfth (1/12) of the sheriff's receipts of the previous year whichever is the lesser.

[Section 2. If the secretary approves the recommendation of the vounty fee systems supervisor, a secretary's order will be issued directing that the advancement be made, whereupon the cabinet will issue its warrant in the amount specified in the secretary's order.]

LEE TROUTWINE, Commissioner
APPROVED BY AGENCY: July 24, 1991
FILED WITH LRC: July 26, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 1991, at 2 p.m. at Department of Local Government Conference Room. Individuals in being heard at this hearing shall notify this agency in writing by September 21, 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: Junie Tutterow, Dan Tuttle, Department of Local Government, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Tuttle and Junie Tutterow
(1) Type and number of entities affected: 114 sheriffs' offices - proper administrative designation change in regulation.
(a) Direct and indirect costs or savings to those affected: No change.
1. First year: No change.
2. Continuing costs or savings: No change.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No change.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: No change.
1. First year: No change.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None needed.
(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. It applies equally to each entity.

DEPARTMENT OF LOCAL GOVERNMENT
(Proposed Amendment)

109 KAR 12:040. Subsequent advancements.

RELATES TO: KRS Chapter 64
STATUTORY AUTHORITY: KRS 64.140(1)
NECESSITY AND FUNCTION: KRS 64.140 provides for advancement to sheriffs. This regulation provides for subsequent advancements after the initial advancement and the amount a sheriff is entitled to.

Section 1. Having been granted an initial advancement, a sheriff may receive subsequent advancements upon filing with the Department of Local Government [Finance and Administration Cabinet] a request for the said advancement accompanied by an affidavit setting out the receipts and expenditures of the sheriff's office through the previous month.

Section 2. Upon receipt of the request the County Fee Systems Supervisor will add the actual expenditures to date to the estimated expenditures for the current month, subtract the actual receipts of the office, and cause a warrant to be issued for the lesser of:
(1) The difference; or
(2) The amount requested; provided however, that in no event shall the said warrant exceed the lesser of $30,000 or one-twelfth (1/12) of the sheriff's receipts for the previous year.

LEE TROUTWINE, Commissioner
APPROVED BY AGENCY: July 24, 1991
FILED WITH LRC: July 26, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 1991, at 2 p.m. at Department of Local Government Conference Room. Individuals in being heard at this hearing shall notify this agency in writing by September 21, 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: Junie Tutterow, Dan Tuttle, Department of Local Government, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Tuttle and Junie Tutterow
(1) Type and number of entities affected: 114 sheriffs' offices - proper administrative designation change in regulation.
(a) Direct and indirect costs or savings to

those affected: No change.
1. First year: No change.
2. Continuing costs or savings: No change.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No change.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: No change.
1. First year: No change.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None needed.
(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. It applies equally to each entity.

DEPARTMENT OF LOCAL GOVERNMENT
(Proposed Amendment)

109 KAR 12:050. Refunding procedure.

RELATES TO: KRS Chapter 64
STATUTORY AUTHORITY: KRS 64.140
NECESSITY AND FUNCTION: The authority for advancements to sheriffs is KRS 64.140. This regulation sets forth the requirements a sheriff must follow after having received an advancement; reparations to the Commonwealth.

Section 1. Each sheriff receiving advancements shall on or before the tenth day of November, December, and January, file with the [Executive] Department of Local Government [for Finance and Administration] an affidavit showing the actual receipts and expenditures of his office for the preceding month. The affidavit shall be accompanied by a check made payable to the Treasurer of the Commonwealth of Kentucky in the amount that the receipts exceed the expenditures for the previous month; provided, however, that the total amount of money thus payable to the Commonwealth shall not exceed the total of the advancements made to the sheriff during the preceding year.

Section 2. In the event that the payments provided in Section 1 of this regulation are not equal to the amounts advanced to the sheriff by the Commonwealth during the preceding year, the sheriff shall on or before January 15 of the year following the year in which the advancements were made forward a check made payable to the Treasurer of the Commonwealth of Kentucky in the amount of the unpaid balance.

[Section 3. On or before January 15 of any year following a year in which advancements are made to a sheriff, he shall file with the department an affidavit setting out the total receipts and expenditures of his office for the previous year along with a statement of the total advancements made to him in that year.]

Section 3. [4.] No advancements may be made to a sheriff unless the total amount advanced in the previous year has been refunded to the Commonwealth.

LEE TROUTWINE, Commissioner
APPROVED BY AGENCY: July 24, 1991
FILED WITH LRC: July 26, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 26, 1991, at 2 p.m. at Department of Local Government Conference Room. Individuals in being heard at this hearing shall notify this agency in writing by September 21, 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: Junie Tutterow, Dan Tuttle, Department of Local Government, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Tuttle and Junie Tutterow
(1) Type and number of entities affected: Sheriffs' offices in 114 counties - housekeeping only is involved in this amendment.
(a) Direct and indirect costs or savings to those affected: No change.
1. First year: No change.
2. Continuing costs or savings: No change.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No change from present procedures.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: No change.
1. First year: No change.
2. Continuing costs or savings: No change.
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 needed.
(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. It applies equally to each entity.

GENERAL GOVERNMENT CABINET
Board of Social Work Examiners
(Proposed Amendment)

201 KAR 23:070. Specialty certification.

RELATES TO: 335.080, 335.090, 335.100
STATUTORY AUTHORITY: KRS 335.070
NECESSITY AND FUNCTION: This regulation further clarifies descriptions of specialty certification and the functions evolving therefrom, in addition to clarifying terms used KRS Chapter 335.

Section 1. Definitions. (1)(a) "Educational institution approved by the board" means graduate schools of social work accredited by the Council on Social Work Education, except that the board will evaluate credentials of foreign graduates on a case-by-case basis; and

(b) "A social work or social welfare program" not accredited by the Council on Social Work Education must demonstrate to the satisfaction of the board that they meet the Council on Social Work Education standards for accreditation of graduate programs.

(2) Supervision for the independent practice of clinical social work shall be defined as the educational process of utilizing a partnership aimed at enhancing the professional development of supervisees in providing services which focus upon the evaluation and treatment of emotional disorders and mental illness as related to the total health of the individual, and on helping with problems of living and activities designed to stimulate growth and development.

(3) "Certification for the independent practice of clinical social work" is defined as the process whereby the board recognizes a certified social worker to have special training and/or competence to engage in the independent practice of clinical social work.

(4) "Independent practice of clinical social work" is defined as that practice in which an individual who, wholly or in part, practices clinical social work outside of those settings specifically exempted by KRS 335.010, and has responsibility for his own practice and sets up his own conditions of exchange with his clients and identifies himself in any manner as a clinical social work practitioner in offering services. In addition, a social work employee of any individual, institution, or organization except those exempted by KRS 335.010 providing clinical social work services and paid by such persons, institutions or organizations rather than by direct arrangement with the client is considered within the definition of the private independent practice of clinical social work.

(5) "Clinical social work" is defined as practice which focuses on the evaluation and treatment of emotional disorders and mental illness as related to the total health of the individual. Such practice is based on knowledge of psychodynamics, human relations, crisis intervention, psychopathology, and group dynamics. Practitioners have numerous skills including those necessary for individual, marital, family and group psychotherapy, as well as other treatment modalities. The responsibility of the clinical social worker is to establish a therapeutic relationship which leads to correction of the dysfunction. Such relationship includes diagnosis using professionally recognized clinical nomenclature; treatment planning which includes development, implementation, and modification of the plan; evaluation of progress; and termination of the treatment process. This relationship is further characterized by face-to-face contact with the client system throughout the treatment process. Because the clinical social worker holds the welfare of the client/patient in high regard, all persons seen in a therapeutic capacity shall be informed of the regulatory authority of this board. This notice will be in a written format as specified by the board.

(6) "Supervisor of record" is defined as a licensed clinical social worker who enters into a plan of supervised activities for clinical social work experience with a certified social worker for any authorized purpose. This person shall assume responsibility for the CSW's practice and shall supervise in accordance with Section 3 of this regulation, and KRS 335.100(B) during the period covered by the plan.

Section 2. (1) A certified social worker who is an [work] employee of an individual LCSW, nonexempt institution, or a nonexempt organization may engage in the practice of clinical social work by contracting, in writing, with a person who holds a valid Kentucky certification for clinical practice, who shall assume responsibility for the employee's practice and shall supervise in accordance with Section 3 of this regulation, and KRS 335.100(b), over the qualifying period of eligibility for taking the specialty certification exam. The certified social worker shall, for purposes of this section, be an employee of a nonexempt institution or nonexempt organization in which he has no direct or indirect interest other than such employment. He shall not enter into such practice of social work until this contract has been approved by the board and shall cease such practice of social work immediately upon the termination of said contract. At the termination of the contract the employee shall apply for the speciality certification or request an extension of the contract from the board.

(2) The supervisory contract required in subsection (1) of this section shall contain all of the following:

(a) The name and license number of the supervisee.

(b) The name and license number of the supervisor.

(c) The nature of such practice.

(d) The nature, duration and frequency of the supervision.

(e) The conditions or procedures for termination of the supervision.

(f) The explicit statement that the supervisor understands that he shall be held accountable to the board for the care given to the supervisee's clients.

(g) The explicit statement that the certified social worker is a bona fide employee, and as such has social security and income tax deducted from his salary.

(h) The explicit statement that the supervisor meets the criteria set out in subsection (3) of this section.

(3) While practicing under supervision, the

employee shall notify each client/patient of this fact in a format specified by the board. This notice shall be in writing and include the name, office address, telephone number, and license number of the supervisor of record. It shall also contain information regarding the regulatory authority of this board.

(4) [(3)] For purposes of the contractual arrangement mentioned in subsection (1) of this section only, the criteria for a supervisor shall be:

(a) A person who has been in the independent practice of clinical social work for five (5) years following licensure for the independent practice of clinical social work.

(b) A person who has no unresolved complaints filed before the board.

(c) A person who has no more than six (6) certified social workers with whom they have a contract to be held accountable to the board.

(d) A person who has demonstrated to the board's satisfaction a level of competence equivalent to that contained in paragraph (a) of this subsection.

Section 3. To be certified for the independent practice of clinical social work the licensee must have:

(1) Had the required number of hours of experience in clinical social work under supervision. Such supervision shall have been provided by an individual meeting the requirement set forth in subsection (4) of this section;

(2) Spent at least sixty (60) percent of the required experience in a direct client-professional relationship;

(3) Had direct responsibility for specific individual and/or groups of clients;

(4) Qualifying experience which provides broad exposure and opportunity for skill development with a variety of dysfunctions, diagnoses, acuity levels and population groups. [Supervision provided by one (1) of the following:]

[(a) An individual certified for the independent practice of clinical social work by this board.]

[(b) An individual listed at the time of supervision in either the National Association of Social Workers Registry of Clinical Social Workers or the National Registry of Health Care Providers in Clinical Social Work. Persons beginning supervision after September 1, 1987 must obtain their supervision from persons meeting the qualifications set out in paragraph (a) or (c) of this subsection.]

[(c) A person who has demonstrated to the board's satisfaction a level of competence equivalent to that contained in paragraph (a) of this subsection.]

(5) Supervision provided by one (1) of the following:

(a) An individual certified for the independent practice of clinical social work by this board;

(b) A person who has demonstrated to the board's satisfaction a level of competence equivalent to that contained in paragraph (a) of this subsection. [Supervision related specifically to the experience which is proffered as the qualifying experience for the clinical certificate;]

(6) Supervision related specifically to the experience which is proffered as the qualifying experience for the clinical certificate. Such supervision shall focus on:

(a) The accurate diagnosis of client problems leading to proficiency in applying professionally recognized clinical nomenclature;

(b) The development and modification of the treatment plan;

(c) The development of treatment skills suitable to each phase of the therapeutic process;

(d) Ethical problems in independent practice; and

(e) The development and use of the professional self in the therapeutic process. [A written agreement among an authorized agent of the agency, the supervisor, and the supervisee, including evidence of built-in accountability and the assurance of the confidentiality of patient records shall be provided to the board before supervision may be obtained outside the agency in which the clinical experience is occurring;]

(7) Supervision which totals a minimum of 200 hours equitably distributed throughout the qualifying period; not more than 100 hours of which, excepting hours of supervision received prior to December 31, 1981, may be obtained through group supervision in groups of six (6) or fewer members;

(8) Supervision congruent with the board's code of ethical practice;

(9) Passed an examination developed by the board.

Section 4. The period of supervised experience required by KRS 335.100(1)(b) and the supervisory requirements set forth in Section 3 of this regulation shall be evaluated by the board according to one (1) of the two (2), or a combination of the two (2) following methods at the option of the candidate:

(1) Postexperience evaluation. The candidate submits his/her application along with appropriate documentation of supervision upon completion of the experience on forms provided by the board.

(2) Preexperience evaluation. The candidate submits a detailed description of the plan for experience which will be taking place over the required time period on forms provided by the board. This plan shall be evaluated by the board and shall be approved or disapproved within ninety (90) days of its submission. The plan shall include all of the following:

(a) The name and license number of the supervisee;

(b) The name and license number of the supervisor;

(c) The agency where the experience will be received;

(d) A detailed description of the nature of the practice, which includes all of the following:

1. The type of clients which will be seen;

2. The type of therapies and treatment modalities which will be used including the prospective length of treatment;

3. The type of problems which will be treated;

(e) The nature, duration and frequency of the supervision which includes all of the following:

1. The number of hours of supervision per week;

2. The amount of group and individual supervision;

3. The methodology for transmission of case information;

(f) The conditions or procedures for termination of the supervised experience;
(g) The explicit statement that the supervisor meets the criteria set forth in Section 3(4) of this regulation.

JACK B. JOHNSON, Chairman
APPROVED BY AGENCY: August 15, 1991
FILED WITH LRC: August 15, 1991 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1991 at 9 a.m. at the Division of Occupations and Professions Conference Room, located at Berry Hill, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 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 the contact person: David L. Nicholas, Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Nicholas
(1) Type and number of entities affected: One level of licensure.
(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: These will be streamlined for applicants.
(2) Effects on the promulgating administrative body: This will assist the board in approving applications.
(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: This will streamline paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: This appeared to be the most efficient way of dealing with this.
(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. Not necessary.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 1:015. Boats and outboard motors; restrictions.

RELATES TO: KRS 150.025, 150.090, 150.620, 150.625
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: It is necessary to regulate the size of outboard motors and boats on state-owned lakes to minimize the conflict with the primary purposes of the lakes which are the perpetuation of fish or game populations and the associated sports. This amendment is necessary to allow idle speed/unlimited motor size on Wilgreen Lake [regulate boating on Lake Reba].

Section 1. No boat shall be permitted on any of the herein named lakes with a centerline exceeding eighteen (18) feet six (6) inches in length as measured on deck or from bow to stern, except canoes which have no length limit and float boats which shall have pontoons and decking no longer than twenty-two (22) feet. On Lake Malone and Lake Beshear only float boats can have pontoons and decking up to thirty (30) feet in length.

Section 2. No houseboats of any description shall be permitted on any of the herein named lakes.

Section 3. No motor of any type is permitted on the following lakes:
(1) Lake Chumley, Lincoln County;
(2) Dennie Gooch Lake, Pulaski County;
(3) Martin County Lake, Martin County; and
(4) Kingdom Come Lake, Harlan County.

Section 4. Electric motors only may be used on the following lakes:
(1) Carter Caves Lake, Carter County;
(2) Spurlington Lake, Taylor County;
(3) Marion County Lake, Marion County;
(4) Lake Washburn, Ohio County;
(5) Bert Combs Lake, Clay County;
(6) McNeely Lake, Jefferson County;
(7) Lake Mauzy, Union County;
(8) Carpenter Lake and Kingfisher Lakes, Daviess County;
(9) Metcalfe County Lake, Metcalfe County;
(10) Briggs Lake, Logan County;
(11) Big Turner, Ballard County;
(12) Little Turner, Ballard County;
(13) Shelby, Ballard County;
(14) Mitchell, Ballard County;
(15) Happy Hollow, Ballard County;
(16) Burnt Slough, Ballard County;
(17) Butler, Ballard County;
(18) Sandy Slough, Ballard County;
(19) Long Pond, Ballard County;
(20) Cross Slough, Ballard County;
(21) Little Green Sea, Ballard County;
(22) Burnt Pond, Ballard County;
(23) Arrowhead Slough, Ballard County;
(24) Deep Slough, Ballard County;
(25) Beaver Dam Slough, Ballard County;
(26) Cypress Slough, Ballard County;
(27) Twin Pockets Slough, Ballard County;
(28) Lake Reba, Madison County.

Section 5. No motor larger than ten (10) hp. (inboard or outboard) shall be used on the following state-owned lakes; however, slow speeds which cause no disturbance or interference with fishing must be exercised at:
(1) Shanty Hollow Lake, Warren County;
(2) Bullock Pen Lake, Grant County;
(3) Lake Boltz, Grant County;
(4) Falmouth Lake, Pendleton County;
(5) Elmer Davis Lake, Owen County;
(6) Beaver Creek Lake, Anderson County,
(7) Herb Smith Lake, Harlan County;
(8) Corinth Lake, Grant County;
(9) Wilgreen Lake, Madison County, through February 29, 1992;
(10) Greenbo Lake, Greenup County;
(11) Swan Lake, Ballard County.

Section 6. No boat motor larger than 150 hp. shall be used, and all boat motors used shall have an underwater exhaust on the following state-owned lakes:
(1) Guist Creek Lake, Shelby County;
(2) Lake Malone, Todd, Muhlenberg and Logan Counties; and
(3) Lake Beshear, Christian and Caldwell Counties.

Section 7. Boat motors of any size may be used on Pan Bowl Lake, Breathitt County and beginning March 1, 1992 on Wilgreen Lake, Madison County; however, boat speed is limited to idle speed only for the entire lake.

Section 8. Failure to comply with the rules and specifications set forth in this regulation shall constitute grounds for revocation of the rights and privileges of any person to admittance to and to the use of these public waters.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
RONALD E. GENTRY, Secretary
APPROVED BY AGENCY: July 23, 1991
FILED WITH LRC: July 25, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on Monday, September 30, 1991 at 1 p.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick
(1) Type and number of entities affected: There are approximately 600 individual anglers fishing Wilgreen Lake. Those that are presently using 10 hp motors will be restricted to idle speed. Those that have larger motors will now be able to use them at idle speed only.
(a) Direct and indirect costs or savings to those affected: No increased monetary costs are expected. The idle speed restriction will increase travel time on the water for some anglers while at the same time decreasing energy costs.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No reporting or paperwork involved.
(2) Effects on the promulgating administrative body: Initial enforcement activities will increase then return to normal levels.
(a) Direct and indirect costs or savings: Initially very small increased costs will occur as a result of time spent apprehending violators.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Some increase in citations and law enforcement reports.
(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on budgets, manpower, funding levels or equipment needs.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives considered included idle speed only for larger motors; and a 1 year experimental period including a survey to determine acceptability. Both options were rejected. The differential speed limit was not acceptable to individuals with the larger motors. In addition, the input from the anglers using the lake indicated the idle speed/unlimited motor size option was acceptable.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or government policies which are in conflict, overlapping or a duplication.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 1:075. Gigging, hand grabbing or snagging, tickling and noodling.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.235, 150.360, 150.440, 150.445, 150.470
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation is necessary to permit and govern methods of harvest to the benefit of the fishery resource. This amendment is necessary to revise the list of streams where gigging or snagging are prohibited [open the main stems of the North, Middle and South Forks of the Kentucky River to tickling and noodling].

Section 1. As used in this regulation, the word "snagging" means an act of taking fish by using a single hook or one (1) treble hook (except in the Green River and its tributaries and Rolling Fork River and its tributaries where five (5) hooks, either single or treble hooks, may be used) which is attached by line to a pole and is used in a jerking and pulling manner.

Section 2. A person may gig or snag from the stream or lake banks, but cannot use these fishing methods from a boat or platform, except gigging is permitted from a boat in any lake with a surface acreage of 500 acres or larger during the daylight hours.

Section 3. The season during which gigging and snagging is permitted is February 1 through May 10, annually, except persons may gig rough fish through the ice in these same waters any time the surface is frozen thick enough to stand on, and gigger must gig while supported by the ice.

Section 4. Gigging [and/]or snagging for rough fish is permitted night and day in all lakes and streams, except where specifically prohibited in Sections 2 and 5 of this regulation.

Section 5. Gigging [and/]or snagging is specifically prohibited in the following streams and their tributaries. (Exceptions: See subsection (1)(b) and subsection (2)(b) of this section.)

(1)(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, and in the Cumberland River in the area below Barkley Dam downstream to US 62 bridge.

(b) Those tributaries to the Cumberland River below Wolf Creek Dam downstream to the Tennessee line shall be open to gigging and snagging, in season, except that portion of each tributary which is within one-half (1/2) mile of its junction with the Cumberland River.

(2)(a) Within 200 yards of any dam on any stream;

(b) Snagging only is permitted in the Tennessee River below Kentucky Dam subject to restrictions in 301 KAR 1:020.

(3) Stream and counties:

Bark Camp Creek - Whitley;

Barren River Tailwaters, from the Barren River Lake Dam downstream to the Hwy. 101 bridge - Allen and Barren;

Beaver Creek - McCreary;

Beaver Creek - Wayne;

Beaver Dam Creek - Edmonson;

Big Double Creek - Clay;

Buffalow Creek, Right Fork - Owsley,

Canada Creek - Wayne;

Cane Creek - Laurel;

Caney Creek - Elliott;

Casey Creek - Trigg;

Clover Bottom Creek - Jackson;

Dogslaughter Creek - Whitley;

East Fork Little Sandy River - Boyd;

Elkhorn Creek - Pike;

Goose Creek - Casey and Russell;

Hawk Creek - Laurel;

Hood Creek - Johnson and Lawrence;

Indian Creek - Jackson;

Laurel Creek - Elliott;

Lick Creek - McCreary;

Lick Creek - Simpson;

Little Kentucky River, upstream from a point 200 yards below the low water dam at the Sulphur Road Bridge - Trimble;

Little South Fork - McCreary and Wayne;

Little Whipporwill Creek - Logan;

Lynn Camp Creek - Hart;

Middle Fork Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line - Perry;

Middle Fork Red River - Powell and Wolfe;

Peter Creek - Barren and Monroe;

Raven Creek - Harrison;

Rock Creek - McCreary;

Rockcastle Creek, from the junction of Hwy. 3 and Hwy. 40 in Inez north approximately five (5) miles to the Hwy. 3, Johnson Bottom Bridge - Martin;

Rough Creek - Hardin;

Rough River, below Rough River Lake Dam downstream to Hwy. 54 bridge - Breckinridge and Grayson;

Roundstone Creek - Hart;

Russell Fork - Pike;

Sinking Creek - Breckinridge;

Skinframe Creek - Lyon;

Station Camp Creek - Estill;

Sturgeon Creek - Lee;

Sulphur Spring Creek - Simpson;

Swift Camp Creek - Wolfe;

Trammel Fork, upstream from the Hwy. 1332 bridge at Butlersville - Allen;

War Fork - Jackson.

[(3) Little Kentucky River - upstream from a point 200 yards below the low water dam at the Sulphur Road Bridge.]

[(4) Goose Creek - Russell and Casey.]

[(5) Casey Creek - Trigg.]

[(6) Rough River, below Rough River Dam downstream to where Ky. 54 crosses the stream, and above the first riffle on Rough River Lake.]

[(7) Middle Fork of the Kentucky River, from Buckhorn Dam downstream to Breathitt-Perry County line.]

[(8) Trammel Creek, upstream from the Butlersville Bridge where Ky. 1332 crosses the stream.]

[(9) Peters Creek - Barren and Monroe.]

[(10) Beaver Dam Creek - Edmonson.]

[(11) Canada Creek - Wayne.]

[(12) Shultz Creek - Greenup.]

[(13) Sulphur Spring Creek - Simpson.]

[(14) Lick Fork Creek - Simpson.]

[(15) Sinking Creek - Breckinridge.]

[(16) Beaver Creek - Barren.]

[(17) Big Brush Creek - Green.]

[(18) Rough Creek - Hardin.]

[(19) Claylick Creek - Crittenden.]

[(20) Lynn Camp Creek - Hart.]

[(21) Roundstone Creek - Hart.]

[(22) Ravens Creek - Harrison.]

[(23) Boone Creek - Fayette and Clark.]

[(24) Caney Creek - Elliott.]

[(25) Greasy Creek - Leslie.]

[(26) Laurel Fork Creek - Harlan.]

[(27) Beaver Creek - Wayne.]

[(28) Craney Creek - Rowan.]

[(29) Swift Camp Creek - Wolfe.]

[(30) Middle Fork - Powell and Wolfe.]

[(31) War Fork - Jackson.]

[(32) Indian Creek - Jackson.]

[(33) Clover Bottom Creek - Jackson.]

[(34) Cane Creek - Laurel.]

[(35) Hawk Creek - Laurel.]

[(36) Beaver Creek - McCreary.]

[(37) Little South Fork - McCreary and Wayne.]

[(38) Rock Creek - McCreary.]

[(39) Lick Creek - McCreary.]

[(40) Bark Camp Creek - Whitley.]

[(41) Dogslaughter Creek - Whitley.]

[(42) Laurel Creek - Elliott.]

[(43) Big Double Creek - Clay.]

[(44) Hood Creek - Johnson and Lawrence.]

[(45) Line Fork - Letcher.]

Section 6. All game fish caught by gigging or snagging, except those taken below Kentucky Dam

in the Tennessee River, shall be returned to the water immediately, regardless of condition.

Section 7. The tickling and noodling (hand grabbing) season for rough fish only shall be June 10 to August 31 (all dates inclusive) during daylight hours only. Tickling and noodling shall be permitted in all waters except the tributaries to the North, Middle and South Forks of the Kentucky River. The daily creel limit for tickling and noodling shall be fifteen (15) rough fish of which not more than five (5) may be catfish.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
RONALD E. GENTRY, Secretary
APPROVED BY AGENCY: July 23, 1991
FILED WITH LRC: July 25, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on Monday, September 30, 1991 at 3 p.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick
(1) Type and number of entities affected: There are approximately 100 individual giggers that are using the streams affected by this change. Those using the streams added to the list will no longer be able to gig them. Those streams deleted from the list will now be opened to gigging.
(a) Direct and indirect costs or savings to those affected: There are no measurable direct or indirect costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No reporting or paperwork are required.
(2) Effects on the promulgating administrative body: No additional effort will be required. Policing is a part of ongoing routine patrol.
(a) Direct and indirect costs or savings: No significant additional costs or savings will occur.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional reporting and paperwork required.
(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on funding, budgets, manpower levels or equipment needs.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no reasonable alternative approaches that could be used to protect stocked trout from indiscriminate gigging.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which are in conflict, overlapping or a duplication.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

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

RELATES TO: KRS 150.010, 150.025, 150.470, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: In order to insure the continuance of viable and desirable populations of fish, it is necessary to govern the size and numbers anglers can harvest. This amendment is necessary to reduce the statewide daily creel limits on crappie and white bass and yellow bass to thirty (30) and set a nine (9) inch minimum size limit on crappie in Nolin and Green River lakes [establish a fifteen (15) inch size limit on largemouth and smallmouth bass at Fishtrap, Buckhorn, Yatesville, Paintsville, and Carr Fork Lakes, a ten (10) inch size limit on crappie at Barkley and Kentucky Lakes, special bass regulations on Lake Reba and close Lincoln Homestead State Park Lake to fishing].

Section 1. The statewide creel limits, size limits and possession limits for taking fish by angling shall be as follows, except as specified in Section 3 of this regulation and as provided in 301 KAR 1:180:

	Size Limit Inches	Daily Creel Limit	Possession Limit
Black bass:*			
Largemouth	12)	10	20
Smallmouth	12)	Singly	Singly
Kentucky (spotted)	None)	or in	or in
Coosa	12)	Aggregate	Aggregate
Rock bass (goggle eye or redeye)	None	15	30
Walleye and their hybrids	15	10	20
Sauger	None	10	20
Muskellunge and their hybrids	30	2	2
Northern pike	None	5	10
Chain pickerel	None	5	10
White bass and yellow bass	None	60 (30 after 2/29/92)	60
Striped bass (rock-fish) and their hybrids	15	5	5
Crappie	None	60 (30 after 2/29/92)	60
Rainbow trout & brown trout	None	8	8
Brook trout	10	2	2

*For size limit purposes, any black bass, with the exception of the smallmouth, with a patch of

teeth on its tongue is considered to be a Kentucky bass.

Section 2. Seasons for all species is year around.

Section 3. The following special limits apply. All other angling limits and seasons apply as set forth in Sections 1 and 2 of this regulation.

(1) The impounded waters of Grayson Lake. The size limit on largemouth bass and smallmouth bass is fifteen (15) inches. There are no daily creel or possession limits on crappie.

(2) The impounded and flowing waters of Dix River and its tributaries upstream from Herrington Lake Dam:

	Size Limit Inches	Daily Creel Limit	Possession Limit
White bass, striped bass (rockfish) and their hybrids	*	20	40

*No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.

(3) Dix River from Herrington Lake Dam downstream a distance of two (2) miles. The size limit for brown trout is fifteen (15) inches. The daily creel and possession limits for brown trout is three (3) fish. The daily creel and possession limits for brown trout and rainbow trout combined is eight (8) fish of which no more than three (3) fish can be brown trout. Fishing is permitted only with artificial lures or flies. Possession of fish eggs, small bait fish, insects or worms or other similar organic bait or parts thereof while in the possession of fishing tackle in the above described two (2) mile section of Dix River is prohibited.

(4) The impounded waters of Taylorsville Lake. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches. The daily creel and possession limits for crappie are fifteen (15) and thirty (30) respectively.

(5) The impounded waters of Kentucky and Barkley Lakes, including the connecting canal. The size limit for largemouth bass and smallmouth bass is fourteen (14) inches, except that the daily limit may include no more than one (1) and the possession limit no more than two (2) less than fourteen (14) inches in length. The size, creel and possession limits for crappie are ten (10) inches, thirty (30) and sixty (60) respectively.

(6) The impounded waters of Cave Run, Yatesville, Paintsville, Fishtrap, Carr Fork, Buckhorn and Dewey Lakes. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches.

(7) The impounded and flowing waters of Barren River and its tributaries upstream from Barren River Lake Dam.

	Size Limit Inches	Daily Creel Limit	Possession Limit
Crappie	10	30	60
White bass, striped bass (rockfish) and their hybrids	*	20	40

*No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.

(8) The impounded waters of Cumberland Lake. The size limit for largemouth and smallmouth bass is fifteen (15) inches. The creel and possession limits for striped bass (rockfish) are three (3) and three (3) respectively.

(9) In the following brook trout streams fishing is permitted only with artificial flies or lures with a single hook. Possession of fish eggs, small fish, insects, worms, or other similar organic bait or parts thereof while in the possession of fishing tackle is prohibited:

(a) Shillalah Creek, Bell County (outside boundary of Cumberland Gap National Park);

(b) Martins Fork and tributaries in Harlan County from Left Fork upstream 2.3 miles to the Cumberland Gap National Historical Park boundary;

(c) Bad Branch, Letcher County;

(d) Poor Fork and tributaries in Letcher County from the headwaters downstream to the first crossing of Highway 392;

(e) Parched Corn Creek, Wolfe County.

(10) The impounded waters of Carter Caves Lake. The size limit for largemouth bass is twenty (20) inches. The daily creel and possession limits for largemouth bass are one (1) and one (1) respectively. Fishing is permitted only during daylight hours.

(11) The impounded waters of Lake Reba. The size limit, creel limit and possession limit for largemouth and smallmouth bass collectively are fifteen (15) inches, five (5) and ten (10), respectively.

(12) The impounded waters of Lincoln Homestead State Park Lake: closed to fishing until January 1, 1993.

(13) Ohio River. The daily creel limit for crappie is sixty (60), the daily creel limit for white bass and yellow bass is sixty (60), (singly or in aggregate).

(14) The impounded waters of Nolin and Green River Lakes. After February 29, 1992, the size limit for crappie is nine (9) inches.

Section 4. Measure all fish from the end of the lower jaw to the tip of the tail with fish laid flat on rule, mouth closed and tail lobes squeezed together. All fish caught that are smaller than those prescribed minimum lengths shall be returned immediately to the waters from which they were taken in the best physical condition possible. Under no circumstances may a fisherman remove the head or the tail or part thereof of any of the above-named fish while in the field and before he has completed fishing for the day.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
RONALD E. GENTRY, Secretary
APPROVED BY AGENCY: July 23, 1991
FILED WITH LRC: July 25, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on Monday, September 30, 1991 at 10 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick
(1) Type and number of entities affected: There are over 1 million anglers that fish Kentucky waters each year.
(a) Direct and indirect costs or savings to those affected: There are no measurable direct or indirect costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No reporting or paperwork are involved.
(2) Effects on the promulgating administrative body: Policing will be a part of ongoing patrol. Initially some increased effort will be required.
(a) Direct and indirect costs or savings: Some increased cost will occur as a result of time spent apprehending violators, publication of informational brochures and placement of regulatory signs.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Slight increase in citations and associated law enforcement reports.
(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on budgets, manpower, funding levels or equipment needs.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Consideration was given to 20, 25 and 35 fish creel limits, however, angler surveys conducted at various lakes over the state supported the 30 fish limit. The nine-inch size limit was based on growth and recruitment of crappie in Nolin and Green River Lake. There were no suitable options.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which are in conflict, overlapping, or a duplication.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

TOURISM CABINET
Department of Fish & Wildlife Resources
(Proposed Amendment)

301 KAR 2:044. Taking of migratory wildlife.

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

Section 1. Seasons. (1) Doves: September 1 through September 30; October 5 [6] through October 28 [29]; November 30 [December 1] through December 5 [6].
(2) Woodcock: October 15 [1] through December 18 [4].
(3) Common snipe: October 15 [1] through December 18 [4].
(4) Wood duck: September 18 [12] through September 22 [16].

Section 2. Limits.

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

The possession limit is double the daily bag limit.

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

Section 4. Shooting Hours. (1) Doves: from 11 a.m. until sunset during the period September 1 through September 30 and October 5 [6] through October 28 [29]; from sunrise to sunset during the period November 30 [December 1] through December 5 [6].
(2) Common snipe and woodcock: from one-half (1/2) hour before sunrise to sunset.
(3) Wood duck: from one-half (1/2) hour before sunrise to sunset.

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

Section 6. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this regulation apply to the following areas:
(1) Ballard Wildlife Management Area, located in Ballard County.
(a) Doves: September 1 through September 30; and October 5 [6] through October 13 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.
(b) Woodcock and snipe: seasons closed.
(c) Wood duck: September 18 through September 22. Areas designated by signs are closed hunting.
(2) West Kentucky Wildlife Management Area, located in McCracken County.
(a) Doves: September 1 through September 30;

and October 5 [6] through October 13 only.
(b) Woodcock and snipe: hunting permitted on tracts 2, 3, 6, and 7 only.
(c) All tracts designated by numbers followed by the letter "A" are closed to hunting.
(3) Central Kentucky Wildlife Management Area, located in Madison County.
(a) Doves: September 1 through September 30; and October 5 [6] through October 13 only.
(b) Woodcock and snipe: seasons closed.
(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.
(a) Doves: September 1 through September 30 and December 1 through December 5 [6] only.
(b) Woodcock and snipe: December 1 through December 5 [4] only.
(5) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties.
(a) Doves: postwide from September 1 through September 27 [21] and November 30 [December 1] through December 5 [6]. On designated areas [only] from September 28 [22] through September 30; October 5 through October 28 [October 6].
(b) Woodcock: postwide from November 28 [22] through December 13 [3 and January 3 through January 27]. On designated areas only from December 14 [4] through December 18 [31].
(c) Snipe: postwide from November 28 [22] through December 13 [3 and January 3 through January 31]. On designated areas only from December 14 [4] through December 18 [31].
(d) September wood duck: September 18 [13] through 22 [16] only. Hunting permitted during these permits in designated areas only.
(6) Paintsville Lake Wildlife Management Area located in Johnson and Morgan counties and Dewey Lake Wildlife Management Area located in Floyd County.
(a) Doves: September 1 through September 30; and October 5 [6] through October 13 only.
(b) Wood duck: September 18 [12] through September 22 [16].
(7) Closed areas:
(a) The hunting of doves, woodcock, and common snipe is prohibited on Camp Webb Refuge Area, Grayson Lake.
(b) Waterfowl hunting is prohibited on the following areas on Grayson Lake: the Camp Webb Refuge Area; the area north of Rosedale Point, Deer Creek Fork, west of Route 1496; within fifty (50) yards of the state park shoreline.
(8) Dove hunter guidelines on wildlife management areas. The department shall establish hunter density guidelines for dove hunting fields on department property. If those densities are reached, hunters shall be so advised and instructed that they may hunt at their own risk, disperse to other fields, or wait until hunter densities subside, when other hunters may be allowed to replace those leaving on a first-come, first-served basis. Any person behaving in an unsafe or uncooperative manner shall be immediately required to leave the premises.

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

Section 8. Use of Steel Shot. Only steel shot may be in possession when taking or attempting to take waterfowl statewide. [Except for the areas requiring use of steel shot identified in subsections (1) and (2) of this section, all provisions of 301 KAR 3:080, Prohibition of lead shot for waterfowl and dove hunting, apply.]
(1) Prohibition of lead shot for dove hunting. Lead shot is prohibited for the taking of doves on the Ballard, Swan Lake, Peal, Sloughs, Ohio River Islands, Duck Island and Kaler Bottoms Wildlife Management Areas. [Western steel shot zone. That area of Western Kentucky west of an eastern boundary described by the lines and/or roads as follows: The Purchase Parkway from Fulton, Kentucky, on the Kentucky-Tennessee border northeast to the Interstate 24 – Purchase Parkway junction; northeast on I-24 to the Lyon County line; then on a line including all of Lyon, Caldwell and Hopkins Counties to Fredonia; north from Fredonia on US 641 to US 60 at Marion; north on US 60 to the Union County line; northeast and north along the Union County Henderson County lines to the Indiana-Kentucky border north of Newman, Kentucky.]
(2) Possession of lead shot shells.
(a) Persons hunting waterfowl shall not have lead shot shells in their possession.
(b) Persons hunting doves on wildlife management areas listed in subsection (1) of this section shall not have lead shot shells in their possession. [Bracken and Oldham Counties.]

Section 9. 301 KAR 3:080 is hereby repealed.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
RONALD E. GENTRY, Secretary
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 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 September 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, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick
(1) Type and number of entities affected: An estimated 90,000 persons will participate in the migratory bird hunting proposed by this regulation.
(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp and a state waterfowl stamp if hunting

waterfowl. Indirect costs would be determined by the hunter, depending on his level of participation. Steel shot will be required in 2 additional counties and half of another this year. Steel shot costs approximately $2 more per box of 25 shells than does lead shot.

1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license ($8.50 for residents) unless exempt by regulations. Waterfowl hunters would be required to possess a $15 federal migratory bird hunting and conservation stamp and a $5.25 state waterfowl stamp.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Randomly selected waterfowl hunters will be asked to report their hunting success by completing and mailing a Kentucky waterfowl survey in a postage paid envelope.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $140,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The results of the waterfowl harvest survey will be tabulated and reported to the U.S. Fish and Wildlife Service in accordance with experimental hunting season agreement.

(3) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about $204 a season on food, lodging, transportation and equipment. This will add about $18,360,000 to the income of local businesses.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Only one class of citizen, the hunter, is impacted by this regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR part 20, Federal Register, Vol. 56, No. 135 Monday, July 15, 1991.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Woodcock - season frameworks between September 1, 1991, and January 31, 1992, with a 65 day maximum season. Bag limits may be a maximum of 5 per day with 10 in possession. Wood duck - season frameworks allow 5 days in September. Bag limits may be 2 daily with 4 in possession. Dove - season frameworks allow either 70 or 60 days between September 1, 1991, and January 15, 1992. Bag limits may be either 12 per day with 24 in possession for the 70 day season or 15 per day with 30 in possession for the 60 day season.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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. Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.

3. State the aspect or service of local government to which this administrative regulation relates. This activity relates to KRS Chapter 150.

4. 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: Hunting encourages spending by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures.

GENERAL GOVERNMENT CABINET
Kentucky Department of Agriculture
(Proposed Amendment)

302 KAR 45:010. Ginseng, general provisions.

RELATES TO: KRS 246.650, 246.660
STATUTORY AUTHORITY: KRS Chapter 13A, 246.660
NECESSITY AND FUNCTION: KRS 246.660 authorized the Department of Agriculture to adopt rules and regulations relating to the administration of a program for Wild American Ginseng. This regulation sets forth general provisions which apply in this chapter with regard to definitions, harvest season, and cooperative agreements.

Section 1. (1) "Ginseng Dealer" means any person engaged in the business of buying ginseng roots from ginseng collectors, ginseng cultivators, and other ginseng dealers for resale to ginseng exporters or to other ginseng dealers or any person who sells ginseng in any form in interstate commerce.
(2) "Commissioner" means the Commissioner of Agriculture.
(3) "Department" unless otherwise specified means the Kentucky Department of Agriculture.
(4) "State" means the Commonwealth of Kentucky.

Section 2. Registration. (1) No person shall be a ginseng dealer without first obtaining a certificate of registration issued by the department. No registration shall be renewed until the ginseng dealer has met all requirements of recordkeeping and reporting as required by the department.
(2) Certificates of registration will be issued for a period of one (1) year, and will expire on the 30th day of April each year.
(3) Completed applications for certification of registration, issued by the department, must be returned prior to June 30th of each year.

Section 3. Record Keeping. (1) All ginseng dealers shall keep records, on forms furnished by the department, of all purchases and sales of ginseng. These records will include month purchased, month dug, county where dug, weight of purchase, and signature and address of digger or seller. Ginseng dealers shall also keep records of purchases from other dealers. These records shall include the month each purchase from a dealer is made, the weight of purchase, and the signature and registration number of the dealer from whom the purchase is made. All purchase records shall be submitted to the department on a monthly basis. No ginseng shall be certified until the purchase records are recorded by the department.
(2) Retention. All persons required to maintain records under this section shall retain the records for a period of three (3) years.
(3) Availability. Records required under this section shall be made available to the department upon request.

Section 4. Annual Report. All ginseng dealers will file an annual report with the department by April 30th. The annual report shall include the listing of each purchase and sale of ginseng made by the dealer since July 1 the previous year.

Section 5. All ginseng dealers will file a report with the department at least every calendar-year quarter if the dealer has any commerce in ginseng originating from any state other than Kentucky. The report must be sent within fifteen (15) days of the end of any calendar-year quarter and shall list each purchase and sale of out-of-state ginseng made by the dealer during that quarter.

Section 6. Harvest Season. Beginning September 1, 1988 and each year thereafter, wild ginseng will only be dug between <u>August 15th</u> [September 1st] and December 1st of each year. Any seeds adhering to a plant taken during the season shall be planted within fifty (50) feet of the location of the plant with no tool used other than the finger.

Section 7. All sales of ginseng by dealers shall be certified for sale during the ginseng selling season beginning September <u>1st</u> [15th] of each year and extending until March 31st of the following year.

Section 8. All ginseng unsold by March 31st of the year after harvest must be weighed by the department and the dealer given a weight receipt. Any future export certification of this stock will only be issued against the weight receipt.

Section 9. (1) All ginseng dealers holding a certificate of registration hereunder must obtain a certificate of legal taking issued by the department after inspection by an official of the department identifying the origin, year of taking, and weight of any shipment of ginseng to a destination outside the Commonwealth of Kentucky. The certificate shall also state whether the ginseng is Wild American Ginseng or whether the ginseng has been cultivated or propagated by a grower. Such certification shall be issued to the dealer on triplicate forms issued by the department. A copy of such certification must be enclosed with the shipment subject of the certification. A copy of such certificate shall be retained for a minimum of three (3) years by the licensed ginseng dealer and a copy of the certificate shall be retained by the certifying agent of the department and submitted in accordance with internal procedures of the department.
(2) At the time of issuance of the certificate, the department official shall receive from the ginseng dealer copies of all purchase records covering the amount of ginseng certified. Records of ginseng purchased from other dealers shall be recorded with the department prior to a certificate being issued.

Section 10. No ginseng dug outside the borders of Kentucky which is uncertified in its state of origin shall be allowed to enter Kentucky.

Section 11. (1) Any ginseng which is obtained in contravention of laws for the protection of the species or in violation of any other law shall not be purchased, sold, shipped, or transported within the Commonwealth of Kentucky.
(2) The Kentucky Department of Agriculture may enforce the provisions of Section 11 of this regulation herein as provided in KRS 260.030.

CHARLES L. HAMILTON, Commissioner
APPROVED BY AGENCY: July 22, 1991
FILED WITH LRC: July 23, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 27, 1991, at 9 a.m. at Department of Agriculture Conference Room, 7th Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals in being heard at this hearing shall notify this agency in writing by September 22, 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: J. Michael Noyes, General Counsel, Department of Agriculture, Capital Plaza Tower, 500 Mero Street, 7th Floor, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Chris Kring
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: No additional cost or indirect saving, only regulatory change related to the date of harvest season.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No change in reporting or paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No additional cost or indirect saving, only regulatory change related to the date of harvest season.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No change on any revenues, programs generated no funds.
(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 246.660 mandates that harvest season be set, this is only a change in the harvest season date. Industry and agency request to change season does not conflict with statutory requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflicts.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. All ginseng dealers must be treated under a uniform standard.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. "50 CFR Part 23 requires than the state maintain a ginseng regulation program and set a season for ginseng harvesting. KRS 246.660 authorizes the department to establish a ginseng harvesting season. This regulation is in compliance with statutory mandate and is no more stringent that the minimum federal requirement."
2. State compliance standards. See 1 above.
3. Minimum or uniform standards contained in the federal mandate. See 1 above.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The federal mandate is that we establish a harvest season. The exact date of season is adapted to state and industry requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional requirements or responsibilities.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 50:010. Definitions and abbreviations of terms used in Title 401, Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65.

RELATES TO: KRS 224.320, 224.330, 224.340
STATUTORY AUTHORITY: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the defining of terms to be used in Title 401, Chapters 50 to 65.

Section 1. Definitions. All terms not defined in this regulation or in subsequent regulations, shall have the meaning given them in KRS 224.005 or by commonly accepted usage. As used in the regulations of the Division for Air Quality, unless the content clearly indicates otherwise, the following words shall have the following meanings:
(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.
(2) "Air contaminant" has the meaning given it in KRS 224.005.
(3) "Air pollutant" means an air contaminant.
(4) "Air pollution" has the meaning given it in KRS 224.005.
(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.
(6) "Alteration" means:
(a) The installation or replacement of air pollution control equipment at a source;
(b) A physical change in or change in the method of operation of an affected facility

which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventiveor control measures.

(10) "Cabinet" has the meaning given it in KRS 224.005.

(11) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(12) "Compliance schedule" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(13) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(14) "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(15) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(16) "District" has the meaning given it in KRS 224.005.

(17) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(18) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(19) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(20) "Existing source" means a source which is not a new source.

(21) "Extreme nonattainment county" means a county designated extreme nonattainment in 401 KAR 51:010.

(22) [(21)] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(23) [(22)] "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(24) [(23)] "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(25) [(24)] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(26) [(25)] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(27) [(26)] "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

[(27) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner.]

(28) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(29) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner.

(30) "Marginal nonattainment county" means a county designated marginal nonattainment in 401 KAR 51:010.

(31) "Moderate nonattainment county" means a county designated moderate nonattainment in 401 KAR 51:010.

(32) [(29)] "Modification" means a physical change in, or change in the method of operation of an affected facility which increases the potential to emit of an air pollutant (to which a standard applies) emitted by the facility, or which results in the emission of an air pollutant (to which a standard applies) not previously emitted, except that:

(a) Routine maintenance, repair, and replacement of component parts shall not be considered physical changes;

(b) The following shall not be considered a change in the method of operation:

1. An increase in the production rate, if the increase does not exceed the operating design capacity of the affected facility, or the maximum operating capacity specified as a condition to a permit issued by the cabinet;

2. An increase in hours of operation;

3. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to the facility, the affected facility is designed to accommodate the alternative use.

(33) [(30)] "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(34) [(31)] "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(35) [(32)] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(36) [(33)] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(37) [(34)] "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(38) [(35)] "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(39) [(36)] "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(40) [(37)] "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(41) [(38)] "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(42) [(39)] "PM_{10} emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(43) [(40)] "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(44) [(41)] "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(45) [(42)] "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61. This term may be more narrowly defined within a specific regulation or chapter.

(46) [(43)] "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(47) [(44)] "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(48) "Serious nonattainment county" means a county designated serious nonattainment in 401 KAR 51:010.

(49) "Severe nonattainment county" means a county designated severe nonattainment in 401 KAR 51:010.

(50) [(45)] "Shutdown" means the cessation of an operation.

(51) [(46)] "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(52) [(47)] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(53) [(48)] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with Title 401, Chapter 51, of the regulations of the Division for Air Quality.

(54) [(49)] "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68)) degrees

Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(55) [(50)] "Start-up" means the setting in operation of an affected facility.

(56) [(51)] "State implementation plan" means the most recently prepared plan or revision required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

(57) [(52)] "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(58) [(53)] "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(59) [(54)] "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.

(60) [(55)] "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(61) [(56)] "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides; ammonium carbonates; methylene chloride; 1,1,1,-trichloroethane (methyl chloroform); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); trichlorotrifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the regulations of Title 401, Chapters 50 to 65, shall have the following meanings:

AOAC – Association of Official Analytical Chemists
ANSI – American National Standards Institute
ASTM – American Society for Testing and Materials
BOD – Biochemical oxidant demand
BTU – British Thermal Unit
°C – Degree Celsius (centigrade)
Cal – calorie
cfm – Cubic feet per minute
CFR – Code of Federal Regulations
CH_4 – methane
CO – Carbon monoxide
CO_2 – Carbon dioxide
COD – Chemical oxidant demand
dscf – dry cubic feet at standard conditions
dscm – dry cubic meter at standard conditions
°F – Degree Fahrenheit
ft – feet
g – gram[(s)]
gal – gallon[(s)]
gr – grain[(s)]
hr – hour[(s)]
HCl – Hydrochloric acid
Hg – mercury
HF – Hydrogen fluoride
H_2O – water
H_2S – Hydrogen sulfide
H_2SO_4 – Sulfuric acid
in – inch[(es)]
J – joule
KAR – Kentucky Administrative Regulations
kg – kilogram[(s)]
KRS – Kentucky Revised Statutes
l – liter[(s)]
lb – pound[(s)]
m – meter[(s)]
m^3 – cubic meter
min – minute[(s)]
mg – milligram[(s)]
MJ – megajoules
MM – million
mm – millimeter[(s)]
mo – month
Ng – nanograms
N_2 – Nitrogen
NO – Nitric oxide
NO_2 – Nitrogen dioxide
NO_x – Nitrogen oxides
oz – ounce
O_2 – oxygen
O_3 – ozone
ppb – parts per billion
ppm – parts per million
ppm (w/w) – parts per million (weight by weight)
ug – microgram
psia – pounds per square inch absolute
psig – pounds per square inch gage
S – at standard conditions
sec – second
SIP – State implementation plan
SO_2 – Sulfur dioxide
sq – square
TAPPI – Technical Association of the Pulp and

Paper Industry
TSP – Total suspended particulates
TSS – Total suspended solids
U.S. EPA – United States Environmental Protection Agency
UTM – Universal Transverse Mercator
VOC – Volatile organic compound
yd – yard.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: August 15, 1991
FILED WITH LRC: August 15, 1991 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on September 30, 1991, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid
(1) Type and number of entities affected: This regulation provides the definitions and abbreviations by which all terms in the regulations of the Division for Air Quality are to be understood. It is being amended to update the definition of volatile organic compounds (VOCs) and add 5 classifications of nonattainment of national ambient air quality standards. The definition for VOC is being amended because the U.S. EPA, in the Federal Register of March 18, 1991 (56 FR 11390), has determined that additional organic compounds have negligible photochemical reactivity. In addition, the 5 classifications of nonattainment are being added to comply with the federal Clean Air Act as amended in 1990. The VOC definition is part of the changes being made to correct deviations from current U.S. EPA policy in Kentucky's State Implementation Plan (SIP) for ozone. All sources in Kentucky which emit VOCs will now use these definitions unless other definitions are specifically included in the individual applicable regulation. Any impact from these amendments will be due to changes in specific regulations which use these terms.
(a) Direct and indirect costs or savings to those affected: There will be no additional costs or savings due to these amendments. Potential savings because the additional compounds determined to have negligible photochemical activity will not need to be controlled as VOCs would be due to the impact of each individual regulation which requires the emission reduction.
1. First year: There are no direct or indirect costs or savings in the first year.
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 and paperwork requirements.
(2) Effects on the promulgating administrative body: There are none due to the amendments to this regulation. Any impact is due to the changes in the individual regulations.
(a) Direct and indirect costs or savings:
1. First year: There are no direct or indirect costs or savings in the first year.
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 and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: No effect is anticipated on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because these changes were required to eliminate deviations with U.S. EPA policy.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.
(a) Necessity of proposed regulation if in conflict: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.
(6) Any additional information or comments: The U.S. EPA has identified the VOC definition specifically defined in individual Kentucky regulations as a deviation from U.S. EPA policy. The individual regulations will be amended to remove the specified definition; the definition in 401 KAR 50:010 would then apply. The regulatory impact analysis for each individual regulation will contain information concerning the impact of removing the old definition and adopting the definitions in 401 KAR 50:010.
TIERING: Was tiering applied? No. Tiering is not applicable in these amendments since this regulation provides only the definitions and abbreviations for terms which are used in the other regulations for the Division for Air Quality.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal Register, March 18, 1991 (56 FR 11390), and Clean Air Act as amended November 15, 1990.
2. State compliance standards. 401 KAR 50:010, Section 1(21), (30), (31), (48), (49), and (61).
3. Minimum or uniform standards contained in the federal mandate. The U.S. EPA has determined that additional organic compounds have negligible photochemical reactivity. The proposed amendment to 401 KAR 50:010 excludes these compounds from the definition of volatile organic compounds (VOCs). In addition, the Clean Air Act as amended November 15, 1990, requires that ambient air quality nonattainment areas be classified under one of five categories.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The proposed regulation is being amended to eliminate deviations from U.S. EPA policy.
5. Justification for the imposition of the stricter standard, or additional or different

responsibilities or requirements. The proposed amendment does not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 50:012. General application.

RELATES TO: KRS Chapter 224
STATUTORY AUTHORITY: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides guidelines by which all regulations of Title 401, Chapters 50 to 65, are to be understood.

Section 1. General Application of Regulations and Standards. Regulations of the cabinet shall be construed and applied <u>according to subsections (1) through (4) of this section,</u> [in light of the considerations set forth hereinafter] which shall guide the cabinet in the issuance, modification, and revocation of permits.

(1) In the absence of <u>a</u> [any] standard specified in these regulations, all air contaminant sources shall as a minimum apply [such] control procedures <u>that</u> [as] are reasonable, available, and practical.

(2) Nothing in these regulations is intended to permit <u>a</u> [any] practice which is in violation of <u>a</u> [any] statute, ordinance, or regulation.

(3) These regulations shall be [construed as] complementary to each other, and to [such] other regulations [as have been] adopted [or shall be adopted] by the cabinet. If <u>a</u> [any] provision of these regulations or the application thereof to <u>a</u> [any] person or circumstance is held to be invalid, <u>the</u> [such] invalidity shall not affect other provisions or application of <u>another</u> [any other] part of these regulations and to this end each provision of these regulations and the various applications thereof are declared to be severable.

<u>(4) Nothing in these regulations shall allow a source to remove control equipment or discontinue procedures previously required in a nonattainment area to achieve the national ambient air quality standards until a state implementation plan containing different requirements has been approved by the U.S. EPA.</u>

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: August 15, 1991
FILED WITH LRC: August 15, 1991 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on September 30, 1991, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid
(1) Type and number of entities affected: This amendment applies to all sources ever subject to regulation in a nonattainment area in order to achieve the National Ambient Air Quality Standards (NAAQS). This amendment assures that the control equipment and procedures required to achieve the NAAQS will not be discontinued once an area becomes attainment. These reductions were used to achieve attainment and must be continued to maintain the NAAQS. This amendment formalizes a division practice and U.S. EPA requirement.
(a) Direct and indirect costs or savings to those affected:
1. First year: This amendment does not impose first year costs or savings.
2. Continuing costs or savings: This amendment requires a source to continue control equipment and procedures used to achieve the NAAQS; therefore, this amendment sustains continuing costs or savings.
3. Additional factors increasing or decreasing costs (note any effects upon competition): This amendment applies to sources located in an area ever designated nonattainment. A source in an area never designated nonattainment could have a competitive advantage.
(b) Reporting and paperwork requirements: Any reporting and paperwork requirements required of this source would continue to be required by this amendment.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: There are no first year costs or savings imposed by this amendment.
2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Sources will continue to be inspected and the cost will be absorbed as a part of the operating budget.
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data as in 1. and 2. above.
(3) Assessment of anticipated effect on state and local revenues: No effects on state and local revenues are anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since this amendment is a U.S. EPA requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.
(a) Necessity of proposed regulation if in conflict: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.
(6) Any additional information or comments: There is no additional information or comment.
TIERING: Was tiering applied? No. Tiering was

not applied since this amendment is a U.S. EPA requirement.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This amendment is being made to maintain Kentucky's State Implementation Plan under the Clean Air Act as amended November 15, 1990.
2. State compliance standards. This amendment formulizes a division practice and U.S. EPA requirement by ensuring that sources required to control emissions to achieve air quality standards must continue to control those emissions to maintain those standards.
3. Minimum or uniform standards contained in the federal mandate. The Clean Air Act requires that the national ambient air quality standards continue to be maintained.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This proposed amendment will not impose stricter requirements, or additional or different responsibilities or requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment does not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 51:017. Prevention of significant deterioration of air quality.

RELATES TO: KRS 224.320, 224.330, 224.340, 40 CFR 51, Subpart I, Part 51, Appendix S, Section IV, 51.166, 52.21, Parts 60 and 61, 81, Subpart D, 81.318, the Clean Air Act, 42 USC 7411, the National Environmental Policy Act, 42 USC 4321

STATUTORY AUTHORITY: KRS 224.033, 40 CFR 51, Subpart I, Part 51, Appendix S, Section IV, 51.166, 52.21, Parts 60 and 61, 81 Subpart D, 81.318, the Clean Air Act, 42 USC 7411, the National Environmental Policy Act, 42 USC 4321

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the prevention of significant deterioration of ambient air quality.

[Section 1. Applicability. The provisions of this regulation are applicable to any major stationary source or any major modification which:]

[(1) Commenced construction after September 22, 1982;]

[(2) Emits any pollutant regulated by the Clean Air Act; and]

[(3) Is constructed in areas designated as attainment or unclassifiable for any pollutant as defined pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act. Area designations are contained in 40 CFR 81.318.]

Section 1. [2.] Definitions. [As used in this regulation] Terms not defined in this section [herein] shall have the meaning given them in 401 KAR 50:010.

(1)(a) "Major stationary source" means:

1. [(a)] Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of a [any] pollutant subject to regulation under the Clean Air Act, 42 USC 7411: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination of fossil fuel boilers [thereof]) totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. [(b)] Notwithstanding the stationary source size specified in subparagraph 1 of this paragraph, a [paragraph (a) of this subsection, any] stationary source which emits, or has the potential to emit, 250 tons per year or more of an [any] air pollutant subject to regulation under the Clean Air Act, 42 USC 7411; or [; and]

3. [(c)] Any physical change that would occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the changes would constitute a major stationary source by themselves.

(b) [(d)] A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(c) For the purposes of this regulation, the fugitive emissions of a stationary source shall not be included in determining if it is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;

20. Chemical process plants;
21. Fossil-fuel boilers (or combination of fossil-fuel boilers) totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; and
27. Any stationary source category which, as of August 7, 1980, is being regulated under Title 401 KAR Chapters 57 and 59, 40 CFR Parts 60 and 61; or Section 111 or 112 of the Clean Air Act, 42 USC 7411.

(2) "Major modification" means a [any] physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act, 42 USC 7411.

(a) A [Any] net emissions increase that is significant for volatile organic compounds shall be significant for ozone.

(b) A physical change or change in the method of operation shall not include:

1. Routine maintenance, repair and replacement;

2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source which:

a. The source was capable of accommodating before January 6, 1975, unless the [such] change would be prohibited under a [any] permit condition which was established after January 6, 1975; or

b. The source is approved to use under a [any] permit issued under this regulation or under 40 CFR 52.21;

5. An increase in the hours of operation or in the production rate, unless the [such] change would be prohibited after January 6, 1975 pursuant to 40 CFR 52.21; after June 6, 1979, pursuant to 401 KAR 51:015; after September 22, 1982, pursuant to this regulation; or under 401 KAR 50:035 and 401 KAR 51:016E; or

6. A [Any] change in ownership at a stationary source.

(3) "Net emission increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) An [Any] increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) [Any] Other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date which is ten (10) years before construction on the particular change commences, but not before January 6, 1975, and the date that the increase from the particular change occurs.

(d) An increase or decrease in actual emissions is creditable only if the cabinet or the U.S. EPA has not relied on it in issuing a permit for the source under this regulation or 40 CFR 52.21, if the [which] permit is in effect when the increase in actual emissions from the particular change occurs.

(e) An increase or decrease in actual emissions of sulfur dioxide, [or] particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it shall [is required to] be considered in calculating the amount of maximum allowable increases remaining available.

(f) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(g) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is state and federally enforceable from [at and after] the time that actual construction on the particular change begins; and

3. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(h) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A [Any] replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. A [Any] physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state and federally enforceable. Secondary emissions shall [do] not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means a [any] building, structure, facility, or installation which emits or may emit an [any] air pollutant subject to regulation under the Clean Air Act, 42 USC 7411.

(6) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of a [any] vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1987, which has been incorporated by reference in Section 21 of this regulation [1972, as amended by the 1977 supplement].

(7) "Emission unit" means a [any] part of a stationary source which emits or would have the potential to emit a [any] pollutant subject to regulation under the Clean Air Act, 42 USC 7411.

(8) "Construction" means any physical change

or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of 401 KAR Chapters 50 to 63 and federal air quality control laws and regulations.

(11) "Begin actual construction" means[, in general,] initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Those [Such] activities include, but are not limited to, installation of building supports and foundations, laying underground pipework, and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than the preparatory activities which mark the initiation of the change.

(12) "Best available control technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act, 42 USC 7411, which would be emitted from a [any] proposed major stationary source or major modification which the cabinet, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for that [such] source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that [such] pollutant. [In no event shall] Application of best available control technology shall not result in emissions of a [any] pollutant which would exceed the emissions allowed by an [any] applicable standard under 401 KAR Chapters 57 and 59 or 40 CFR Parts 60 and 61. If the secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, or operational standard, or combination of design, equipment, work practice, or operational standard, [thereof] may be prescribed instead to satisfy the requirement for the application of best available control technology. That [Such] standard shall, to the degree possible, establish [set forth] the emissions reduction achievable by implementation of the [such] design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(13) "Baseline concentration" means that ambient concentration level which exists in the baseline area when [at the time of] the applicable minor source baseline date is established. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (c) of this subsection; and

(b) The allowable emissions of major stationary sources which commenced construction before the major source baseline date [January 6, 1975,] but were not in operation by the applicable minor source baseline date.

(c) The following shall [will] not be included in the baseline concentration and shall [will] affect the applicable [maximum] allowable increase[(s)]:

1. Actual emissions from a [any] major stationary source on which construction commenced after the major source baseline date [January 6, 1975]; and

2. Actual emissions increases and decreases at a [any] stationary source occurring after the minor source baseline date.

(14)(a) "Major source baseline date" means:

1. For particulate matter and sulfur dioxide, January 6, 1975; and

2. For nitrogen dioxide, February 8, 1988.

(b) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date shall be:

1. For particulate matter and sulfur dioxide, August 7, 1977; and

2. For nitrogen dioxide, February 8, 1988.

(c) [(14) "Baseline date" means the earliest date after August 7, 1977, on which the first complete application is submitted by a major stationary source or major modification subject to the requirements of federal or state prevention of significant deterioration regulations.] The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

1. [(a)] The area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act, 42 USC 7411, for the pollutant on the date of its complete application; and

2. For [(b) In the case of] a major stationary source, the pollutant would be emitted in significant amounts, or, for [in the case of] a major modification, there would be a significant net emissions increase of the pollutant.

(15) "Baseline area" means an intrastate [any] area (and every part of that area [thereof]) designated as attainment or unclassifiable pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act, 42 USC 7411, in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) ug/m^3 (annual average) of the pollutant for which the minor source baseline date is established. Area redesignations under Section 107(d)(1)(D)or (E) of the Clean Air Act, 42 USC 7411, cannot intersect or be smaller than the area of impact

of a [any] major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to this regulation and would be constructed in the Commonwealth of Kentucky.

(16) "Allowable emissions" means the emissions rate of a stationary source which is calculated using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards [as set forth] in [Title] 401 KAR Chapters 57 and 59, or 40 CFR 60 and 61;

(b) The applicable state and federally approved regulatory emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a state and federally enforceable permit condition, including those with a future compliance date.

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. EPA, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within any applicable state implementation plan and any permit requirement established pursuant to 40 CFR 52.21, or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operation permits issued under an EPA-approved program incorporated into the State Implementation Plan, which expressly requires adherence to a permit issued under the program [51.18 or 40 CFR 51.24].

(18) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this regulation, secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from an [any] off-site support facility which would not [otherwise] be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall [do] not include [any] emissions which come [directly] from a mobile source, (e.g., [such as] the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel).

(19) "Innovative control technology" means a [any] system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than a [any] control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21)(a) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (b) to (d) of this subsection.

(b) [In general,] Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the [a] two (2) year period [which] precedes the particular date and which is representative of normal source operation. The cabinet may [shall] allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The cabinet may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For an [any] emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(22) "Complete" means, in reference to an application for a permit, that the application contains [all of] the information necessary for processing the application.

(23) "Significant" means:

(a) In reference to a net emissions increase or the potential of a source to emit a pollutant listed in Section 22 of this regulation [any of the following pollutants], a rate of emissions that would equal or exceed a rate [any of the rates] given in Section 22 [Appendix A] of this regulation.

(b) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act, 42 USC 7411, that is not listed in Section 22 of [Appendix A to] this regulation, any emissions rate.

(c) Notwithstanding paragraph (b) of this subsection and Section 22 of [Appendix A to] this regulation, "significant" means an [any] emissions rate or [any] net emissions increase associated with a major stationary source or major modification which is to be constructed [would construct] within ten (10) kilometers of a Class I area and have an impact on that [such] area equal to or greater than one (1) ug/m^3 (twenty-four (24) hour average).

(24) "Federal land manager" means, with respect to [any] lands in the United States, the secretary of the department with authority over those [such] lands.

(25) "High terrain" means an [any] area having an elevation of 900 feet or more above the base of the stack of a source.

(26) "Low terrain" means an [any] area other than high terrain.

(27) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination shall be made on a case-by-case basis and shall consider [taking into account] the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and timing of natural conditions that reduce visibility.

[(28) "State implementation plan" means the most recently prepared plan or revision thereof required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.]

(28) [(29)] "Mandatory Class I federal area" means an [any] area identified in 40 CFR 81,

Subpart D, where the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.

(29) [(30)] "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(30) [(31)] "Visibility impairment" means a [any] humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

Section 2. Applicability. This regulation shall apply to a major stationary source or a major modification which:

(1) Commenced construction after September 22, 1982;

(2) Emits a pollutant regulated by the Clean Air Act, 42 USC 7411; and

(3) Is constructed in an area designated as attainment or unclassified for a pollutant as defined pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act, 42 USC 7411. Area designations are contained in 40 CFR 81.318.

Section 3. Ambient Air Increments. In areas designated as Class I or II, increases in pollutant concentration over the baseline concentration shall be limited to the levels specified in Section 23 [Appendix B] of this regulation. For a [any] period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

Section 4. Ambient Air Ceilings. No concentration of a pollutant specified in Section 2 [1] of this regulation shall exceed:

(1) The concentration permitted under the national secondary ambient air quality standard; or

(2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.

Section 5. Area Classifications. (1) The following areas which were in existence on August 7, 1977, shall be Class I areas and shall [may] not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks which exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the [such an] area, is designated Class II but may be redesignated as provided in 40 CFR 51.166(g) [51.24(g)].

(3) The visibility protection requirements [provisions] of this regulation [relating to visibility protection] shall apply only to sources which may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 6. Exclusions from Increment Consumption. (1) The cabinet may, after notice and opportunity for at least one (1) public hearing to be held in accordance with procedures established in 401 KAR 50:035, exclude the following concentrations in determining compliance with a maximum allowable increase:

(a) Concentrations attributable to the increase in emissions from stationary sources which have been converted from the use of petroleum products, natural gas, or both by reason of an order in effect under a federal statute or regulation over the emissions from the [such] sources before the effective date of the [such an] order;

(b) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the federal statute over the emissions from those [such] sources before the effective date of the [such] plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

(d) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, [or] particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the Administrator of the U.S. EPA as meeting the criteria specified in subsection (4) of this section.

(2) No exclusion of [such] concentrations shall apply more than five (5) years after the effective date of the order to which subsection (1)(a) of this section refers or the plan to which subsection (1)(b) of this section refers, whichever is applicable. If both an [such] order and plan are applicable, no [such] exclusion shall apply more than five (5) years after the later of the two (2) [such] effective dates.

(3) No exclusion under this section shall occur after May 7, 1981, unless a State Implementation Plan revision meeting the requirements of 40 CFR 51.166 [51.24] has been approved by the U.S. EPA.

(4) For purposes of excluding concentrations pursuant to subsection (1)(d) of this section, the plan revision referred to in subsection (3) of this section shall specify the following provisions:

(a) The time over which the temporary emission increase of sulfur dioxide, [or] particulate matter, or nitrogen oxides would occur. The [Such] time period shall not exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

(b) [That] The time period for excluding certain contributions in accordance with paragraph (a) of this subsection is not renewable;

(c) [That] No emissions increase will occur from a stationary source which would:

1. Impact a Class I area or an area where an applicable increment is known to be violated; or

2. Cause or contribute to the violation of a national ambient air quality standard; and

(d) Limitations shall [will] be in effect at

the end of the time period established in [specified in accordance with] paragraph (a) of this subsection which [would] ensure that the emissions levels from stationary sources affected by the plan revision will [would] not exceed those levels occurring from those [such] sources before the plan revision was approved.

Section 7. Stack Heights. (1) The degree of emission limitation required for control of an [any] air pollutant under this regulation shall not be affected [in any manner] by:

(a) So much of the stack height of a [any] source as exceeds good engineering practice; or

(b) Another [Any other] dispersion technique.

(2) Subsection (1) of this section shall not apply [with respect] to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

Section 8. Review of Major Stationary Sources and Major Modifications; Source Applicability and Exemptions. (1) No major stationary source or major modifications to which [the requirements of] Sections 9 to 17 of this regulation apply shall begin actual construction without a permit which states that the stationary source or modification will comply with Sections 9 to 17 of this regulation [would meet those requirements].

(2) [The requirements of] Sections 9 to 17 of this regulation shall apply to a [any] major stationary source and [any] major modification for [with respect to] each pollutant that it would emit which is subject to regulation under the Clean Air Act, 42 USC 7411 [that it would emit], except as required [otherwise provided] in Section 2 [1] of this regulation.

(3) [The requirements of] Sections 9 to 17 of this regulation shall apply only to a [any] major stationary source or major modification that will [would] be constructed in an area designated as attainment or unclassifiable pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act, 42 USC 7411.

(4) [The requirements of] Sections 9 to 17 of this regulation shall not apply to a particular major stationary source or major modification if:

(a) The owner or operator:

1. Obtained the necessary [a] federal, state, and [or] local preconstruction approval effective before September 22, 1982;

2. Commenced construction before September 22, 1982; and

3. Did not discontinue construction for a period of eighteen (18) months or more; or

(b) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at the [such an] institution, and the Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements;

(c) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or combination of fossil-fuel boilers [thereof]) totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
27. Another [Any other] stationary source category which, as of August 7, 1980, is being regulated under [Title] 401 KAR Chapters 57 and 59 or 40 CFR Parts 60 and 61; or

(d) The source is a portable stationary source which has previously received a permit under this regulation; and:

1. The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary;

2. The emissions from the source would not exceed its allowable emissions;

3. The emissions from the source would not impact a [no] Class I area or an [and no] area where an applicable increment is known to be violated; and

4. Reasonable notice is given to the cabinet prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. [Such] Notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.

(e) The source or modification was not subject to this regulation with respect to particulate matter requirement s[, as] in effect before July 31, 1987, and the owner or operator:

1. Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable state implementation plan before July 31, 1987;

2. Commenced construction within eighteen (18) months after July 31, 1987; and

3. Did not discontinue construction for a period of eighteen (18) months or more and completed construction within a reasonable period of time.

(f) The source or modification was subject to this regulation with respect to particulate matter requirements, as in effect before July 31, 1987, and the owner or operator submitted an application for a permit under this regulation before that date, and the cabinet subsequently determined that the application as submitted was complete with respect to the particulate matter requirements then in effect in this regulation.

If not [Instead], the requirements of Sections 9 to 17 of this regulation that were in effect before July 31, 1987, shall apply to the [such] source or modification.

(5) [The requirements of] Sections 9 to 17 of this regulation shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, for [relative to] that pollutant, the source or modification is located in an area designated as nonattainment pursuant to Section 107(d)(1)(A), (B), or (C) of the Clean Air Act, 42 USC 7411.

(6) [The requirements of] Sections 10, 12 and 14 of this regulation shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modifications:

(a) Will not impact a [Would impact no] Class I area or an [and no] area where an applicable increment is known to be violated; and

(b) Will [Would] be temporary.

(7) [The requirements of] Sections 10, 12 and 14 of this regulation as they apply to a [relate to any] maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the Clean Air Act, 42 USC 7411, from the modification after the application of best available control technology will [would] be less than fifty (50) tons per year.

(8) The cabinet may exempt a stationary source or modification from the monitoring requirements of Section 12 of this regulation [with respect to monitoring] for a particular pollutant if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification will [would] cause[, in any area,] air quality impacts in an area which are less than the amounts given in Section 24 of [Appendix C to] this regulation; or

(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Section 24 of [Appendix C to] this regulation, or the pollutant is not listed in Section 24 of [Appendix C to] this regulation.

(9)(a) At the discretion of the cabinet, the requirements for air quality monitoring of PM_{10} in Section 12 of this regulation may not apply to a particular source or modification if [when] the owner or operator of the source or modification submitted [submits] an application for a permit under this section on or before June 1, 1988, and the cabinet subsequently determines that the application as submitted before that date was complete, except for [with respect to] the requirements for monitoring particulate matter specified in Section 12 of this regulation.

(b) The requirements for air quality monitoring of PM_{10} in Section 12 of this regulation shall apply to a particular source or modification if the owner or operator of the source or modification submitted [submits] an application for a permit under 40 CFR 52.21 or this regulation [this section] after June 1, 1988, and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes [otherwise] complete in accordance with [the provisions set forth under] Section 12 of this regulation, unless [except that if] the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four (4) months), the data that Section 12 of this regulation requires shall have been gathered over that shorter period.

Section 9. Control Technology Review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under [Title] 401 KAR Chapters 50 to 63, and each applicable emission standard and standard of performance under [pursuant to] 40 CFR 60 and 61.

(2) A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the Clean Air Act, 42 USC 7411, that it will [would] have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each pollutant subject to regulation under Clean Air Act, 42 USC 7411, for which it will [would] result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant will [would] occur as a result of a physical change or change in the method of operation of [in] the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. [At such time,] The owner or operator of the applicable stationary source may then be required to demonstrate the adequacy of a [any] previous determination of best available control technology for the source.

Section 10. Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), will [would] not cause or contribute to air pollution in violation of:

(1) A [Any] national ambient air quality standard in an [any] air quality control region; or

(2) An [Any] applicable maximum allowable increase over the baseline concentration in an [any] area.

Section 11. Air Quality Models. (1) [All] Estimates of ambient concentrations [required under this regulation] shall be based on the applicable air quality models, data bases, and other requirements specified in 401 KAR 50:040 [the "Guideline on Air Quality Models," filed by reference in 401 KAR 50:015].

(2) If the applicable [Where an] air quality impact model [specified in the "Guideline on Air Quality Models"] is inappropriate, the model may be modified or another model substituted. This [Such a] change shall [will] be subject to notice and opportunity for public comment under Section 16 [17] of this regulation. Written

approval of the U.S. EPA shall [must] be obtained for a [any] modification or substitution. Methods similar to [like] those outlined in the "Workbook for the Comparison of Air Quality Models," specified in 401 KAR 50:040, Section 1(3), shall [filed by reference in 401 KAR 50:015, should] be used to determine the comparability of air quality models.

Section 12. Air Quality Analysis. (1) Preapplication analysis.

(a) An [Any] application for a permit under this regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification will [would] affect for each of the following pollutants:

1. For a [the] source, each pollutant that it will [would] have the potential to emit in a significant amount as defined in Section 1 [2](23) of this regulation;

2. For a [the] modification, each pollutant for which it will [would] result in a significant net emissions increase.

(b) With respect to a [any such] pollutant for which no national ambient air quality standard exists, the analysis shall contain the [such] air quality monitoring data [as] the cabinet determines [are] necessary to assess ambient air quality for that pollutant in an [any] area that the emissions of that pollutant will [would] affect.

(c) For pollutants [With respect to any such pollutant] (other than nonmethane hydrocarbons) for which [such] a standard does exist, the analysis shall contain continuous air quality monitoring data gathered to determine if [for purposes of determining whether] emissions of that pollutant will [would] cause or contribute to a violation of the standard or a [any] maximum allowable increase.

(d) The required [In general, the] continuous air quality monitoring data [that are required] shall have been gathered over a period of at least one (1) year and shall represent at least the year preceding receipt of the application, except that, if the cabinet determines [applicant demonstrates through historical data or dispersion models] that the monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months) will be obtained during a time period when maximum air quality levels can be expected, the required data [that are required] shall have been gathered over at least that shorter period.

(e) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51, Appendix S, section IV may provide postapproval monitoring data for ozone in lieu of providing preconstruction data [as] required under paragraphs (a) to (d) of this subsection.

(f) For an [any] application that is [becomes] complete, except for [as to] the requirements of paragraphs (c) and (d) of this subsection pertaining to PM_{10}, after December 1, 1988, and no later than August 1, 1989, the data that paragraph (c) of this subsection requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, unless [except that if] the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four (4) months), the data that paragraph (c) of this subsection requires shall have been gathered over that shorter period.

(g) [With respect to any requirements] For air quality monitoring of PM_{10} under Section 8(9)(a) and (b) of this regulation, the owner or operator of the source or modification shall use a monitoring method approved by the cabinet and shall estimate the ambient concentrations of PM_{10} using the data collected by that [such] approved monitoring method in accordance with estimating procedures approved by the cabinet.

(2) Postconstruction monitoring. The owner or operator of a major stationary source or major modification [shall], after construction of the stationary source or modification, shall conduct the [such] ambient monitoring which [as] the cabinet determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in an [any] area.

(3) Operation of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR 58, which has been incorporated [filed] by reference in 401 KAR 50:015, during the operation of monitoring stations to satisfy [for purposes of satisfying] subsections (1) and (2) of this section.

Section 13. Source Information. The owner or operator of a proposed source or modification shall submit all information necessary to perform an [any] analysis or make a [any] determination required under this regulation.

(1) For [With respect to] a major source or major modification to which Sections 9, 11, 13 and 15 of this regulation apply, the [such] information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modification;

(c) A detailed description of the [as to what] system of continuous emission reduction [is] planned for the source or modification, emission estimates, and [any] other information necessary to determine that best available control technology will [would] be applied.

(2) Upon request of the cabinet, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate the [such] impact; and

(b) The air quality impacts, and the nature and extent of [any or all] general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification will [would] affect.

Section 14. Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator is not required to [need not] provide an analysis of the impact on vegetation having no significant commercial or recreational

value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(3) Visibility monitoring. The cabinet may require monitoring of visibility in a [any] Class I area impacted by the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA. The method selected shall be determined on a case-by-case basis by the cabinet. [Any] Visibility monitoring required by the cabinet in a Class I area shall [will] be approved by the federal land manager. Data obtained from [any] visibility monitoring shall be made available to the cabinet, U.S. EPA, and the federal land manager, upon request.

Section 15. Sources Impacting Class I Areas; Additional Requirements. (1) Notice to U.S. EPA and federal land managers. The cabinet shall provide written notice to the U.S. EPA, the federal land manager, and the federal official charged with direct responsibility for management of lands within a Class I area of a [of any] permit application for a proposed major stationary source or major modification the emissions from which may affect the [a] Class I area [to the U.S. EPA, the federal land manager, and the federal official charged with direct responsibility for management of any lands within any such area]. The cabinet shall provide [such] notice promptly after receiving the application. The notice [Such notification] shall include a copy of all information relevant to the permit application and shall be given within thirty (30) days of receipt and at least sixty (60) days prior to the [any] public hearing on the application for a permit to construct. The notice [Such notification] shall include an analysis of the proposed source's anticipated impacts on visibility in the Class I area. The cabinet shall also provide the federal land manager and other [such] federal officials with a copy of the preliminary determination required under Section 16 [17] of this regulation, and shall make available to them the [any] materials used in making that determination, promptly after the cabinet makes it. [Finally,] The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an [any] advanced notification of the [any such] permit application.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of [such] lands located in a Class I area have an affirmative responsibility to protect the air quality related values (including visibility) of the [such] lands and to consider, in consultation with the cabinet, whether a proposed source or modification will have an adverse impact on those [such] values.

(3) Visibility analysis. The cabinet shall consider an [any] analysis performed by the federal land manager, provided within thirty (30) days of the notice [notification] and analysis required by subsection (1) of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in a [any] Class I area. If [Where] the cabinet finds that [such] analysis does not demonstrate to the satisfaction of the cabinet that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public notice required in 401 KAR 50:035, Section 4, either explain that decision or give notice as to where the explanation can be explained.

(4) Denial; impact on air quality related values. The federal land manager of [any such] lands located in a Class I area may demonstrate to the cabinet that the emissions from a proposed source or modification will [would] have an adverse impact on the air quality related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from the proposed [such] source or modification will [would] not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area as defined in Section 23 of [Appendix B to] this regulation. If the cabinet concurs with the [such] demonstration then the cabinet shall not issue the permit.

(5) Class I variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from the [such] source or modification will [would] have no adverse impact on the air quality related values of [any such] lands located in a Class I area (including visibility), notwithstanding that the change in air quality resulting from emissions from the [such] source or modification will [would] cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with the [such] demonstration and he so certifies, the cabinet may, if the other [provided that the] applicable requirements of this regulation are [otherwise] met, issue the permit with the [such] emission limitations that are [as may be] necessary to assure that emissions of sulfur dioxide, [and] particulate matter, and nitrogen oxides will [would] not exceed the maximum allowable increases over minor source baseline concentration for the [such] pollutants specified in Section 25 of [Appendix D to] this regulation.

(6) Sulfur dioxide variance by governor with federal land manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under subsection (5) of this section because the source cannot be constructed without exceeding a maximum allowable increase in sulfur dioxide applicable to a Class I area for a period of twenty-four (24) hours or less, may demonstrate to the Governor of the Commonwealth of Kentucky that [the source cannot be constructed by reason of any maximum allowable increase in sulfur dioxide for a period of twenty-four (24) hours or less applicable to any Class I area and that] a variance under this clause will [would] not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if applicable [any]) and subject to his concurrence, may, after notice and public hearing, grant a variance from the [such] maximum allowable increase. If a [such] variance is granted, the

cabinet shall issue a permit to the [such] source or modification under [pursuant to] the requirements of subsection (8) of this section, if the other [provided that the] applicable requirements of this regulation are [otherwise] met.

(7) Variance by the governor with the President's concurrence. If [In any case where] the Governor of the Commonwealth of Kentucky recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President of the United States of America. If the variance is approved by the President, the cabinet shall issue a permit pursuant to the requirements of subsection (8) of this section, if the other [provided that the] applicable requirements of this regulation are [otherwise] met.

(8) Emission limitations for presidential or gubernatorial variance. For [In the case of] a permit issued pursuant to subsections (6) or (7) of this section the source or modification shall comply with those [such] emission limitations [as may be] necessary to assure that emissions of sulfur dioxide from the source or modification will [would] not (during a [any] day on which the other[wise] applicable maximum allowable increases are exceeded) cause or contribute to concentrations which will [would] exceed the maximum allowable increases over the baseline concentration as specified in Section 26 [Appendix E] of this regulation and to assure that the [such] emissions will [would] not cause or contribute to concentrations which exceed the other[wise] applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than a total of eighteen (18) days, not necessarily consecutive, during an [any] annual period.

Section 16. Public Participation. The cabinet shall follow the applicable procedures of 401 KAR 50:035 in processing applications under this regulation.

Section 17. Source Obligation. (1) An [Any] owner or operator who constructs or operates a source or modification not in accordance with the application submitted to the cabinet under [pursuant to] this regulation or under [with] the terms of an [any] approval to construct; or an [any] owner or operator of a source or modification subject to this regulation who begins actual construction after September 22, 1982 without applying for and receiving approval [hereunder], shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of the [such] approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The cabinet may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision shall [does] not apply to the time period between construction of the approved phases of a phased construction project; each phase shall [must] commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an [any] owner or operator of the responsibility to comply fully with [applicable provisions of Title] 401 KAR Chapters 50 to 63, and [any] other requirements of [under] local, state, or federal law.

(4) When [At such time that] a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification [otherwise] to emit a pollutant, such as a restriction on hours of operation, then [the requirements of] Sections 9 to 18 of this regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Section 18. Environmental Impact Statements. If a [Whenever any] proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act, 42 USC 4321, review by the cabinet conducted pursuant to this regulation shall be coordinated with the broad environmental reviews under that Act and under Section 309 of the Clean Air Act, 42 USC 7411, to the maximum extent feasible and reasonable.

Section 19. Innovative Control Technology. (1) An owner or operator of a proposed major stationary source or major modification may request the cabinet in writing to approve a system of innovative control technology.

(2) The cabinet shall, with the consent of the governors [governor(s)] of other affected states [state(s)], determine that the source or modification may employ a system of innovative control technology if:

(a) The proposed control system will [would] not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 9(2) of this regulation by a date specified by the cabinet. The [Such] date shall not be later than four (4) years from the time of start-up or seven (7) years from permit issuance.

(c) The source or modification will [would] meet [the requirements of] Sections 9 and 10 of this regulation based on the emissions rate that the stationary source employing the system of innovative control technology will [would] be required to meet on the date specified by the cabinet;

(d) The source or modification will [would] not before the date specified by the cabinet:

1. Cause or contribute to a violation of an applicable national ambient air quality standard; or

[2. Impact any Class I area; or]

2. [3.] Impact an [any] area where an applicable increment is known to be violated; [and]

(e) Section 15 of this regulation (relating to Class I areas) has been satisfied for all periods during the life of the source or modification; and

(f) [(e)] All other applicable requirements including those for public participation have been met.

(3) The cabinet shall withdraw [any] approval

to employ a system of innovative control technology [made under this regulation] if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(b) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(c) The cabinet decides [at any time] that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection (3) of this section, the cabinet may allow the source or modification up to an additional three (3) years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

Section 20. Permit Condition Rescission. (1)(a) An [Any] owner or operator holding a permit for a stationary source or modification which contains conditions pursuant to 401 KAR 51:015 or 401 KAR 51:016E may request that the cabinet rescind the applicable conditions.

(b) An [Any] owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under this regulation as in effect on July 30, 1987, or an [any] earlier version of this regulation, may request that the cabinet rescind the permit or a particular portion of the permit.

(2) The cabinet shall rescind a permit condition if [so] requested and if the applicant can demonstrate to the satisfaction of the cabinet that this regulation does [would] not apply to the source or modification or to a portion of the source or modification [thereof].

Section 21. Reference Material. (1) Incorporation by Reference. The following document is incorporated by reference: the Standard Industrial Classification Manual, 1987, available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161, Order No. PB 87-100012.

(2) The document incorporated by reference in subsection (1) of this section is available for public inspection and copying (subject to copyright law) at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time.

(a) Kentucky Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

Section 22. [APPENDIX A TO 401 KAR 51:017] Significant Net Emissions Rates.

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate matter emissions
	15 tpy of PM_{10} emissions
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Asbestos	0.007 tpy
Beryllium	0.0004 tpy
Mercury	0.1 tpy
Vinyl chloride	1 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy

Section 23. [APPENDIX B TO 401 KAR 51:017] Ambient Air Increments.

Pollutant	Maximum Allowable Increase (Micrograms per cubic meter)
Class I	
Particulate Matter:	
TSP, Annual geometric mean	5
TSP, 24-hour maximum	10
Sulfur Dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Nitrogen Dioxide:	
Annual arithmetic mean	2.5
Class II	
Particulate Matter:	
TSP, Annual geometric mean	19
TSP, 24-hour maximum	37
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen Dioxide:	
Annual arithmetic mean	25

Section 24. [APPENDIX C TO 401 KAR 51:017] Significant Air Quality Impact.

Pollutant	Air Quality Level	Averaging Time
Carbon monoxide	575 ug/m^3	8-hour average
Nitrogen dioxide	14 ug/m^3	annual average

Particulate matter	10 ug/m^3 of TSP	24-hour average
	10 ug/m^3 of PM_{10}	24-hour average
Sulfur dioxide	13 ug/m^3	24-hour average
Ozone	No de minimis air quality level is provided for ozone. However, a [any] net increase of 100 tons per year or more of volatile organic compounds subject to this regulation is [would be] required to perform an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1 ug/m^3	3-month average
Mercury	0.25 ug/m^3	24-hour average
Beryllium	0.001 ug/m^3	24-hour average
Fluorides	0.25 ug/m^3	24-hour average
Vinyl chloride	15 ug/m^3	24-hour average
Hydrogen sulfide	0.2 ug/m^3	1-hour average
Total reduced sulfur	10 ug/m^3	1-hour average
Reduced sulfur compounds	10 ug/m^3	1-hour average

Section 25. [APPENDIX D TO 401 KAR 51:017] Ambient Air Increments for Class I Variances.

	Maximum Allowable Increase (micrograms per cubic meter)
Particulate Matter:	
TSP, Annual geometric mean	19
TSP, 24-hour maximum	37
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325
Nitrogen Dioxide:	
Annual arithmetic mean	25

Section 26. [APPENDIX E TO 401 KAR 51:017] Ambient Air Increments for Presidential or Gubernatorial SO_2 Variances.

Maximum Allowable Increase
(Micrograms per cubic meter)

	Terrain areas	
Period of Exposure	Low	High
24-hour maximum	36	62
3-hour maximum	130	221

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: August 15, 1991
FILED WITH LRC: August 15, 1991 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on September 30, 1991, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid
(1) Type and number of entities affected: This regulation provides for the prevention of significant deterioration of ambient air quality. It applies to major stationary sources and major modifications constructing in areas that are designated as attainment or unclassified for the specified pollutants. It is being amended to incorporate the amendments to the federal Prevention of Significant Deterioration (PSD) regulation relating to nitrogen dioxide (NO_2) increment, as promulgated by the U.S. EPA in the Federal Register of October 17, 1988, (53 FR 40656). Any new major stationary sources or major modifications of NO_2 locating in the Commonwealth after that date would consume NO_2 increment. The amendment provides that the application date of the first major source in each PSD area also sets the minor source baseline date for that area. From the minor source baseline date onward, growth in minor source emissions would also consume increment. The amendment to the PSD regulations for NO_2 adds the requirements for NO_2 increments analyses to those for sulfur dioxide (SO_2) and particulate matter (PM). The NO_2 air quality modeling analyses prepared for major source permit applications must also consider minor source emissions growth since the minor source baseline date. This amendment would not require increment analysis for sources of NO_2 that have already filed a complete application, including any source that has already received a permit, before the effective date of the amendments to the federal regulation (October 17, 1989), but such source would consume increment. The source types most likely to be affected by the NO_2 increment amendment are: chemical processing plants, natural gas and crude oil pumping stations, steam electric generating plants (including cogeneration facilities), petroleum refineries, kraft pulp mills, natural gas processing plants, and municipal solid waste incineration facilities. The U.S. EPA has mandated that these revisions be made in order for Kentucky's SIP for the prevention of significant deterioration to be fully approvable. No additional requirements are affected by the KRS Chapter 13A amendments. (Also, see discussion in (6) Any additional information or comments on page 3.)
(a) Direct and indirect costs or savings to those affected: There are no costs or savings associated with KRS Chapter 13A amendments. If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will enforce the requirements of the federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation. There may be, in fact, some savings for sources to deal with a regulatory agency located in Kentucky rather that in Atlanta.
1. First year: There are no additional costs

associated with complying with the state's amendments over complying with the same requirements in the federal regulation. The amendment associated with the nitrogen oxide increment will bring sources who construct after the baseline date (October 17, 1989) under nitrogen oxide provisions of this regulation for the first time. The number and size of those future constructing entities, of course, is not known; however, the nitrogen dioxide emissions reduction to achieve an increment for a Class II area (25 ug m^3) is estimated by the U.S. EPA to have an average cost of $1,106 per ton.

2. Continuing costs or savings: Please see discussion under first year, 1. above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional known factors.

(b) Reporting and paperwork requirements: A proposed source of nitrogen dioxide must submit all information necessary to perform the analysis for increment consumption required by the PSD regulation. The time typically required for a source to prepare the NO_2 increment consumption analysis associated with each PSD permit application has been determined by the U.S. EPA to be approximately 60 hours, when a mobile source emissions analysis is needed. The actual hours may be more or less than this estimate, depending on the complexity of the sources and the nature of the area in which the source is located.

(2) Effects on the promulgating administrative body: The cabinet will examine each PSD permit application for compliance with the NO_2 increment regulation, and continue to issue permits and inspect sources that are subject to these provisions. Since most sources subject to the PSD regulation for nitrogen oxide are also expected to be subject to the increment requirements for PM or SO_2, the administration costs of implementing the nitrogen dioxide increment requirements should be relatively minor.

(a) Direct and indirect costs or savings: The cost to the division for administering the nitrogen dioxide increment program is estimated to be $3,000 per year, assuming that PSD applications are received for that year.

1. First year: The division will review and process permits for any newly affected sources. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operation budget.

3. Additional factors increasing or decreasing costs: There are no known additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are currently no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable. The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

(3) Assessment of anticipated effect on state and local revenues: The amendment to this regulation is not expected to have a significant impact on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered since these amendments are the same as those made by the U.S. EPA to its PSD regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: Most of the proposed changes to this regulation are being made in order to bring the state regulation into conformance with the corresponding federal regulatory revisions for the PSD nitrogen dioxide increment. The intended effect of the NO_2 increment amendment is to require all applicants for major new stationary sources and major modifications emitting nitrogen oxides to account for and, if necessary, restrict emissions so as not to cause or contribute to exceedances of the nitrogen dioxide increment established by the Federal Register of October 17, 1988, (53 FR 40656). The NO_2 amendment also provides that the application date of the first major source in each PSD area sets the minor source baseline date for that area. From the minor source baseline date onward, growth in minor source emissions would also consume increment. Some minor language changes have been made to the state PSD regulation so that it will agree with amendments, reaffirmations, and clarifications to the federal PSD regulation concerning the definitions of "federally enforceable" and "significant" in Class I areas, on innovative control technology waiver for sources impacting Class I areas, secondary emissions, and the requirement for health and welfare equivalence for netting. The amendments to the federal regulation concerning these issues were published by the U.S. EPA in the Federal Register of June 28, 1989 (54 FR 27274). That Federal Register notice constituted final action on the terms of a settlement agreement between the U.S. EPA and the Chemical Manufacturers Association (CMA). These minor changes in language will have no effect on the regulated community since they merely clarify or reaffirm existing requirements. Additional text changes have been made so that this regulation will agree with the requirements of KRS Chapter 13A. The changes will not change the applicability or requirements of the existing state PSD regulation.

TIERING: Was tiering applied? Yes. This regulation applies to major stationary sources or major modifications, which are defined to be sources or modifications which have a potential to emit of 100 or 250 tons per year or more of any pollutant regulated under the Clean Air Act, depending on the type of source. The amendment relating to nitrogen dioxide increment consumption is also tiered in that the increments provide greater protection of air quality in Class I areas than in Class II areas by providing more stringent limits on increases in ambient concentrations of nitrogen dioxide for Class I areas. Tiering was not considered

for the CMA Settlement and KRS Chapter 13A revisions because there was no basis for including tiering in these revisions.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The amendments to this regulation are the same as those made by the U.S. EPA to its regulation for the prevention of significant deterioration, 40 CFR 52, and in the federal regulation for the requirements of State Implementation Plan, 40 CFR 51. These amendments were promulgated in the Federal Register of October 17, 1988 (53 FR 40656). Some minor language changes have been made to the state PSD regulation so that it will agree with amendments, reaffirmations, and clarifications to the federal PSD regulation published by the U.S. EPA in the Federal Register of June 28, 1989 (54 FR 27274).

2. State compliance standards. The state compliance standards are identical to those promulgated by the U.S. EPA.

3. Minimum or uniform standards contained in the federal mandate. The regulations for nitrogen oxides promulgated in 53 FR 40656 (October 17, 1988) are based on an ambient increment requirement for nitrogen dioxide as the numerical measure of significant deterioration in air quality. The federal regulation establishes nitrogen dioxide increments of 2.5 ug m^3 for Class I areas and 25 ug^3 for Class II areas. The averaging time for the nitrogen dioxide increments is an annual average, based on the averaging period of the NAAQS for nitrogen dioxide. There is no short-term nitrogen dioxide NAAQS. The amendment to the federal regulation established February 8, 1988, as the major source baseline date. After this date, emissions of nitrogen oxides, in addition to particulate matter and sulfur dioxide, from all new or modified major stationary sources in a PSD area consume increment. A minor source baseline date is also established as the earliest date after a complete application for a major source or modification is submitted for approval to a reviewing authority. After this date all new or modified sources consume (or expand) increment. The amendments, reaffirmations, and clarifications to the federal PSD regulation, published by the U.S. EPA in the Federal Register of June 28, 1989 (54 FR 27274) concern the definitions of "federally enforceable" and "significant" in Class I areas; innovative control technology waiver for sources impacting Class I areas; secondary emissions; and the requirement for health and welfare equivalence for netting. These amendments constituted final action on the terms of a settlement agreement between the U.S. EPA and the Chemical Manufacturers Association (CMA). These minor changes in language will have no effect on the regulated community since they merely clarify or reaffirm existing requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments to the state PSD regulation are identical to the amendments to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes___ No_X_ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. The amendment to this regulation concerning nitrogen dioxide increments could affect those parts of local governments responsible for the operation of incinerators in which solid waste is combusted.

3. State the aspect or service of local government to which this administrative regulation relates. The operation of incinerators in which solid waste is combusted.

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 (+/-): This regulation is not expected to affect revenues.

Expenditures (+/-): This regulation is not expected to increase expenditures.

Other Explanation: This regulation is not expected to have a significant impact on incinerators operated by any local government. Generally, a solid waste incinerator operates on a fees-for-services-rendered basis. Any increase in operating costs resulting from the nitrogen dioxide amendments to this regulation would be passed along to the consumer.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 59:214. New factory surface coating operations of flat wood paneling.

RELATES TO: KRS [Chapter] 224.320, 224.330, 224.340, 40 CFR 81.318

STATUTORY AUTHORITY: KRS 224.033, 40 CFR 81.318

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new factory surface coating operations of flat wood paneling.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:]

[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(2) In any other county and is a part of a major source of volatile organic compounds.]

[(3) The provisions of this regulation shall not apply to affected facilities in the

following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for the factory surface coating of interior flat wood paneling.

(2) "Applicator" means the mechanism or device used to apply the coating including but not limited to: roll coaters, curtain coaters, sprays and brushes.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Coating line" means a series of equipment [and/]or operations used to apply, dry, or cure any coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [volatile organic compounds];

(g) Processing and handling of recovered VOCs [volatile organic compounds];

(h) For the purposes of determining compliance with this regulation, if [any] equipment or an operation is [could be] considered to be a part of more than one (1) coating line, its VOC [volatile organic compound] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC [volatile organic compound] it receives from or distributes to each coating line;

(i) If a [any] portion of the series of equipment [and/]or operations qualifies [qualify] for an exemption according to Section 6 [5] of this regulation, then that portion shall be considered to be a separate coating line;

[(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(5) [(6)] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [volatile organic compounds], or recovered VOCs [volatile organic compounds]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(6) [(7)] "Interior flat wood paneling" means printed interior wall panels made of hardwood plywood and thin particle board, natural finish hardwood plywood panels, or hardboard paneling with Class II finishes.

(7) [(8)] "Printed panels" means panels whose grain or natural surface is obscured by fillers and basecoats upon which a simulated grain or decorative pattern is printed.

(8) [(9)] "Hardwood plywood" means plywood whose surface layer is a veneer of hardwood.

(9) [(10)] "Particle board" means a manufactured board made of individual wood particles which have been coated with a binder and formed into flat sheets by pressure. Thin particle board has a thickness of one-fourth (1/4) inch or less.

(10) [(11)] "Natural finish hardwood plywood panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

(11) [(12)] "Hardboard" means a panel manufactured primarily from interfelted lignocellulosic fibers which are consolidated under heat and pressure in a hot-press.

(12) [(13)] "Class II hardboard paneling finishes" means finishes which meet the specifications of Voluntary Product Standard PS-59-73, which has been incorporated [filed] by reference in 401 KAR 50:015, as approved by the American National Standards Institute.

(13) [(14)] "Classification date" means February 4, 1981 [the effective date of this regulation].

(14) "VOCs [(15) "Volatile organic compounds] net input" means the total amount of VOCs [volatile organic compounds] input to the affected facility minus the amount of VOCs [volatile organic compounds] that are not emitted into the atmosphere. VOCs [Volatile organic compounds] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [volatile organic compounds] net input. If [When] the nature of an [any] operation or a design of equipment [is such as to] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or a portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is a part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be maintained.

Section 3. Standard for VOCs [Volatile Organic Compounds]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [volatile organic compounds] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of a [any] control system is subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [except in those cases where] the cabinet determines that a material balance is not possible. If [For those cases where] a material balance is not possible, compliance shall [will] be determined based upon an engineering analysis by the cabinet of: the control system, design, control device efficiency, control system capture efficiency, and [any] other factors that could influence the performance of the system. If [so] requested by the cabinet, performance tests [as] specified by the cabinet shall be conducted [in order] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:046.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [such] changes [in the affected facility as are] necessary to qualify for an exemption under Section 6 [5] of this regulation.

(4) If [Whenever] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 [5] of this regulation. Method 24, which has been incorporated [The following methods of analyses, filed] by reference in 401 KAR 50:015, [for coatings] shall be used as applicable to determine compliance of the coatings unless [except in those cases where] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [:]

[(a) ASTM D 1644-75 Method A;]

[(b) ASTM D 1475-60(74);]

[(c) ASTM D 2369-73; or]

[(d) Federal Standard 141 a, Method 4082.1.]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application of adhesive, coating, or solvent;

(f) The amount of surface preparation, clean-up, or wash-up solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance upon startup.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for a reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than nine (9) months after the date the affected facility becomes subject to this regulation.

(b) Award a contract for the control system or for the exempt coatings and any accompanying process change no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(c) Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than thirteen (13) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted.

Section 6. [5.] Exemptions. (1) An [Any] affected facility shall be exempt from [the provision of] Section 3 of this regulation if the total VOC [volatile organic compound] content of all the coatings applied to a specific area of finished paneling product is:

(a) [(1)] Less than two and nine-tenths (2.9) kg of VOCs [volatile organic compounds] per 100 sq. m. of coated surface (six (6.0) lb/1,000 sq. ft.) for printed interior wall panels made of hardwood plywood and thin particle board;

(b) [(2)] Less than five and nine-tenths (5.9) kg of VOCs [volatile organic compounds] per 100 sq. m. of coated surface (twelve (12.0) lb/1,000 sq. ft.) for natural finish hardwood plywood panels; or

(c) [(3)] Less than four and nine-tenths (4.9) kg of VOCs [volatile organic compounds] per 100 sq. m. of coated surface (ten (10.0) lb/1,000 sq. ft.) for Class II finishes for hardboard paneling.

(2) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

(3) An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hour actual emissions before add-on control;

(b) Fifteen (15) lb/day actual emissions before add-on control; or

(c) Ten (10) tons per year theoretical potential emissions based on design capacity (or maximum production) and 8760 hr/yr before add-on control.

[Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.]

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: August 15, 1991

FILED WITH LRC: August 15, 1991 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on September 30, 1991, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are no entities presently affected by the amendments to this regulation. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the State Implementation Plan (SIP) and U.S EPA policy, to update the applicability, and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore not federally enforceable. The applicability has been updated to be compatible with the Clean Air Act as amended November 15, 1990. The Clean Air Act eliminates the distinction between rural and urban nonattainment counties. Formerly, minor sources were controlled only in urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by these amendments; therefore, there are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

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 currently no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(2) Effects on the promulgating administrative body: There are no entities affected by these amendments; therefore, there are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: There are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

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 entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues because there are no entities affected by the amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because there are currently no entities affected by these amendments, and therefore no basis for an alternative exists.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no entities affected by these amendments. Conflict and duplication exist between this regulation and 401 KAR 50:016, Policies incorporated by reference. The conflict is in the capture efficiency procedures. This regulation references the new capture efficiency procedures required by the U.S. EPA which will take precedence over the old U.S. EPA capture efficiency procedures contained in 401 KAR 50:016. The duplication is in the control of volatile organic compounds. 401 KAR 50:016 is not part of Kentucky's State Implementation Plan (SIP). The requirements are repeated in this regulation which is a part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:046, Capture efficiency test procedures. 401 KAR 50:046 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedure.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: The compliance time schedule has been added to allow for present affected facilities which become subject to this regulation on or after the effective date of this regulation. This

situation could occur if the attainment status of a county changes. In addition, the division no longer distinguishes between exempt counties and other counties for future construction. After the effective date of the amendments to this regulation, a new major source or major modification constructing in a previously exempt county or any other county, is subject to this regulation.

TIERING: Was tiering applied? No. The amendment is being made to a regulation in which tiering already applies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's State Implementation Plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, definitions, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, new sources in formerly exempt counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in the exempt counties will become subject to the requirements of this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all major sources in attainment areas. There are no stricter standards, or additional or different responsibilities or requirements imposed on sources constructed prior to the effective date of these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 59:225. New miscellaneous metal parts and products surface coating operations.

RELATES TO: KRS [Chapter] 224.320, 224.330, 224.340, 40 CFR 81.318

STATUTORY AUTHORITY: KRS 224.033, 40 CFR 81.318

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new miscellaneous metal parts and products surface coating operations.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:]

[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(2) In any other county and is a part of a major source of volatile organic compounds.]

[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line located at job shops and original equipment manufacturing industries which apply coatings on metal substrates not elsewhere subject to regulation in this chapter.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to: dipping, spraying, or flow coating.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Single coat" means only one (1) film of coating is applied to the metal substrate.

(5) "Prime coat" means the first of two (2) or more films of coating applied in an operation.

(6) "Topcoat" means the final film or series of films of coating applied in a two (2) coat (or more) operation.

(7) "Coating line" means a series of equipment [and/]or operations used to apply, dry, or cure any prime, topcoat or single coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of (VOCs) [volatile organic compounds];

(g) Processing and handling of recovered (VOCs) [volatile organic compounds];

(h) For the purposes of determining compliance with this regulation, if [any] equipment or an operation is [could be] considered to be a part of more than one (1) coating line, its VOC [volatile organic compound] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC [volatile organic compound] it receives from or distributes to each coating line;

(i) If a [any] portion of the series of equipment [and/]or operations qualify for an exemption according to Section 6 [5] of this regulation, then that portion shall be considered to be a separate coating line.

[(8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane,

ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(8) [(9)] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [volatile organic compounds], or recovered VOCs [volatile organic compounds]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(9) [(10)] "Miscellaneous metal parts and products" means items including but not limited to:

(a) Large farm machinery (harvesting, fertilizing and planting machines, tractors, combines, etc.);

(b) Small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(c) Small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(d) Commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(e) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(f) Fabricated metal products (metal covered doors, frames, etc.); and

(g) Any other industrial category not otherwise subject to regulation in this chapter which coats metal parts or products.

(10) [(11)] "Heat sensitive material" means materials which cannot be exposed to temperatures greater than eighty-two (82) to ninety-three (93)°C (180°-200°F).

(11) [(12)] "Air or forced air-dried items" means parts that are too large or too heavy for practical size ovens; parts that are sensitive to heat; parts to which heat sensitive materials are attached; or equipment assembled prior to top coating for specific performance or quality standards.

(12) [(13)] "Outdoor or harsh exposure or extreme environmental conditions" means exposure to any of the following: year round weather conditions, temperatures consistently above ninety-five (95)° Celsius, detergents, scouring, solvents, corrosive atmosphere; and similar environmental conditions.

(13) [(14)] "Classification date" means February 4, 1981 [the effective date of this regulation].

(14) [(15)] "VOCs [Volatile organic compounds] net input" means the total amount of VOCs [volatile organic compounds] input to the affected facility minus the amount of VOCs [volatile organic compounds] that are not emitted into the atmosphere. VOCs [Volatile organic compounds] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [volatile organic compounds] net input. If [When] the nature of an [any] operation or design of equipment [is such as to] permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be maintained.

Section 3. Standard for VOCs [Volatile Organic Compounds]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [volatile organic compounds] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of a [any] control system is subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [except in those cases where] the cabinet determines that a material balance is not possible. If [For those cases where] a material balance is not possible, compliance shall [will] be determined based upon an engineering analysis by the cabinet of: the control system design, control device efficiency, control system capture efficiency, and [any] other factors that could influence the performance of the system. If [so] requested by the cabinet, performance tests [as] specified by the cabinet shall be conducted [in order] to determine the efficiency of the control device. Capture efficiency shall be determined by the procedures specified in 401 KAR 50:046.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [such] changes [in the affected facility as are] necessary to qualify for an exemption under Section 6 [5] of this regulation.

(4) If [Whenever] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 [5] of this regulation. Method 24, which has been incorporated [The following methods of analyses, filed] by reference in 401 KAR 50:015, [for coatings] shall be used as applicable to determine compliance of the coatings unless [except in those cases where] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [:]

[(a) ASTM D 1644-75 Method A;]

[(b) ASTM D 1475-60(74);]

[(c) ASTM D 2369-73; or]

[(d) Federal Standard 141 a, Method 4082.1.]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvent shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, clean-up, or wash-up solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance upon startup.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for a reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than nine (9) months after the date the affected facility becomes subject to this regulation.

(b) Award a contract for the control system or for the exempt coatings and any accompanying process change no later than eleven (11) months after the date the affected facility becomes subject to the regulation.

(c) Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than thirteen (13) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted.

Section 6. [5.] Exemptions. (1) An [Any] affected facility shall be exempt from the provisions of Section 3 of this regulation if the VOC [volatile organic compound] content of coating is:

(a) Less than 0.52 kg/l of coating (four and three-tenths (4.3) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with clear coat;

(b) Less than 0.42 kg/l of coating (three and five-tenths (3.5) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with air or forced air-dried items or items subject to outdoor or harsh exposure or extreme environmental conditions;

(c) Less than 0.36 kg/l of coating (three (3.0) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with color coat or first coat on untreated ferrous substrate; or

(d) Less than 0.05 kg/l of powder coating (four-tenths (0.4) lb/gal) delivered to applicators associated with no or infrequent color change, or a small number of colors applied.

(2) The surface coating of the following metal parts and products are exempt from this regulation:

(a) The exterior of airplanes and marine vessels, but not parts for the exterior of airplanes and marine vessels that are coated as a separate manufacturing or coating operation;

(b) Automobile refinishing; and

(c) Customized top coating of automobiles and trucks, if production is less than thirty-five (35) vehicles per day.

(3) An [Any] affected facility shall be exempt from [the provisions of Section 3 of] this regulation if the total VOC [volatile organic compound] emissions from all affected facilities subject to this regulation are less than or equal to twenty (20) tons per year.

(4) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

[Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.]

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: August 15, 1991

FILED WITH LRC: August 15, 1991 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on September 30, 1991, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those

persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently 11 entities under this regulation. These entities are miscellaneous metal parts and products surface coating operations. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore not federally enforceable. The applicability is updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1991. This amendment will not impact the 11 entities currently under this regulation. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. In addition, the division no longer distinguishes between exempt counties and other counties for future construction. After the effective date of the amendments to this regulation, a new major source or major modification construction in a previously exempt county or any other county, is subject to this regulation. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. There are no additional costs associated with complying with the state's amendments over complying with the same requirements in a federal regulation. The costs associated with the SIP deviation amendments are of the nature of more recordkeeping, a different test method, and a different capture efficiency procedure. A chemical that was previously noncontrolled because of its low vapor pressure could now be classified as a volatile organic compound or vice versa under the new definition of volatile organic compound. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-78-015, pages 3-1 through 3-24, June 1978. Five control options are analyzed for small, medium, and large sources of 7 operation types. A small source waterborne-coatings cost effectiveness is given on page 3-12 at $857/megagram of solvent controlled. However, in the consideration of the various applicable control options, a range from $339 saved to $20,154 cost per megagram of solvent controlled is presented. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1978 to 1991 is 1.7. This means that 1978 costs should be multiplied by 1.7 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under First year, 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not. These amendments will create a more equitable competitive environment for major sources in attainment areas commenced after the effective date of these amendments.

(b) Reporting and paperwork requirements: The U.S. EPA identified recordkeeping as a SIP deficiency. Section 4(8) was added to comply with this federal requirement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered for the amendments which contain the same provisions as federal requirements. Three methods were considered for the

applicability to major new sources. One method was to continue to exempt 11 counties. A second method was to make the provisions of this amended regulation retroactive to the exempt counties. The third was to make all major new sources commenced after the amendment of this regulation in all counties subject to this amended regulation. The first and second methods were not considered equitable. Therefore, the third method was chosen as the most equitable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is conflict in the capture efficiency procedures between this regulation and 401 KAR 50:016, Policies incorporated by reference. There is also duplication, because 401 KAR 50:016 is not part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:046, Capture efficiency test procedures. 401 KAR 50:046 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedures.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above. In addition, new sources in formerly exempt counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in the exempt counties will become subject to the requirements of this regulation. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all major sources in attainment areas. There are no stricter standards, or additional or different responsibilities or requirements imposed on sources constructed prior to the effective date of these amendments.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements. This amendment is being made to a regulation in which tiering already applies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's State Implementation Plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, definitions, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, new sources in formerly exempt counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in the exempt counties will become subject to the requirements of this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all major sources in attainment areas. There are no stricter standards, or additional or different responsibilities or requirements imposed on sources constructed prior to the effective date of these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 59:230. New synthesized pharmaceutical product manufacturing operations.

RELATES TO: KRS [Chapter] 224.320, 224.330, 224.340, 40 CFR 81.318

STATUTORY AUTHORITY: KRS 224.033, 40 CFR 81.318

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new synthesized pharmaceutical product manufacturing operations.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:]

[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(2) In any other county and is a part of a major source of volatile organic compounds.]

[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means operations involved in the manufacture of pharmaceutical

products by chemical synthesis, but does not include fermentation, extraction, or formulation and packaging.

(2) "Extraction" means the manufacture of botanical and biological products by the extraction of organic chemicals from vegetative materials or animal tissues.

(3) "Fermentation" means the production and separation of medicinal chemicals such as antibiotics and vitamins from microorganisms.

(4) "Formulation and packaging" means the formulation of bulk pharmaceuticals into various dosage forms such as tablets, capsules, injectable solutions, ointments, etc., that can be taken by the patient immediately and in accurate amount.

[(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(5) [(6)] "Classification date" means February 4, 1981 [the effective date of this regulation].

(6) [(7)] "kPa" means kilopascals.

(7) [(8)] "psi" means pounds per square inch.

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be maintained.

Section 3. Standard for VOCs [Volatile Organic Compounds]. The owner or operator of an affected facility to which this regulation applies shall install, maintain and operate the control equipment and observe at all times the following operating requirements:

(1)(a) Each vent from reactors, distillation operations, crystallizers, centrifuges, and vacuum dryers that emit six and eight-tenths (6.8) kg/day (fifteen (15) lb/day) or more of VOCs [volatile organic compounds] shall be equipped with surface condensers or other methods of control which provide emission reductions equivalent to the use of surface condensers which meet the requirements in paragraph (b) of this subsection.

(b) If surface condensers are used, the condenser outlet gas temperatures shall not exceed the following temperatures (degrees Celsius) if [when] condensing VOCs [volatile organic compounds] with the respective minimum vapor pressures (kilopascals). All vapor pressures are measured to twenty (20) degrees Celsius.

1. Negative twenty-five (-25)°C; forty (40) kPa (five and eight-tenths (5.8) psi);

2. Negative fifteen (-15)°C; twenty (20) kPa (two and nine-tenths (2.9) psi);

3. Zero°C; ten (10) kPa (one and five-tenths (1.5) psi);

4. Ten (10)°C; seven (7) kPa (one (1.0) psi); and

5. Twenty-five (25)°C; three and five-tenths (3.5) kPa (five-tenths (0.5) psi).

(2)(a) For air dryers and production equipment exhaust systems that emit 150 kg/day (330 lbs/day) or more of VOCs [volatile organic compounds], emissions shall be reduced ninety (90) percent.

(b) For air dryers and production equipment exhaust systems that emit less than 150 kg/day (330 lbs/day), emissions shall be reduced to fifteen (15) kg/day (thirty-three (33) lbs/day).

(3)(a) For storage tanks storing VOCs [volatile organic compounds] with a vapor pressure greater than twenty-eight (28) kPa (four and one-tenth (4.1) psi) at twenty (20)°C, one (1) liter of displaced vapor shall be allowed to be released to the atmosphere for every ten (10) liters transferred (i.e., a ninety (90) percent effective vapor balance or equivalent) on truck or [/]rail car delivery to all tanks greater than 7,500 liters (2,000 gal) capacity unless the [except where] tanks are equipped with floating roofs, vapor recovery systems, or their equivalent. This requirement does not apply to transfer of VOCs [volatile organic compounds] from one (1) in-plant location to another.

(b) For tanks storing VOCs [volatile organic compounds] with a vapor pressure greater than ten (10) kPa (one and five-tenths (1.5) psi) at twenty (20)°C, the pressure or [/]vacuum conservation vents shall be set at plus or minus two-tenths (0.2) kPa, unless [except where] more effective air pollution control is used.

(4) All centrifuges containing VOCs [volatile organic compounds], rotary vacuum filters processing liquid containing VOCs [volatile organic compounds] and [any] other filters having an exposed liquid surface if [where] the liquid contains VOCs [volatile organic compounds] shall be enclosed. This applies to liquids exerting a total VOCs [volatile organic compounds] vapor pressure of three and five-tenths (3.5) kPa (five-tenths (0.5) psi) or more at twenty (20)°C.

(5) All in-process tanks containing VOCs [volatile organic compound] at any time shall have covers which shall be closed except for short periods when production, sampling, maintenance, or inspection procedures require operator access.

(6) For liquids containing VOCs [volatile organic compounds], all leaks in which liquid is [can be] observed to be running or dripping from vessels and equipment (for example: pumps, valves, flanges) shall be repaired within fifteen (15) days. A visual recheck shall be made after repair. If the leak is still present or a new leak is created by the repair, further maintenance shall be performed until the VOC [volatile organic compound] emission drops below the screening value (observed to be running or dripping). Leaks that cannot be repaired within fifteen (15) days shall be repaired during the

next scheduled turnaround, or if unable to be brought into compliance, a variance shall be requested and obtained on an individual basis. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. Leak detection or [/]maintenance and repair procedures shall include maintaining a survey log identifying when the leak occurred and reporting every ninety (90) days those leaks not repaired after fifteen (15) days. The operator shall retain the survey log for two (2) years after the inspection is completed.

Section 4. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance upon startup.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for a reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than three (3) months after the date the affected facility becomes subject to this regulation.

(b) Award the control system contract no later than five (5) months after the date the affected facility becomes subject to this regulation.

(c) Initiate on-site construction or installation of emissions control equipment no later than seven (7) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted.

Section 5. [4.] Compliance Procedures. Compliance shall [will] be determined based upon an engineering analysis by the cabinet of[:] the control system design, control device efficiency, control system capture efficiency, and [any] other factors that could influence the performance of the system. If [so] requested by the cabinet, performance tests [as] specified by the cabinet shall be conducted [in order] to determine the efficiency of the control device.

Section 6. [5.] Monitoring Requirements. If [When] adsorbers, condensers, incinerators or scrubbers are used to achieve compliance with Section 3 of this regulation, the following monitoring devices shall be an integral part of the control device:

(1) For carbon adsorbers, a monitoring device connected to an alarm device, which indicates carbon bed breakthrough;

(2) For condensers, a temperature securing device located in the exit gas stream;

(3) For incinerators, temperature securing devices located in the combustion chamber for thermal incinerators and in the catalyst preheat chamber for catalytic incinerators; and

(4) For scrubbers, flow meters for measuring flow rate of scrubbing medium or pressure drop measuring devices indicating back pressure and pressure drop across the scrubber.

[Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.]

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: August 15, 1991

FILED WITH LRC: August 15, 1991 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on September 30, 1991, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are no entities presently affected by the amendments to this regulation. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the SIP and U.S. EPA policy, to update the applicability, and to comply with KRS Chapter 13A. The applicability has been updated to be compatible with the Clean Air Act as amended November 15, 1990. The Clean Air Act eliminates the distinction between rural and urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by these amendments; therefore, there are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

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 currently no entities affected by the amendments; therefore, reporting and paperwork requirements are not applicable.

(2) Effects on the promulgating administrative body: There are no entities affected by these amendments; therefore, there are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings:

There are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

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 currently no entities affected by the amendments; therefore, reporting and paperwork requirements are not applicable.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues because there are no entities affected by these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because there are currently no entities affected by these amendments; therefore, no basis for an alternative exists.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: The compliance time schedule has been added to allow for affected facilities which become subject to this regulation on or after the effective date of this regulation. For instance, this situation could occur if the attainment status of a county changes. In addition, the division no longer distinguishes between exempt counties and other counties in future construction after the effective date of this regulation. If a new major source or major modification constructs in a previously exempt county or any other county, it is subject to this regulation.

TIERING: Was tiering applied? No. This amendment is being made to a regulation in which tiering already applies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's SID and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, definitions, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, new sources in formerly exempt counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in the exempt counties will become subject to the requirements of this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky is required by the Clean Air Act to maintain the National Ambient Air quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all major sources in attainment areas. There are no stricter standards, or additional or different responsibilities or requirements imposed on sources constructed prior to the effective date of these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 59:240. New perchloroethylene dry cleaning systems.

RELATES TO: KRS [Chapter] 224.320, 224.330, 224.340, 40 CFR 81.318

STATUTORY AUTHORITY: KRS 224.033, 40 CFR 81.318

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new perchloroethylene dry cleaning systems.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:]

[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(2) In any other county and is a part of a major source of volatile organic compounds.]

[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a dry cleaning system which uses perchloroethylene.

(2) "Dry cleaning system" means a series of equipment [and/]or operations which includes, but is not limited to[:] washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves used for the purpose of commercial cleaning of fabrics.

[(3) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide,

carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(3) [(4)] "Classification date" means February 4, 1981 [the effective date of this regulation].

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be maintained.

Section 3. Standard for VOCs [Volatile Organic Compounds]. The owner or operator of an affected facility shall install, maintain and operate the control equipment such that the following requirements are met:

(1) There shall be no liquid leakage of organic solvents from the system.

(2) The entire dryer exhaust shall be vented through a properly functioning carbon adsorber or equally effective control device.

(3) The maximum organic solvent concentration in the vent from the dryer control device shall not exceed 100 ppm before dilution.

(4) Filter and distillation wastes.

(a) The residue from a [any] diatomaceous earth filter shall be cooked or treated so that wastes shall not contain more than twenty-five (25) kg of solvent per 100 kg of wet waste material.

(b) The residue from a solvent still shall not contain more than sixty (60) kg of solvent per 100 kg of wet waste material.

(c) Filtration cartridges shall be drained in the filter housing for at least twenty-four (24) hours before being discarded. The drained cartridges shall be dried in the dryer tumbler after draining.

(d) Any other filtration or distillation system may [can] be used if equivalency to these requirements is demonstrated. A [Any] system reducing waste losses below one (1) kg solvent per 100 kg clothes cleaned shall [will] be considered equivalent.

Section 4. Compliance. (1) Liquid leakage shall be determined by visual inspection of the following sources:

(a) Hose connections, unions, couplings and valves;

(b) Machine door gasket and seating;

(c) Filter head gasket and seating;

(d) Pumps;

(e) Base tanks and storage containers;

(f) Water separators;

(g) Filter sludge recovery operations;

(h) Distillation units;

(i) Diverter valves;

(j) Saturated line from lint basket; and

(k) Cartridge filters.

(2) Dryer exhaust concentration shall be determined by the proper installation, operation, and maintenance of approved equipment as determined by the cabinet or by performance tests specified by the cabinet.

(3) The amount of solvent in filter and distillation wastes shall be determined by ASTM D 322-67(77), and substituting collector C from ASTM E 123-78. ASTM methods have been incorporated [are filed] by reference in 401 KAR 50:015.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance upon startup.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for a reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than three (3) months after the date the affected facility becomes subject to this regulation.

(b) Award the control system contract no later than five (5) months after the date the affected facility becomes subject to this regulation.

(c) Initiate on-site construction or installation of emission control equipment no later than seven (7) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted.

Section 6. [5.] Exemptions. Perchloroethylene dry cleaning facilities which are coin-operated shall be exempt from this regulation.

Section 7. [6.] Variances. Variation with the standards and limitations contained in this regulation, if [when] supported by adequate technical information, may [will] be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: August 15, 1991
FILED WITH LRC: August 15, 1991 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on September 30, 1991, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid
(1) Type and number of entities affected: A review of the division's records indicates that there are currently 8 entities under this regulation for dry cleaners. The amendments to this regulation have been made in response to 3 requirements. The first requirement is to eliminate deviations between state regulations which are a part of the State Implementation Plan (SIP) and U.S. EPA policy. The second is to update the applicability to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. The third is to comply with KRS Chapter 13A. The impacts of these amendments to the 8 sources are minimal. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995. Any new source locating in a nonattainment area, except marginal nonattainment, will be subject to this regulation and the proposed amendments. In addition, the division no longer distinguishes between exempt counties and other counties in future construction after the effective date of these amendments. If a new major source or major modification constructs in a previously exempt county or any other county, it is subject to this regulation.
(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulation. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.
1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. The costs or savings due to the SIP deviations' amendments are minimal. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number of entities will not be known until the redesignations of nonattainment status for individual counties have been made. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-78-050, December 1978. 5 different sized facilities were analyzed. For example, for the model 11 kg/load commercial plant the total installed capital cost for a carbon adsorber was estimated to be $3200, the net annualized cost $500/year, and the cost per kilogram of hydrocarbon controlled 31 cents/kg controlled. Large industrialized units of 114 kg/load were predicted a savings of 41 cents/kg controlled. Although inflation can be accounted for, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1978 to 1991 is 1.7. This means that 1978 costs should be multiplied by 1.7 to obtain 1991 costs.
2. Continuing costs or savings: Please see discussion under first year, 1. above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment and marginal nonattainment areas are not. These amendments will create a more equitable competitive environment for major sources in attainment areas commenced after the effective date of these amendments.
(b) Reporting and paperwork requirements: There are no additional reporting and paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: The division will review and process permits for sources newly affected. Costs will be recovered by a permit fee.
2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.
(3) Assessment of anticipated effect on state and local revenues: No effects on state and local revenues are anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered for the amendments which contain the same provisions as the federal requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.
(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: These amendments were made in response to the 3 requirements discussed under (1) above. In addition, new sources in formerly exempt counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in the exempt counties will become subject to the requirements of this regulation. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all major sources in attainment areas. There are no stricter standards, or additional or different responsibilities or requirements imposed on sources constructed prior to the effective date of these amendments.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements. The amendments are being made to a regulation that is already tiered.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's State Implementation Plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, definitions, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, new sources in formerly exempt counties will become subject to this regulation. For future construction after the effective date of the amendments to this regulation, major sources in the exempt counties will become subject to the requirements of this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky is required by the Clean Air Act to maintain the National Ambient Air Quality Standards in attainment areas. Part of the strategy chosen by Kentucky to accomplish that is the application of this regulation to major sources in attainment areas. The purpose of this amendment is to make that strategy equitable for all major sources in attainment areas. There are no stricter standards, or additional or different responsibilities or requirements imposed on sources constructed prior to the effective date of these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:124. Existing factory surface coating operations of flat wood paneling.

RELATES TO: KRS [Chapter] 224.320, 224.330, 224.340, 40 CFR 81.318

STATUTORY AUTHORITY: KRS 224.033, 40 CFR 81.318

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing factory surface coating operations of flat wood paneling.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:]

[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.]

[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for the factory surface coating of interior flat wood paneling.

(2) "Applicator" means the mechanism or device used to apply the coating including but not limited to[:] roll coaters, curtain coaters, sprays and brushes.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Coating line" means a series of equipment [and/]or operations used to apply, dry, or cure [any] coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [volatile organic compounds];

(g) Processing and handling of recovered VOCs [volatile organic compounds];

(h) For the purposes of determining compliance with this regulation, if [any] equipment or an operation is [could be] considered to be a part of more than one (1) coating line, its VOC [volatile organic compound] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC

[volatile organic compounds] it receives from or distributes to each coating line;

(i) If a [any] portion of the series of equipment [and/]or operations qualifies [qualify] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate coating line;

[(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(5) [(6)] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [volatile organic compounds], or recovered VOCs, [volatile organic compounds;] but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(6) [(7)] "Interior flat wood paneling" means printed interior wall panels made of hardwood plywood and thin particle board, natural finish hardwood plywood panels, or hardboard paneling with Class II finishes.

(7) [(8)] "Printed panels" means panels whose grain or natural surface is obscured by fillers and basecoats upon which a simulated grain or decorative pattern is printed.

(8) [(9)] "Hardwood plywood" means plywood whose surface layer is a veneer of hardwood.

(9) [(10)] "Particle board" means a manufactured board made of individual wood particles which have been coated with a binder and formed into flat sheets by pressure. Thin particle board has a thickness of one-fourth (1/4) inch or less.

(10) [(11)] "Natural finish hardwood plywood panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

(11) [(12)] "Hardboard" means a panel manufactured primarily from interfelted lignocellulosic fibers which are consolidated under heat and pressure in a hot-press.

(12) [(13)] "Class II hardboard paneling finishes" means finishes which meet the specifications of Voluntary Product Standard PS-59-73, which has been incorporated [filed] by reference in 401 KAR 50:015, as approved by the American National Standards Institute.

(13) [(14)] "Classification date" means February 4, 1981 [the effective date of this regulation].

(14) "VOCs [(15) "Volatile organic compounds] net input" means the total amount of VOCs [volatile organic compounds] input to the affected facility minus the amount of VOCs [volatile organic compounds] that are not emitted into the atmosphere. VOCs [Volatile organic compounds] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [volatile organic compounds] net input. If [When] the nature of an [any] operation or a design of equipment [is such as to] permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [Volatile Organic Compounds]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [volatile organic compounds] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of a [any] control system is subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [except in those cases where] the cabinet determines that a material balance is not possible. If [For those cases where] a material balance is not possible, compliance shall [will] be determined based upon an engineering analysis by the cabinet of[:] the control system design, control device efficiency, control system capture efficiency, and [any] other factors that could influence the performance of the system. If [so] requested by the cabinet, performance tests [as] specified by the cabinet shall be conducted [in order] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:046.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [such] changes [in the affected facility as are] necessary to qualify for an exemption under Section 6 of this regulation.

(4) If [Whenever] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 of this regulation. Method 24, which has been incorporated [The following methods of analyses, filed] by reference in 401 KAR 50:015, [for coatings] shall be used as applicable to determine compliance of the coatings unless [except in those cases where] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [:]

[(a) ASTM D 1644-75 Method A;]

[(b) ASTM D 1475-60(74);]

[(c) ASTM D 2369-73; or]

[(d) Federal Standard 141 a, Method 4082.1.]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging time may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating

less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, clean-up, or wash-up solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance by December 31, 1982.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [(1)] Submit a final control plan for achieving compliance with this regulation no later than nine (9) months after the date the affected facility becomes subject to this regulation [April 15, 1981].

(b) [(2)] Award a contract for the control system [contract] or for the exempt coatings and [any] accompanying process change [contracts] no later than eleven (11) months after the date the affected facility becomes subject to this regulation [June 15, 1981].

(c) [(3)] Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than thirteen (13) months after the date the affected facility becomes subject to this regulation [December 1, 1981].

(d) [(4)] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation [December 1, 1982].

(e) [(5)] Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation [December 31, 1982].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted.

Section 6. Exemptions. (1) An [Any] affected facility shall be exempt from [the provision of] Section 3 of this regulation if the total VOC [volatile organic compound] content of all the coatings applied to a specific area of finished paneling product is:

(a) [(1)] Less than two and nine-tenths (2.9) kg of VOCs [volatile organic compounds] per 100 sq. m. of coated surface (six (6.0) lb/1,000 sq. ft.) for printed interior wall panels made of hardwood plywood and thin particle board;

(b) [(2)] Less than five and nine-tenths (5.9) kg of VOCs [volatile organic compounds] per 100 sq. m. of coated surface (twelve (12.0) lb/1,000 sq. ft.) for natural finish hardwood plywood panels; or

(c) [(3)] Less than four and nine-tenths (4.9) kg of VOCs [volatile organic compounds] per 100 sq. m. of coated surface (ten (10.0) lb/1,000 sq. ft.) for Class II finishes for hardboard paneling.

(2) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

(3) An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hour actual emissions before add-on control;

(b) Fifteen (15) lb/day actual emissions before add-on control; or

(c) Ten (10) tons per year theoretical potential emissions based on design capacity (or maximum production) and 8760 hr/yr before add-on control.

[Section 7. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.]

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: August 15, 1991

FILED WITH LRC: August 15, 1991 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on September 30, 1991, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are no entities presently affected by the amendments to this regulation. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the State Implementation Plan (SIP) and U.S. EPA policy, to update the applicability, and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but

not part of the SIP, and therefore not federally enforceable. The applicability has been updated to be compatible with the Clean Air Act as amended on November 15, 1990. The Clean Air Act eliminates the distinction between rural and urban nonattainment counties. Formerly, minor sources were controlled only in urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by these amendments; therefore, there are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

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 entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(2) Effects on the promulgating administrative body: There are no entities affected by these amendments; therefore, there are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: There are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

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 entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues because there are no entities affected by these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because no basis for an alternative exists since there are currently no entities affected by these amendments.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no entities affected by these amendments. Conflicts and duplication exist between this regulation and 401 KAR 50:016, Policies incorporated by reference. The conflict is in the capture efficiency procedures. This regulation references the new capture efficiency procedures required by the U.S. EPA which will take precedence over the old U.S. EPA capture efficiency procedures contained in 401 KAR 50:016. The duplication is in the control of VOCs. 401 KAR 50:016 is not part of Kentucky's SIP. The requirements are repeated in this regulation which is a part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:046, Capture efficiency test procedures. 401 KAR 50:046 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedure.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: The compliance time schedule has been updated to allow for affected facilities which become subject to this regulation on or after the effective date of this regulation. For instance, the situation could occur if the attainment status of a county changes.

TIERING: Was tiering applied? No. There are no entities currently affected by these amendments; therefore, no basis for tiering exists.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's State Implementation Plan and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, calculations, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, calculations, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation has been amended to eliminate deviations between Kentucky's SIP and federal policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements imposed by these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:132. Existing miscellaneous metal parts and products surface coating operations.

RELATES TO: KRS [Chapter] 224.320, 224.330, 224.340, 40 CFR 81.318

STATUTORY AUTHORITY: KRS 224.033, 40 CFR 81.318

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions

from existing miscellaneous metal parts and products surface coating operations.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:]

[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.]

[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

[(4) The provisions of this regulation shall not apply to affected facilities which are subject to local air pollution control district regulations which have been approved by the cabinet and the U.S. EPA.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line located at job shops and original equipment manufacturing industries which apply coatings on metal substrates not subject to a regulation, other than 401 KAR 61:060, in this chapter.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to[:] dipping, spraying, or flow coating.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Single coat" means only one (1) film of coating is applied to the metal substrate.

(5) "Prime coat" means the first of two (2) or more films of coating applied in an operation.

(6) "Topcoat" means the final film or series of films of coating applied in a two (2) coat (or more) operation.

(7) "Coating line" means a series of equipment [and/]or operations used to apply, dry, or cure any prime, topcoat or single coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [volatile organic compounds];

(g) Processing and handling of recovered VOCs [volatile organic compounds];

(h) For the purposes of determining compliance with this regulation, if [any] equipment or an operation is [could be] considered to be a part of more than one (1) coating line, its VOC [volatile organic compound] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC [volatile organic compound] it receives from or distributes to each coating line;

(i) If a [any] portion of the series of equipment [and/]or operations qualifies [qualify] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate coating line.

[(8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(8) [(9)] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [volatile organic compounds], or recovered VOCs [volatile organic compounds]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(9) [(10)] "Miscellaneous metal parts and products" means items including but not limited to:

(a) Large farm machinery (harvesting, fertilizing and planting machines, tractors, combines, etc.);

(b) Small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(c) Small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(d) Commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(e) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(f) Fabricated metal products (metal covered doors, frames, etc.); and

(g) Any other industrial category not subject to a regulation, other than 401 KAR 61:060, in this chapter which coats metal parts or products.

(10) [(11)] "Heat sensitive material" means materials which cannot be exposed to temperatures greater than eighty-two (82) to ninety-three (93)°C (180°-200°F).

(11) [(12)] "Air or forced air-dried items" means parts that are too large or too heavy for practical size ovens; parts that are sensitive to heat; parts to which heat sensitive materials are attached; or equipment assembled prior to top coating for specific performance or quality standards.

(12) [(13)] "Outdoor or harsh exposure or extreme environmental conditions" means exposure to any of the following: year round weather conditions, temperatures consistently above ninety-five (95)°C, detergents, scouring, solvents, corrosive atmospheres; and similar environmental conditions.

(13) [(14)] "Classification date" means February 4, 1981.

(14) "VOCs [(15) "Volatile organic compounds] net input" means the total amount of VOCs [volatile organic compounds] input to the affected facility minus the amount of VOCs [volatile organic compounds] that are not emitted into the atmosphere. VOCs [Volatile organic compounds] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOC [volatile organic compound] net input. If [When] the nature of an [any] operation or a design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

Section 2. Applicability. (1) This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

(2) This regulation shall not apply to affected facilities which are subject to local air pollution control district regulations which have been approved by the cabinet and the U.S. EPA.

Section 3. Standard for VOCS [Volatile Organic Compounds]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [volatile organic compounds] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of a [any] control system is subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [except in those cases where] the cabinet determines that a material balance is not possible. If [For those cases where] a material balance is not possible, compliance shall [will] be determined based upon an engineering analysis by the cabinet of: the control system design, control device efficiency, control system capture efficiency, and [any] other factors that could influence the performance of the system. If [so] requested by the cabinet, Method 25, which has been incorporated [Kentucky Method 90 or 91, filed] by reference in 401 KAR 50:015, shall be performed in order to determine the efficiency of the control device or demonstrate compliance with the standard. Capture efficiency shall be determined by procedures specified in 401 KAR 50:046.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [such] changes [in the affected facility as are] necessary to qualify for an exemption under Section 6 of this regulation.

(4) If [Whenever] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 of this regulation. Method 24, which has been incorporated [The following methods of analyses, filed] by reference in 401 KAR 50:015, [for coatings] shall be used as applicable to determine compliance of the coatings unless [except in those cases where] the cabinet and the U.S. EPA determine that other methods would be more appropriate. [:]

[(a) ASTM D 1644-75 Method A;]

[(b) ASTM D 1475-60(74);]

[(c) ASTM D 2369-73; or]

[(d) Federal Standard 141 a, Method 4082.1.]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet and the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, clean-up, or wash-up solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance by December 31, 1982.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [(1)] Submit a final control plan for achieving compliance with this regulation no later than nine (9) months after the date the affected facility becomes subject to this regulation [April 15, 1981].

(b) [(2)] Award a contract for the control system [contract] or for the exempt coatings and any other accompanying process change [contracts] no later than eleven (11) months after the date the affected facility becomes subject to this regulation [June 15, 1981].

(c) [(3)] Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than thirteen (13) months after the date the affected facility becomes subject to this regulation [December 1, 1981].

(d) [(4)] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation [December 1, 1982].

(e) [(5)] Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation [December 31, 1982].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted.

Section 6. Exemptions. (1) An [Any] affected facility shall be exempt from [the provisions of] Section 3 of this regulation if the VOC [volatile organic compound] content of the coating is:

(a) Less than 0.52 kg/l of coating (four and three-tenths (4.3) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with clear coat;

(b) Less than 0.42 kg/l of coating (three and five-tenths (3.5) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with air or forced air-dried items or items subject to outdoor or harsh exposure or extreme environmental conditions;

(c) Less than 0.36 kg/l of coating (three (3.0) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with color coat or first coat on untreated ferrous substrate; or

(d) Less than 0.05 kg/l of powder coating (four-tenths (0.4) lb/gal) delivered to applicators associated with no or infrequent color change, or a small number of colors applied.

(2) The surface coating of the following metal parts and products are exempt from this regulation:

(a) The exterior of airplanes and marine vessels, but not parts for the exterior of airplanes and marine vessels that are coated as a separate manufacturing or coating operation;

(b) Automobile refinishing; and

(c) Customized top coating of automobiles and trucks, if production is less than thirty-five (35) vehicles per day.

(3) An [Any] affected facility shall be exempt from [the provisions of Section 3 of] this regulation if the total VOC [volatile organic compound] emissions from all affected facilities subject to this regulation are less than or equal to thirty (30) tons per year.

(4) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

[Section 7. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.]

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: August 15, 1991

FILED WITH LRC: August 15, 1991 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on September 30, 1991, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently 7 entities under this regulation. These entities are existing miscellaneous metal parts and products surface coating operations. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the state implementation plan (SIP) and U.S. EPA policy; to update the applicability; and to comply with KRS Chapter 13A. Many of the SIP deviations are requirements that already appear in 401 KAR 50:016, Policies incorporated by reference, which is a state regulation but not part of the SIP, and therefore not federally enforceable. SIP deviations identified by the U.S. EPA include changes in the definition of volatile organic compounds, test methods, and variance. The applicability is updated to be compatible with the requirements of the Clean Air Act as amended November 15, 1991. This amendment will not impact the 7 entities currently under this regulation. However, the Clean Air Act Amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further, the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act Amendments shall achieve final compliance by May 31, 1995. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulations. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. There are no additional costs associated with complying with the state's amendments over complying with the same requirements in a federal regulation. The costs associated with the SIP deviation amendments are of the nature of more recordkeeping, a different test method, and a different capture efficiency procedure. A chemical that was previously uncontrolled because of its low vapor pressure could now be classified as a volatile organic compound or vice versa under the new definition of volatile organic compound. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number and size of entities will not be known until the redesignations of nonattainment status for individual counties or

portions of counties have been made. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-78-015, pages 3-1 through 3-24, June 1978. Five control options are analyzed for small, medium, and large sources for 7 operation types. A small source waterborne-coatings cost effectiveness is given on page 3-12 at $857/megagram of solvent controlled. However, in the consideration of the various applicable control options, a range from $339 saved to $20,154 cost per megagram of solvent controlled is presented. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1978 to 1991 is 1.7. This means that 1978 costs should be multiplied by 1.7 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under First year, 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Minor sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while minor sources in attainment areas are not.

(b) Reporting and paperwork requirements: The U.S. EPA identified recordkeeping as a SIP deficiency. Section 4(8) was added to comply with this federal requirement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for any sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since these amendments contain the same provisions as federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is conflict in the capture efficiency procedures between this regulation and 401 KAR 50:016, Policies incorporated by reference. There is also duplication, because 401 KAR 50:016 is not part of Kentucky's SIP.

(a) Necessity of proposed regulation if in conflict: This regulation references 401 KAR 50:046, Capture efficiency test procedures. 401 KAR 50:046 requires the U.S. EPA's new capture efficiency protocols. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedures.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.

(6) Any additional information or comments: These amendments were made in response to the requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements. The amendments are being made to a regulation in which tiering already applies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. These amendments change the applicability and eliminate the deviations between Kentucky's SIP and U.S. EPA policy, but do not change the standards.

3. Minimum or uniform standards contained in the federal mandate. These amendments do not change the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are proposed to eliminate deviations from U.S. EPA policy and the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:137. Leaks from existing petroleum refinery equipment.

RELATES TO: KRS [Chapter] 224.320, 224.330, 224.340, 40 CFR 81.318

STATUTORY AUTHORITY: KRS 224.033, 40 CFR 81.318

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from leaks from existing petroleum refinery equipment.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:]

[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source

of volatile organic compounds.]

[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means each individual component within a petroleum refinery complex that could potentially leak volatile organic compounds (VOCs) to the atmosphere.

(2) "Component" means equipment or apparatus which includes, but is not limited to, pump seals, compressor seals, seal oil degassing vents, pipeline valves, flanges and other connections, pressure relief devices, process drains, and open-ended pipes that could potentially leak VOCs [volatile organic compounds] to the atmosphere.

(3) "A petroleum refinery complex" means a [any] facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking, rearrangement or reforming of unfinished petroleum derivatives.

(4) "Leak" means the presence of a VOC [volatile organic compound] concentration exceeding 10,000 ppm if [when] tested in the manner referenced in Section 5 of this regulation.

(5) "Gas service" means that the VOC [volatile organic compound] is gaseous at conditions that prevail in the component during normal operations.

[(6) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(6) [(7)] "Classification date" means February 4, 1981 [the effective date of this regulation].

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [Volatile Organic Compounds]. The owner or operator of an affected facility shall:

(1) If an [When any] affected facility within the petroleum refinery complex is found to be leaking, repair the leak within fifteen (15) days. A component recheck shall be made after repair. If the leak is still present or a new leak is created by the repair, further maintenance shall be performed until the VOC [volatile organic compound] emission drops below the screening value (10,000 ppm).

(2) Any time a valve is located at the end of a pipe or line containing VOCs [volatile organic compounds], seal the end of the line with a second valve, a blind flange, a plug or a cap. This sealing device may be removed only when a sample is being taken. This requirement shall [does] not apply to safety pressure relief valves.

Section 4. Monitoring and Reporting Requirements. The owner or operator shall conduct [such] monitoring of affected facilities and submit records as specified below:

(1) The refinery operator shall perform component monitoring using the method referenced in Section 5 of this regulation as follows:

(a) Monitor with a portable VOC [volatile organic compound] detection device one (1) time per year (annually)[:] pump seals, pipeline valves in liquid service, and process drains.

(b) Monitor with a portable VOC [volatile organic compound] detection device four (4) times per year (quarterly)[:] compressor seals, pipeline valves in gas service, and pressure relief valves in gas service.

(c) Monitor visually fifty-two (52) times per year (weekly)[:] pump seals.

(d) No individual monitoring is necessary for pressure relief valves in liquid service and pipeline flanges.

(2) Pipeline valves and pressure relief valves for gas service shall be marked or noted so that their location is readily obvious to both the refinery operator performing the monitoring and the cabinet.

(3) If [Whenever] liquids are observed dripping from a pump seal, the seal shall be checked immediately with a portable detector to determine if a leak of VOCs [volatile organic compounds] is present.

(4) If [Whenever] a relief valve operates and venting to the atmosphere occurs, the operator shall monitor this [such] valve immediately. Pressure relief devices which are tied in to either a flare header or vapor recovery device shall be exempted from the monitoring requirements.

(5) When a leak is located, a weatherproof and readily visible tag bearing an identification number and the date the leak is located shall be affixed to the leaking component. The location, tag number, date and stream composition of the leak shall also be noted on a survey log. When the leak is repaired, the date of repair and date and instrument reading of component recheck after maintenance shall be entered in the survey log and the tag discarded. The operator shall retain the survey log for two (2) years after the inspection is completed.

(6) After quarterly monitoring has been performed, the refinery operator shall submit a report to the cabinet listing all leaks that were located but not repaired within the fifteen (15) day limit and a signed statement attesting to the fact that all monitoring has been performed as stipulated in the control plan. Leaks that cannot be repaired within fifteen (15) days as determined by the cabinet shall be repaired during the next scheduled turnaround, or if unable to be brought into compliance, a variance shall be requested and obtained on an individual basis. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

Section 5. Test Methods and Procedures. (1) Except as provided for in 401 KAR 50:045 Method

21, which has been incorporated [the test methods as defined in Appendix B to "Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment" (OAQPS 1.2-111, U.S. EPA, Office of Air Quality Planning and Standards), filed] by reference in 401 KAR 50:015, shall be used to determine compliance with the standard prescribed in Section 3 of this regulation and monitoring requirements in Section 4 of this regulation.

(2) The owner or operator may elect to use alternate monitoring methods if it is [can be] demonstrated to the cabinet's satisfaction that the alternate methods shall [will] achieve equivalent control efficiency.

Section 6. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect February 4, 1981, shall have achieved final compliance by January 1, 1982.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [(1)] Submit a final control plan for achieving compliance with this regulation no later than three (3) months after the date the affected facility becomes subject to this regulation [April 1, 1981].

(b) [(2)] Award the control system contract no later than five (5) months after the date the affected facility becomes subject to this regulation [May 15, 1981].

(c) [(3)] Initiate on-site construction or installation of emission control equipment no later than seven (7) months after the date the affected facility becomes subject to this regulation [July 15, 1981].

(d) [(4)] On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation [November 15, 1981].

(e) [(5)] Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation [January 1, 1982].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted.

Section 7. [Variances and] Modifications. (1) If, after at least two (2) complete annual checks, the refinery operator determines that modifications of the monitoring requirements are in order, he may request in writing to the cabinet that a revision be made. The submittal shall include data that have been developed to justify [any] modifications in the monitoring schedule.

(2) If the cabinet finds an excessive number of leaks during an inspection, or if the refinery operator found an excessive number of leaks in a [any] given area during scheduled monitoring, the cabinet shall increase the required frequency of operator inspections for that part of the facility.

[(3) Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.]

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: August 15, 1991

FILED WITH LRC: August 15, 1991 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on September 30, 1991, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there is currently one entity affected by the amendments to this regulation. The entity is a petroleum refinery. The amendments to this regulation have been made in response to three requirements. The first requirement is to eliminate deviations between state regulations which are a part of the State Implementation Plan (SIP) and U.S. EPA policy. The second is to update the applicability to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. The third is to comply with KRS Chapter 13A. The SIP deviations identified by the U.S. EPA include changes in the definition of volatile organic compounds, test methods, and variance.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in a Federal Implementation Plan (FIP). There are no additional costs associated with complying with the states' regulation over complying with the same requirements in a federal regulation.

1. First year: There are no additional costs associated with complying with the Kentucky SIP over complying with a FIP.

2. Continuing costs or savings: There are no additional costs associated with complying with the Kentucky SIP over complying with a FIP.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Since these amendments are the same as federal policy which is applied throughout the country, there are no economic disadvantages to Kentucky caused by promulgating these amendments. Sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while sources in attainment areas are not.

(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 first year costs or savings associated with these amendments.

2. Continuing costs or savings: There are no

continuing costs or savings associated with these amendments.

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 and paperwork requirements.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because these changes were required to eliminate deviations with U.S. EPA policy and to comply with the Clean Air Act.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: These amendments were made in response to the three requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the Kentucky's SIP and federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. These amendments change the applicability and eliminate the deviations between Kentucky's SIP and U.S. EPA policy, but do not change the standards.

3. Minimum or uniform standards contained in the federal mandate. These amendments do not change the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are proposed to eliminate deviations from U.S. EPA policy and the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:150. Existing synthesized pharmaceutical product manufacturing operations.

RELATES TO: KRS [Chapter] 224.320, 224.330, 224.340, 40 CFR 81.318

STATUTORY AUTHORITY: KRS 224.033, 40 CFR 81.318

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing synthesized pharmaceutical product manufacturing operations.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:]

[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.]

[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means operations involved in the manufacture of pharmaceutical products by chemical synthesis, but does not include fermentation, extraction, or formulation and packaging.

(2) "Extraction" means the manufacture of botanical and biological products by the extraction of organic chemicals from vegetative materials or animal tissues.

(3) "Fermentation" means the production and separation of medicinal chemicals such as antibiotics and vitamins from microorganisms.

(4) "Formulation and packaging" means the formulation of bulk pharmaceuticals into various dosage forms such as tablets, capsules, injectable solutions, ointments, etc., that can be taken by the patient immediately and in accurate amount.

[(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(5) [(6)] "Classification date" means February 4, 1981 [the effective date of this regulation].

(6) [(7)] "kPa" means kilopascals.

(7) [(8)] "psi" means pounds per square inch.

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [Volatile Organic Compounds]. The owner or operator of an affected facility to which this regulation applies shall install, maintain and operate the control equipment and observe at all times the following operating requirements:

(1)(a) Each vent from reactors, distillation

operations, crystallizers, centrifuges, and vacuum dryers that emit six and eight-tenths (6.8) kg/day (fifteen (15) lb/day) or more of VOCs [volatile organic compounds] shall be equipped with surface condensers or other methods of control which provide emission reductions equivalent to the use of surface condensers which meet the requirements in paragraph (b) of this subsection.

(b) If surface condensers are used, the condenser outlet gas temperature shall not exceed the following temperatures (degrees Celsius) if [when] condensing VOCs [volatile organic compounds] with the respective minimum vapor pressures (kilopascals). All vapor pressures are measured to twenty (20) degrees Celsius.

1. Negative twenty-five (-25)°C; forty (40) kPa (five and eight-tenths (5.8) psi);
2. Negative fifteen (-15)°C; twenty (20) kPa (two and nine-tenths (2.9) psi);
3. Zero°C; ten (10) kPa (one and five-tenths (1.5) psi);
4. Ten (10)°C; seven (7) kPa (one (1.0) psi); and
5. Twenty-five (25)°C; three and five tenths (3.5) kPa (five-tenths (0.5) psi).

(2)(a) For air dryers and production equipment exhaust systems that emit 150 kg/day (330 lbs/day) or more of VOCs [volatile organic compounds], emissions shall be reduced ninety (90) percent.

(b) For air dryers and production equipment exhaust systems that emit less than 150 kg/day (330 lbs/day), emissions shall be reduced to fifteen (15) kg/day (thirty-three (33) lbs/day).

(3)(a) For storage tanks storing VOCs [volatile organic compounds] with a vapor pressure greater than twenty-eight (28) kPa (four and one-tenth (4.1) psi) at twenty (20)°C, one (1) liter of displaced vapor shall be allowed to be released to the atmosphere for every ten (10) liters transferred (i.e., a ninety (90) percent effective vapor balance or equivalent) on truck or [/]rail car delivery to all tanks greater than 7,500 liters (2,000 gal) capacity unless the [except where] tanks are equipped with floating roofs, vapor recovery systems, or their equivalent. This requirement does not apply to transfer of VOCs [volatile organic compounds] from one (1) in-plant location to another.

(b) For tanks storing VOCs [volatile organic compounds] with a vapor pressure greater than ten (10) kPa (one and five-tenths (1.5) psi) at twenty (20)°C, the pressure or [/] vacuum conservation vents shall be set at plus or minus two-tenths (0.2) kPa, unless [except where] more effective air pollution control is used.

(4) All centrifuges containing VOCs [volatile organic compounds], rotary vacuum filters processing liquid containing VOCs [volatile organic compounds] and [any] other filters having an exposed liquid surface if [where] the liquid contains VOCs [volatile organic compounds] shall be enclosed. This applies to liquids exerting a total VOCs [volatile organic compounds] vapor pressure of three and five-tenths (3.5) kPa (five-tenths (0.5) psi) or more at twenty (20)°C.

(5) All in-process tanks containing VOC [volatile organic compound] at any time shall have covers which shall be closed except for short periods when production, sampling, maintenance, or inspection procedures require operator access.

(6) For liquids containing VOCs [volatile organic compounds], all leaks in which liquid can be observed to be running or dripping from vessels and equipment (for example, pumps, valves, flanges) shall be repaired within fifteen (15) days. A visual recheck shall be made after repair. If the leak is still present or a new leak is created by the repair, further maintenance shall be performed until the VOC [volatile organic compound] emission drops below the screening value (observed to be running or dripping). Leaks that cannot be repaired within fifteen (15) days shall be repaired during the next scheduled turnaround, or if unable to be brought into compliance, a variance shall be requested and obtained on an individual basis. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. Leak detection or [/] maintenance and repair procedures shall include maintaining a survey log identifying when the leak occurred and reporting every ninety (90) days those leaks not repaired after fifteen (15) days. The operator shall retain the survey log for two (2) years after the inspection is completed.

Section 4. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance by December 31, 1982.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [(1)] Submit a final control plan for achieving compliance with this regulation no later than three (3) months after the date the affected facility becomes subject to this regulation [April 15, 1981].

(b) [(2)] Award the control system contract no later than five (5) months after the date the affected facility becomes subject to this regulation [June 15, 1981].

(c) [(3)] Initiate on-site construction or installation of emission control equipment no later than seven (7) months after the date the affected facility becomes subject to this regulation [December 1, 1981].

(d) [(4)] On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation [December 1, 1982].

(e) [(5)] Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation [December 31, 1982].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted.

Section 5. Compliance Procedures. Compliance shall [will] be determined based upon an engineering analysis by the cabinet of[:] the control system design, control device efficiency, control system capture efficiency,

and [any] other factors that could influence the performance of the system. If [so] requested by the cabinet, performance tests as specified by the cabinet shall be conducted [in order] to determine the efficiency of the control device.

Section 6. Monitoring Requirements. If [When] adsorbers, condensers, incinerators or scrubbers are used to achieve compliance with Section 3 of this regulation, the following monitoring devices shall be an integral part of the control device:

(1) For carbon adsorbers, a monitoring device connected to an alarm device, which indicates carbon bed breakthrough;

(2) For condensers, a temperature sensing device located in the exit gas stream;

(3) For incinerators, temperature sensing devices located in the combustion chamber for thermal incinerators and in the catalyst preheat chamber for catalytic incinerators; and

(4) For scrubbers, flow meters for measuring flow rate of scrubbing medium or pressure drop measuring devices indicating back pressure and pressure drop across the scrubber.

[Section 7. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.]

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: August 15, 1991

FILED WITH LRC: August 15, 1991 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on September 30, 1991, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are no entities presently affected by the amendments to this regulation. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the State Implementation Plan (SIP) and U.S. EPA policy, to update the applicability, and to comply with KRS Chapter 13A. The applicability has been updated to be compatible with the Clean Air Act as amended on November 15, 1990. The Clean Air Act eliminates the distinction between rural and urban nonattainment counties. Formerly, minor sources were controlled only in urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by these amendments; therefore, there are no direct or indirect costs or savings.

1. First year: There are no first year costs or savings.

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 entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(2) Effects on the promulgating administrative body: There are no entities affected by these amendments; therefore, there are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: There are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

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 entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues because there are no entities affected by these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because no basis for an alternative exists since there are no entities affected by these amendments.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: The compliance time schedule has been updated to allow for affected facilities which become subject to this regulation on or after the effective date of this regulation. For instance, this situation could occur if the attainment status of a county changes.

TIERING: Was tiering applied? No. There are no entities currently affected by these amendments; therefore, no basis for tiering exists.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's SIP and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended November 15, 1990.

2. State compliance standards. There are no change in the standards. The federal policy

refers to procedures, definitions, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation has been amended to eliminate deviations between Kentucky's SIP and federal policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements imposed by these amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:160. Existing perchloroethylene dry cleaning systems.

RELATES TO: KRS [Chapter] 224.320, 224.330, 224.340, 40 CFR 81.318

STATUTORY AUTHORITY: KRS 224.033, 40 CFR 81.318

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing perchloroethylene dry cleaning systems.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:]

[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.]

[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means dry cleaning systems which use perchloroethylene.

(2) "Dry cleaning system" means a series of equipment [and/]or operations which includes, but is not limited to: washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves used for the purpose of commercial cleaning of fabrics.

[(3) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(3) [(4)] "Classification date" means February 4, 1981 [the effective date of this regulation].

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [Volatile Organic Compounds]. The owner or operator of an affected facility shall install, maintain and operate the control equipment such that the following requirements are met:

(1) There shall be no liquid leakage of organic solvents from the system.

(2) The entire dryer exhaust shall be vented through a properly functioning carbon adsorber or equally effective control device.

(3) The maximum organic solvent concentration in the vent from the dryer control device shall not exceed 100 ppm before dilution.

(4) Filter and distillation wastes.

(a) The residue from a [any] diatomaceous earth filter shall be cooked or treated so that wastes shall not contain more than twenty-five (25) kg of solvent per 100 kg of wet waste material.

(b) The residue from a solvent still shall not contain more than sixty (60) kg of solvent per 100 kg of wet waste material.

(c) Filtration cartridges shall be drained in the filter housing for at least twenty-four (24) hours before being discarded. The drained cartridges shall be dried in the dryer tumbler after draining.

(d) Any other filtration or distillation system may [can] be used if equivalency to these requirements is demonstrated. A [Any] system reducing waste losses below one (1) kg solvent per 100 kg clothes cleaned shall [will] be considered equivalent.

Section 4. Compliance. (1) Liquid leakage shall be determined by visual inspection of the following sources:

(a) Hose connections, unions, couplings and valves;
(b) Machine door gasket and seating;
(c) Filter head gasket and seating;
(d) Pumps;
(e) Base tanks and storage containers;
(f) Water separators;
(g) Filter sludge recovery operations;
(h) Distillation units;
(i) Diverter valves;
(j) Saturated lint from lint basket; and
(k) Cartridge filters.

(2) Dryer exhaust concentration shall be determined by the proper installation, operation, and maintenance of approved equipment as determined by the cabinet or by performance tests specified by the cabinet.

(3) The amount of solvent in filter and distillation wastes shall be determined by ASTM D 322-67(77), and substituting collector C from ASTM E 123-78. ASTM Methods have been

incorporated [are filed] by reference in 401 KAR 50:015.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance by December 31, 1982.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [(1)] Submit a final control plan for achieving compliance with this regulation no later than three (3) months after the date the affected facility becomes subject to this regulation [April 15, 1981].

(b) [(2)] Award the control system contract no later than five (5) months after the date the affected facility becomes subject to this regulation [June 15, 1981].

(c) [(3)] Initiate on-site construction or installation of emission control equipment no later than seven (7) months after the date the affected facility becomes subject to this regulation [December 1, 1981].

(d) [(4)] On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation [December 1, 1982].

(e) [(5)] Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation [December 31, 1982].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted.

Section 6. Exemptions. Perchloroethylene dry cleaning facilities which are coin-operated shall be exempt from this regulation.

Section 7. Variances. Variation with the standards and limitations contained in this regulation, if [when] supported by adequate technical information, may [will] be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: August 15, 1991
FILED WITH LRC: August 15, 1991 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on September 30, 1991, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are currently 21 entities under this regulation for dry cleaners. The amendments to this regulation have been made in response to 3 requirements. The first requirement is to eliminate deviations between state regulations which are a part of the State Implementation Plan (SIP) and U.S. EPA policy. The second is to update the applicability to be compatible with the requirements of the Clean Air Act as amended November 15, 1990. The third is to comply with KRS Chapter 13A. The impacts of these amendments to the 21 sources are minimal. However, the Clean Air Act amendments eliminate the distinction between urban and nonurban ozone nonattainment areas. Previously, for example, minor sources in Boone, Campbell, and Kenton Counties (an urban nonattainment area) were subject to this regulation while similar sources in Boyd County (a nonurban nonattainment area) were not. The amendments will eliminate that distinction. This will make minor sources in Boyd County subject to this regulation. Further the Clean Air Act amendments define 5 classifications of nonattainment. The redesignation of a county from attainment to any of the nonattainment classifications, except marginal nonattainment, would make additional entities subject to this regulation. Sources which become subject to this regulation because of the changes in applicability required by the Clean Air Act amendments shall achieve final compliance by May 31, 1995.

(a) Direct and indirect costs or savings to those affected: If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will promulgate the requirements in federal regulation. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in a federal regulation.

1. First year: There are no costs or savings associated with KRS Chapter 13A amendments. The costs or savings due to the SIP deviations' amendments are minimal. The applicability amendment required by the Clean Air Act will bring additional sources under this regulation for the first time. The number of entities will not be known until the redesignations of nonattainment status for individual counties or portions of counties have been made. A full cost analysis for the initial and continuing impact of this regulation was originally given in the U.S. EPA document EPA-450/2-78-050, pages 4-1 through 4-8, December 1978. 5 different sized facilities were analyzed. For example, for the model 11 kg/load commercial plant the total installed capital cost for a carbon adsorber was estimated to be $3200, the net annualized cost $500/year, and the cost per kilogram of hydrocarbon controlled 31¢/kg controlled. Large industrialized units of 114 kg/load were predicted a savings of 41¢/kg controlled. Although inflation can be taken into consideration, the size of the entities affected is not available for an accurate evaluation. A typical cost multiplier factor for 1978 to 1991 is 1.7. This means that 1978 costs should be multiplied by 1.7 to obtain 1991 costs.

2. Continuing costs or savings: Please see discussion under first year, 1. above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Sources in nonattainment areas (except marginal nonattainment) are subject to this regulation, while sources in attainment areas are not.

(b) Reporting and paperwork requirements: There are no additional reporting and paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process permits for sources newly affected. Costs will be recovered by a permit fee.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emissions data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any newly affected source will be inspected and the cost will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will review and issue permits for newly affected sources and will issue reports of inspections and emissions data as in 1. and 2. above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since these amendments contain the same provisions as the federal requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: These amendments were made in response to the 3 requirements discussed under (1) above.

TIERING: Was tiering applied? No. The amendments eliminate deviations between the SIP and federal requirements. The amendments are being made to a regulation in which tiering already applies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Clean Air Act as amended November 15, 1990.

2. State compliance standards. These amendments change the applicability and eliminate the deviations between Kentucky's SIP and U.S. EPA policy, but do not change the standards.

3. Minimum or uniform standards contained in the federal mandate. These amendments do not change the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are proposed to eliminate deviations from U.S. EPA policy and the Clean Air Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendments do not impose stricter standards, or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 61:175. Leaks from existing synthetic organic chemical and polymer manufacturing equipment.

RELATES TO: KRS 224.320, 224.330, 224.340, 40 CFR 81.318

STATUTORY AUTHORITY: KRS 224.033, 40 CFR 81.318

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from leaks from existing synthetic organic chemical and polymer manufacturing equipment.

[Section 1. Applicability. (1) The provisions of this regulation shall apply to each affected facility commenced on or before the classification date defined below which is located in any county designated nonattainment for ozone under 401 KAR 51:010. The provisions of this regulation shall continue to apply to those affected facilities if the area is redesignated to attainment or unclassified status in 401 KAR 51:010 or 40 CFR 81.318, unless a state implementation plan which provides for other controls is approved by the U.S. EPA.]

[(2) The provisions of this regulation shall not apply to components within a petroleum refinery complex. Leaks from new and existing petroleum refinery equipment shall be regulated by 401 KAR 59:049 and 401 KAR 61:137, respectively.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means each individual component which contacts a process fluid that contains greater than ten (10) percent volatile organic compounds (VOCs) by weight within a synthetic organic chemical manufacturing plant or polymer manufacturing plant.

(2) "Component" means a piece of equipment, including but not limited to pumps, valves, compressors, and pressure relief valves, which has the potential to leak (VOCs) [volatile organic compounds].

(3) "Synthetic organic chemical manufacturing plant" means facilities which operate equipment in process units to manufacture methyl tert-butyl ether or one (1) or more of the synthetic organic chemicals listed [in 40 CFR 60, Subpart VV, filed by reference] in 401 KAR 59:305.

(4) "Polymer manufacturing plant" means a facility [facilities] which operate equipment in process units to manufacture polyethylene, [or] polypropylene, or polystyrene.

(5) "Leak" means the presence of a VOC [volatile organic compound] concentration exceeding 10,000 ppm by volume if [when] tested in the manner referenced in Section 5 of this regulation.

(6) "Gas service" means that the VOC [volatile organic compound] is gaseous at conditions that prevail in the component during normal operations.

(7) "In light liquid service" means that the component contacts a liquid with a concentration greater than twenty (20) percent by weight of VOCs [volatile organic compounds] having a vapor pressure greater than three-tenths (0.3) kilopascals at twenty (20) degrees Celsius.

(8) "Light liquid" means a liquid with a concentration greater than twenty (20) percent by weight of VOCs [volatile organic compounds] having a vapor pressure greater than three-tenths (0.3) kilopascals at twenty (20) degrees Celsius.

(9) "Heavy liquid" means a fluid which is not in the gaseous state at operating conditions or which is not a light liquid.

(10) "Process unit" means components assembled to manufacture, as intermediate or final products, one (1) or more of the chemicals referenced in subsections (3) and (4) of this section. A process unit can operate independently if it is supplied with sufficient feed or raw materials and sufficient storage facilities for the product.

[(11) "Volatile organic compounds (VOC)" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(11) [(12)] "Classification date" means January 5, 1981.

Section 2. Applicability. (1) This regulation shall apply to each affected facility commenced on or before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

(2) This regulation shall not apply to components within a petroleum refinery complex. Leaks from new and existing petroleum refinery equipment shall be regulated by 401 KAR 59:049 and 401 KAR 61:137, respectively.

Section 3. Standard for VOCs [Volatile Organic Compounds]. (1) If an [When any] affected facility within the manufacturing plant is found to be leaking, the owner or operator shall repair the leak within fifteen (15) days. A component recheck shall be made within five (5) days after repair. If the leak is still present or a new leak is created by the repair, further maintenance shall be performed until the VOC [volatile organic compound] emission drops below the screening value (10,000 ppm by volume).

(2) Any time a valve is located at the end of a pipe or line containing VOCs [volatile organic compounds], the owner or operator shall seal the end of the line with a second valve, a blind flange, a plug, or a cap. This sealing device may be removed only when a sample is being taken or during maintenance operations. This requirement shall [does] not apply to safety pressure relief valves.

Section 4. Monitoring and Reporting Requirements. The owner or operator shall conduct [such] monitoring of affected facilities and submit records as specified below:

(1) The operator shall perform component monitoring using the method referenced in Section 5 of this regulation as follows:

(a) Monitor with a portable VOC [volatile organic compound] detection device four (4) times per year (quarterly)[:] pumps in light liquid service, compressors, valves in light liquid service, valves in gas service, and pressure relief valves in gas service.

(b) Monitor visually fifty-two (52) times per year (weekly)[:] pumps in light liquid service. Each pump shall be repaired within fifteen (15) days after visual inspection indicates it is leaking.

(c) Monitor with a portable VOC [volatile organic compound] detection device a pressure relief valve within five (5) days after it has vented to the atmosphere. Pressure relief devices which are tied in to either a flare header or vapor recovery device shall be exempt from the monitoring requirements.

(d) Monitor with a portable VOC [volatile organic compound] detection device within five (5) days of discovery, a [any] component whose sight, smell, or sound indicates that it might be leaking.

(e) Difficult or unsafe-to-monitor components shall be exempt from [the provisions of] this subsection, however these [such] components shall meet the requirements for difficult or unsafe-to-monitor valves as specified in 401 KAR 59:305 [40 CFR 60, Subpart VV].

(2) Pipeline valves and pressure relief valves for gas service shall be marked or noted so that their location is readily obvious to both the operator performing the monitoring and the cabinet.

(3) When a leak is located, a weatherproof and readily visible tag bearing an identification number and the date the leak is located shall be affixed to the leaking component. The location, tag number, date, and stream composition of the leak shall also be noted on a survey log. When the leak is repaired, the date of repair and date and detector reading of component recheck after maintenance shall be entered in the survey log and the tag discarded. The operator shall retain the survey log for two (2) years after the inspection is completed. The survey log shall be made available to the cabinet upon request.

(4) After quarterly monitoring has been performed the operator shall submit a report to the cabinet listing all leaks that were located but not repaired within the fifteen (15) day limit and a signed statement attesting to the fact that all monitoring has been performed as stipulated in the control plan. Leaks that cannot be repaired within fifteen (15) days as determined by the cabinet shall be repaired during the next scheduled turnaround, or if unable to be brought into compliance, a variance shall be requested which the cabinet may grant on an individual basis, based upon a showing which is satisfactory to the cabinet.

Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

Section 5. Test Methods and Procedures. (1) Except as provided for in 401 KAR 50:045, Reference Method 21, which has been incorporated [filed] by reference in 401 KAR 50:015, shall be used to determine compliance with the standard prescribed in Section 3 of this regulation and the monitoring requirements in Section 4 of this regulation.

(2) The owner or operator may elect to use alternate monitoring methods if it can be demonstrated to the cabinet's satisfaction that the alternate methods shall [will] achieve equivalent control efficiency.

Section 6. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on December 2, 1986, shall have achieved final compliance by January 1, 1988.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall complete the following:

(a) [(1)] Submit a final control plan for achieving compliance with this regulation no later than six (6) months after the date the affected facility becomes subject to this regulation [April 1, 1987].

(b) [(2)] Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation [January 1, 1988].

(c) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) and (b) of this subsection adjusted.

Section 7. Exemptions. (1) [Any] Process units which process only heavy liquid VOC shall be exempt from [the provisions of] Section 4 of this regulation.

(2) Equipment operating under a vacuum shall be exempt from [the provisions of] this regulation.

(3) [Any group of all] Affected facilities within a process unit that has the design capacity to manufacture less than 1,000 megagrams per year of polyethylene, polypropylene, polystyrene, methyl tert-butyl ether, or one (1) or more of the synthetic organic chemicals listed in 401 KAR 59:305 [40 CFR 60, Subpart VV], shall be exempt from [the provisions of] this regulation.

(4) [Any group of all] Affected facilities within a process unit that manufactures beverage alcohol shall be exempt from [the provisions of] this regulation.

Section 8. [Variances and] Modifications. (1) If, after at least one (1) complete annual check, the operator determines that modifications of the monitoring requirements are in order, he may request in writing to the cabinet that a revision to the monitoring requirements be made. The submittal shall include data that have been developed to justify [any] modifications in the monitoring schedule. The cabinet may grant this [such a] revision to the monitoring requirements based upon a showing which is satisfactory to the cabinet.

(2) An owner or operator may elect to comply with the alternative standards for valves contained in 401 KAR 59:305. In 401 KAR 59:305 under skip period leak detection and repair alternative for valves, the phrase "60.482-7" shall be read as "Section 4 of this regulation". [40 CFR 60, Subpart VV. In the skip period leak detection and repair alternative for valves contained in 40 CFR 60.483-2, "60.482-7" shall be read as "Section 4 of this regulation."]

[(3) Variation with the standards and limitations contained in this regulation, when supported by adequate technical information will be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.]

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: August 15, 1991

FILED WITH LRC: August 15, 1991 at noon

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on September 30, 1991, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing: Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 315 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid

(1) Type and number of entities affected: A review of the division's records indicates that there are no entities presently affected by the amendments to this regulation. The amendments to this regulation have been made to eliminate deviations between state regulations which are a part of the SIP and U.S. EPA policy, to update the applicability, and to comply with KRS Chapter 13A. The applicability has been updated to be compatible with the Clean Air Act as amended on November 15, 1990. The Clean Air Act eliminates the distinction between rural and urban nonattainment counties. Formerly, minor sources were controlled only in urban nonattainment counties. Now minor sources will be controlled in all nonattainment areas except those classified as marginal. The amendments made to comply with KRS Chapter 13A do not impact any sources.

(a) Direct and indirect costs or savings to those affected: There are currently no entities affected by these amendments; therefore, there are no direct and indirect costs or savings.

1. First year: There are no first year costs or savings.

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 entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(2) Effects on the promulgating administrative

body: There are no entities affected by these amendments; therefore, there are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: There are direct or indirect costs or savings.

1. First year: There are no first year costs or savings.

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 currently no entities affected by these amendments; therefore, reporting and paperwork requirements are not applicable.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues because there are no entities affected by these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because there are currently no entities affected by these amendments; therefore, no basis for an alternative exists.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: The compliance time schedule has been updated to allow for affected facilities which become subject to this regulation on or after the effective date of this regulation. For instance, this situation could occur if the attainment status of a county changes.

TIERING: Was tiering applied? No. There are no entities affected by these amendments; therefore, no basis for tiering exists.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal policy has changed subsequent to the promulgation of this regulation. The U.S. EPA is requiring these amendments to eliminate deviations between Kentucky's SIP and federal policy. The applicability of this regulation has been updated to be compatible with the Clean Air Act as amended on November 15, 1990.

2. State compliance standards. There are no changes in the standards. The federal policy refers to procedures, definitions, etc., to apply the standards.

3. Minimum or uniform standards contained in the federal mandate. The federal policy does not change the standards, but refers to procedures, definitions, etc., to apply the standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation has been amended to eliminate deviations between Kentucky's SIP and federal policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements imposed by these amendments.

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 August 15, 1991 [June 14, 1991] and are incorporated by reference and hereinafter shall 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
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)]
14.6 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
15-07-01 Inmate Account Restriction (Added 8/15/91)
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
18.6 Classification Document
18.7 Transfers
18.8 Guidelines for Transfers Between Institutions
18.9 Out-of-state Transfers
18.10 Preparole Progress Reports
18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
18.15 Protective Custody
19.1 Government Services Projects
19.2 Community Services Projects
20-01-01 Educational Programs (Added 8/15/91)
[20.6 Vocational Study Release (Deleted 8/15/91)]
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
25.7 Expedient Release
25.8 Extended Furloughs
25.10 Administrative Release of Inmates
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
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
27-20-01 Division of Probation and Parole Controlled Intake Program
27-20-02 Prisoner Intake Notification
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
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: August 15, 1991
FILED WITH LRC: August 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 26, 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: 2,883 employees of the Corrections Cabinet, 7,792 inmates, 12,615 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 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards 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 August 15, 1991 and are incorporated by reference [on May 15, 1991] and hereinafter shall [should] be referred to as Kentucky State Penitentiary Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSP 000000-06	Administrative Regulations
KSP 010000-04	Public Information and Media Communication
KSP 020000-15	Legal Assistance
KSP 02-01-01	Inmate Commissary Program (Added 8/15/91)
KSP 02-12-01	Inmate Personal Funds (Added 8/15/91)
KSP 030000-01	Inventory Records and Control
KSP 030000-04	Requisition and Purchase of Supplies and Equipment
[KSP 030000-05	Inmate Personal Funds (Deleted 8/15/91)]
[KSP 030000-06	Inmate Commissary Program (Deleted 8/15/91)]
KSP 040000-01	Management Information System
KSP 040000-02	Inmate Records
KSP 050000-14	Searches and Preservation of Evidence
KSP 060000-01	Special Security Unit
KSP 060000-02	Special Management Units: Assignment, Classification Review and Release
KSP 060000-04	Protective Custody Unit
KSP 070000-01	Hospital Services
KSP 070000-02	Sick Call
KSP 070000-03	Health Evaluations
KSP 070000-04	Consultations
KSP 070000-05	Emergency Medical Procedure
KSP 070000-13	Pharmacy Procedures
KSP 070000-14	Medical Records
KSP 070000-16	Psychiatric and Psychological Services
KSP 070000-17	Dental Services for Special Management Units
KSP 070000-19	Optometric Services
KSP 070000-20	Menu Preparation and Planning
KSP 070000-24	Food Service, General Sanitation, Safety, and Protection Standards and Requirements
KSP 070000-25	Food Service Inspections
KSP 070000-30	Therapeutic Diets

KSP 090000-01	Inmate Work Programs/Safety Inspections of Inmate Work Locations
[KSP 090000-03	Correctional Industries (Deleted 8/15/91)]
KSP 100000-03	Disposition of Unauthorized Property
[KSP 100000-04	Inmate Grooming and Dress Code (Deleted 8/15/91)]
KSP 100000-05	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 100000-06	Inmate Mail and Packages
KSP 100000-07	Inmate Telephone Access
KSP 100000-08	Behavioral Counseling Record
KSP 100000-09	Due Process/Disciplinary Procedures
[KSP 100000-11	Authorized and Unauthorized Inmate Property (Deleted 8/15/91)]
KSP 100000-14	Property Room: Clothing Storage and Inventory
KSP 100000-15	Uniform Cell Standards for Fire Safety, Sanitation and Security
KSP 100000-18	Inmate Grievance Committee Hearings
KSP 100000-20	Legal Services Program
KSP 100000-21	Photocopies for Nonindigent Inmates with Special Court Deadlines
KSP 110000-04	Preparole Progress Report
KSP 110000-06	General Guidelines of the Classification Committee
KSP 110000-07	Statutory Good Time Restoration
KSP 110000-08	Award of Meritorious Good Time
KSP 110000-10	Special Needs Inmates
KSP 110000-12	Unit Classification Committee - Inmate Work Assignments
KSP 110000-13	Classification Document
KSP 110000-14	Vocational School Placement
KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-16	Consideration of Further Treatment Requirements for Inmates Prior to Release
KSP 110000-18	Functions of the Classification Committee
KSP 120000-04	Academic Education
KSP 120000-07	Community Center Program
KSP 120000-08	Inmate Furloughs
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 120000-31	Extended Furloughs
KSP 120000-32	Discharge of Inmates by Shock Probation
KSP 130000-10	Execution Plan
KSP 15-01-01	Inmate Grooming and Dress Code (Added 8/15/91)
KSP 16-01-01	Visiting Program [(Added 05/15/91)]
KSP 17-01-01	Inmate Personal Property (Added 8/15/91)
KSP 19-05-01	Correctional Industries (Added 8/15/91)

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: August 15, 1991
FILED WITH LRC: August 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 24, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. 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: 360 employees of the Kentucky State Penitentiary, 638 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 6:130. Western Kentucky 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 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 August 15, 1991 and are incorporated by reference [on February 15, 1991] and hereinafter shall [should] be referred to as Western Kentucky 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.

WKCC 01-09-01	Duty Officers, External and Internal Inspections, and Staff Tours
WKCC 02-01-01	Inmate Funds
WKCC 02-01-02	Inmate Canteen
WKCC 02-00-03	Invoice and Voucher Processing [(Amended 2/15/91)]
WKCC 02-00-04	Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06	Purchasing Procedures
WKCC 02-01-01	Inmate Funds [(Amended 2/15/91)]
WKCC 02-02-01	Agency Funds and Accounting Procedures [(Amended 2/15/91)]
WKCC 02-08-01	Property Receipt and Inventory Procedures [(Amended 2/15/91)]
WKCC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01	Employee Training and Development
WKCC 04-04-01	Educational Assistance Program
WKCC 05-01-01	Research, Consultants, and Student Interns [(Amended 2/15/91)]
WKCC 06-00-01	Offender Records and Information Access
WKCC 06-00-02	Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKCC 09-00-01	Drug Abuse and Alcohol Testing [(Amended 2/15/91)]
WKCC 10-02-01	Special Management Inmates
WKCC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements [(Amended 2/15/91)]
WKCC 11-00-03	Food Service Inspections, Sanitation, Purchasing, and Storage of Food
WKCC 11-00-04	Food Service Security
WKCC 11-00-05	Food Service General Guidelines [(Added 2/15/91)]
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01	Inmate Clothing [(Amended 2/15/91)]
WKCC 13-00-01	Special Health Programs [(Amended 2/15/91)]
WKCC 13-01-01	Use of Pharmaceutical Products [(Amended 2/15/91)]
WKCC 13-02-01	Health Care Services [(Amended 2/15/91)]
WKCC 14-00-01	Inmate Rights and Responsibilities
WKCC 14-04-01	Legal Services Program
WKCC 14-06-01	Inmate Grievance Procedure
WKCC 15-01-01	Hair and Grooming Standards
WKCC 15-02-01	Inmate Offenses and Penalties
WKCC 15-03-01	Meritorious Good Time [(Amended 2/15/91)]
WKCC 15-05-01	Restoration of Forfeited Good Time
WKCC 15-06-01	Adjustment Procedures and Programs
WKCC 16-01-01	Visiting Policy and Procedures (Amended 8/15/91)
WKCC 16-02-01	Inmate Correspondence [(Amended 2/15/91)]
WKCC 16-03-01	Inmate Access to Telephones
WKCC 16-04-01	Inmate Packages
WKCC 17-01-01	Inmate Personal Property
WKCC 17-02-01	Inmate Reception and Orientation [(Amended 2/15/91)]
WKCC 18-01-01	Structure, Guidelines, and Functions of the Classification Committee [(Amended 2/15/91)]
WKCC 19-03-01	Inmate Wage Program
WKCC 19-04-01	Work/Program Assignments
WKCC 20-03-01	Vocational Education Program [(Amended 2/15/91)]
WKCC 20-04-01	Academic Education Program [(Amended 2/15/91)]
WKCC 22-00-01	Inmate Recreation and Leisure Time Activities [(Amended 2/15/91)]
WKCC 22-00-02	Inmate Clubs and Organizations [(Amended 2/15/91)]
WKCC 23-00-01	Religious Services [(Amended 2/15/91)]
WKCC 25-01-01	Gratuities
WKCC 25-02-01	Inmate Release Process [(Amended 2/15/91)]
WKCC 25-03-01	Prerelease Programs
WKCC 26-01-01	Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: August 15, 1991
FILED WITH LRC: August 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 24, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and Tom Campbell, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 150 employees of the Western Kentucky Farm Center, 390 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. 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 August 15, 1991 [June 14, 1991] and are incorporated by reference and hereinafter shall 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
BCFC 06-02-01	Storage of Expunged Records
BCFC 06-03-01	Court Trips
BCFC 06-03-02	Receipt of Order of Appearance
BCFC 08-02-01	Fire Prevention
BCFC 08-03-01	Fire Procedures
BCFC 08-03-02	Fire Extinguishers and Their Use
BCFC 08-09-01	Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances
BCFC 08-09-02	OHSA Hazard Communication Program
BCFC 09-06-01	Search Policy/Disposition of Contraband (Amended 8/15/91)
BCFC 09-14-01	Bell County Forestry Camp - Restricted Area (Amended 8/15/91)
BCFC 10-01-01	Special Management Inmates [(Added 6/14/91)]
BCFC 11-01-01	Food Services: General Guidelines
BCFC 11-02-01	Food Service: Security
BCFC 11-03-01	Dining Room Guidelines
BCFC 11-04-01	Food Service: Meals
BCFC 11-04-02	Food Service: Menu, Nutrition and Special Diets
BCFC 11-05-02	Health Requirements of Food Handlers
BCFC 11-06-01	Food Service: Inspection and Sanitation
BCFC 11-07-01	Food Service: Purchasing, Storage and Farm Products
BCFC 11-08-01	Staff/Visitor Meals
BCFC 12-01-01	Sanitation, Living Conditions Standards, and Clothing Issues
BCFC 12-01-02	Bed Areas, Assignments/Conditions Standards
BCFC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry
BCFC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule
BCFC 12-03-02	Barbershop Services and Equipment Control
BCFC 12-04-01	Institutional Inspections
BCFC 12-05-01	Fire Safety and Use of Noncombustible Receptacles
BCFC 12-06-01	Pest Control
BCFC 13-01-01	Organization of Health Services
BCFC 13-02-01	Health Maintenance Services: Sick Call and Pill Call
BCFC 13-03-01	Dental Policy/Sick Call
BCFC 13-04-01	Inmate Medical Screenings and Health Evaluations
BCFC 13-05-01	Licensure and Training Standards
BCFC 13-06-01	Suicide Prevention and Intervention Program
BCFC 13-06-02	First Aid/CPR Training Program
BCFC 13-06-03	Emergency Medical/Dental Care Services
BCFC 13-07-01	Health Records
BCFC 13-08-01	Special Diets
BCFC 13-09-01	Notification of Inmate, Family in the Event of Serious Illness, Surgery, or Inmate Death
BCFC 13-10-01	Health Education/Special Health Programs
BCFC 13-11-01	Informed Consent
BCFC 13-12-01	Mental Health/Provision of Psychiatric Services by KCPC
BCFC 13-12-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center (KCPC)
BCFC 13-13-01	Identification of Special Needs Inmates
BCFC 13-14-01	Use of Pharmaceutical Products
BCFC 13-15-01	Medical Restraints
BCFC 13-16-01	Specialized Health Services
BCFC 13-17-01	Vision Care/Optometry Services
BCFC 14-01-01	Inmate Rights and Responsibilities
BCFC 14-02-01	Legal Services Program
BCFC 14-03-01	Inmate Grievance Procedure
BCFC 14-04-01	Inmate Participation in Authorized Research
BCFC 15-01-01	Due Process/Disciplinary Procedures [(Added 6/14/91)]

BCFC 16-01-01	Inmate Visiting (Amended 8/15/91)
BCFC 16-02-01	Telephone Communications
BCFC 16-03-01	Mail Regulations
BCFC 16-03-02	Inmate Packages
BCFC 17-01-01	Assessment/Orientation Procedure
BCFC 17-02-01	Inmate Reception Process
BCFC 17-03-01	Inmate Personal Property and Property Control
BCFC 17-04-01	Unauthorized Items
BCFC 17-05-01	Inmate Canteen
BCFC 18-01-01	Institutional Classification Committee
BCFC 18-02-01	Classification Document
BCFC 18-03-01	Classification Process
BCFC 18-03-02	Classification Program Planning
BCFC 18-03-03	Population Category Status
BCFC 18-04-01	Instructions for Six Month Review
BCFC 18-05-01	Transfers to Other Minimum Security Institutions
BCFC 19-01-01	Job and Vocational Program Assignments
BCFC 19-02-01	Government Service Details
BCFC 20-01-01	Academic/Vocational School
BCFC 20-01-02	Testing and Verification Procedure
BCFC 20-02-01	Educational Program Planning
BCFC 20-03-01	Academic and Vocational Curriculum
BCFC 20-04-01	Educational Personnel Practices
BCFC 21-01-01	Library Services
BCFC 22-01-01	Recreation and Inmate Activities
BCFC 22-02-01	Inmate Clubs and Organizations
BCFC 22-02-02	Conducting Inmate Organizational Meetings and Programs
BCFC 22-03-01	Privilege Trips
BCFC 23-01-01	Religious Service
BCFC 23-02-01	Visitors for Religious Programs
BCFC 23-03-01	Marriage of Inmates
BCFC 24-01-01	Social Services and Counseling Program
BCFC 24-01-02	Casework Services
BCFC 25-01-01	Release Preparation Program Description
BCFC 25-02-01	Temporary Release/Community Center Release
BCFC 25-02-02	Furloughs
BCFC 25-03-01	Preparole Progress Report
BCFC 25-03-02	Parole Eligibility Dates
BCFC 25-04-01	Inmate Discharge Procedure
BCFC 26-01-01	Citizen Involvement and Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: August 15, 1991
FILED WITH LRC: August 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 24, 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.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 4:010. Fees of the Department of Insurance.

RELATES TO: KRS 304.4-010
STATUTORY AUTHORITY: KRS 304.2-110, 304.4-010
NECESSITY AND FUNCTION: KRS 304.2-110 authorizes the Commissioner of Insurance to adopt regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the Commissioner of Insurance to prescribe those services for which fees shall be charged and the amounts of the fees. This regulation prescribes these services for which the Department of Insurance will charge fees and the amounts of those fees.

Section 1. The commissioner shall collect in advance fees as follows:
(1) Annual statement.
(a) Filing each year, $100.
(b) Filing additional or supplemental statement in the same year, $100.
(2) Filing charter documents.
(a) Original charter document, bylaws, and records of organization, or certified copies thereof required to be filed, $100.
(b) Amended charter documents, bylaws, and records of organization, or certified copies thereof required to be filed, $50.
(3) Certificate of authority.
(a) Issuance of original certificate, $500.
(b) Amending, to add a line, $50.
(c) Renewal, each year, $100.
(4) Organization of domestic mutual insurers: filing application for solicitation permit and issuance of such permit, $200.
(5) Self insurer.
(a) Application to become self insurer under subtitle 39, $200.
(b) Notification of self-insurance program

under subtitle 32, $50.
(6) Agent licenses, foreign and alien insurers.
(a) Agent license, per insurer represented, biennial, $40.
(b) Temporary license as agent, $20.
(c) Nonresident agent, per insurer represented, biennial, $50.
(d) Resident corporate or partnership agent, per insurer represented, biennial, $100.
(e) Nonresident corporate or partnership agent, per insurer represented, biennial, $120.
(7) Surplus lines broker or managing general agent, biennial, $100.
(8) Solicitor license, biennial, $40.
(9) Adjuster license, biennial, $50.
(a) Temporary license as apprentice adjuster, $25.
(b) Administrator's license, biennial, $50.
(10) Consultant license, biennial, $100.
(11) Agent licenses for fraternal benefit societies, subtitle 32 corporations, health maintenance organizations, prepaid dental plan organizations, per fraternal benefit society, subtitle 32 corporation, health maintenance organization, or prepaid dental plan represented, biennial.
(a) Residents, $40.
(b) Nonresidents, $50.
(12) Filing agent and solicitor continuing education courses for:
(a) Approval, $5 per hour of continuing education credit; minimum of $10, maximum of $300.
(b) Biennial renewal, $5 per hour of continuing education credit; minimum of $10, maximum of $150.
(13) Late renewal of agent licenses pursuant to KRS 304.9-260, 304.32-190, 806 KAR 38:020, 806 KAR 43:010, and KRS 304.99-100, per insurer, subtitle 32 corporation, health maintenance organization, or prepaid dental plan organization represented.
(a) Residents, $40.
(b) Nonresidents, $50.
(14) Examination for or in connection with licensing of agents, solicitors, adjusters, and consultants, $50.
(15) Annual registration fee of unauthorized insurer under KRS 304.11-020(2), $500.
(16) Advisory organizations.
(a) Application for license, $500.
(b) Annual renewal, $100.
(17) Rate and form filings.
(a) Rate level revision filing in a noncompetitive market or other rate level revision filings subject to prior approval by the commissioner, $100.
(b) Credit life or health insurance filing requiring review for compliance with KRS 304.19-080, $100.
(c) Other rate and form filings, $5.
(18) Insurance premium finance companies.
(a) Application for license, $500.
(b) Annual renewal, $100.
(19) Cost of administering subtitle 32 per membership contract in force on December 31 of each year, except the health insurance contract or contracts for state employees as authorized by KRS 18A.225, ten (10) cents.
(20) Computer printouts of lists, computer printouts of mailing labels, and magnetic tapes:
(a) Agents:
1. General lines or life and health, $500.
2. General lines or life and health magnetic tape, $1,000.
3. All other lines, $100.
4. Listing for each ZIP code, $50.
5. Appointments (activity) of a specific agent, $5.
(b) Adjusters, consultants, managing general agents, solicitors, surplus lines brokers, and third party administrators, $100.
(c) Insurer directories:
1. All authorized insurers, $150.
2. Insurers by line of insurance, $100.
3. Appointments (activity) by a specific insurer, $50.
(d) Corporate or partnership agents:
1. Corporate or partnership agent directory, $150.
2. Corporate or partnership agents by line of insurance, $100.
3. Appointments (activity) of a specific corporation or partnership agent, $10.
(e) Other printouts or magnetic tapes not specified above, if the request is approved by the commissioner, $500.
(21) Miscellaneous services.
(a) Filing other documents, each, $5.
(b) Commissioner's certificate under seal, other than certificates, licenses, and other documents provided for above, each, $5.
(c) For copies of any document on file with the commissioner, per page, fifty (50) cents.
(d) Copy of annual statements, per page, $1.

Section 2. The biennial renewal fees specified in Section 1(6), (7), (8), (9), (10), and (11) of this regulation are payable as follows:
(1) Licensees for life, health, life and health insurers, or fraternal benefit societies shall renew their licenses on or before March 31 in odd numbered years and biennially thereafter; and
(2) Licensees for casualty, marine and transportation, property, surety, mortgage guaranty, or multiple line insurers shall renew their licenses on or before March 31 in even numbered years and biennially thereafter.

Section 3. When a statute or regulation requires payment of a fee as provided in KRS 304.4-010, it refers to a fee as specified in this regulation.

[Section 4. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.]

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: August 12, 1991
FILED WITH LRC: August 13, 1991 at 10 a.m.
PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for September 23, 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 September 23, 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 (5) 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: The proposed amendment is necessary to provide for a renewal fee for insurance agent continuing education courses and to "cap" both initial approval and renewal fees to assure that fees will remain at a reasonable level. Since 1988, the department has charged a fee of $5 per hour of continuing education credit for approval of continuing education courses, with a minimum of $10. However, some courses consist of hundreds of hours of instruction (e.g., CPCU or CLU courses), making the fee excessive. Further, a procedure for renewing approval of continuing education courses is being implemented to assure that courses are kept current, and it is necessary to have a reasonable fee for that procedure. The proposed amendment also makes technical changes in the regulation by deleting Section 4. This standard language was not objected to when the regulation was originally promulgated, but has since been identified as objectionable by a staff attorney for the Administrative Regulation Review Subcommittee.

(1) Type and number of entities affected: 114 providers of continuing education courses have received approval for 1,031 courses. 5,206 insurance agents are subject to the continuing education requirement.

(a) Direct and indirect costs or savings to those affected:

1. First year: Providers will receive savings from the "cap" on fees. Those seeking renewal of approval for their courses will be required to pay the renewal fee.

2. Continuing costs or savings: Persons seeking approval of continuing education courses will receive savings from the "cap" on approval fees while those seeking renewal of approval will be required to pay the renewal fee.

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: Fees received from the approval of continuing education courses, either new or renewal, will be "capped" at $300 and $150 respectively.

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: Fees from review of continuing education programs will be "capped".

(4) Assessment of alternative methods; reasons why alternatives were rejected: The current regulation left the department in a position of charging unreasonable fees. That situation could not be changed without amendment of the regulation.

(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 the lower fee for review of continuing education courses for renewal of approval. Also, the regulation continues to recognize tiering in that the fee increases depending on the number of credit hours in the course.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 9:220. Agent continuing education.

RELATES TO: KRS 304.9-295

STATUTORY AUTHORITY: KRS 304.2-110, 304.9295

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-295 provides that the Commissioner of Insurance may, by regulation, limit the number of excess continuing education credit hours accumulated during any continuing education biennium. This regulation establishes procedures for approval of agent continuing education programs and obtaining credit for attending continuing education programs.

Section 1. Definitions. For the purposes of this regulation:

(1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance; and

(2) "Provider" means the sponsor of a continuing education program.

Section 2. Continuing Education Program Requirements. (1)(a) A continuing education program shall not qualify for use as continuing education credit unless it is filed with and approved by the commissioner. If the continuing education program is or will be advertised as having been approved by the commissioner, it shall be filed with the commissioner at least sixty (60) days in advance of advertising unless the commissioner, in his sole discretion, waives the sixty (60) day period.

(b) Any material change in a continuing education program previously filed with and approved by the commissioner shall not be implemented until filed with and approved by the commissioner.

(c) All applications for approval of a continuing education program shall be in the form prescribed by the commissioner and shall be accompanied by an initial fee of ten (10) dollars which is deemed earned when paid and is not refundable. After review and assignment of the number of credit hours, the commissioner shall notify the provider of the additional fee of five (5) dollars per credit hour due pursuant to 806 KAR 4:010. A continuing education program is not deemed approved until all fees are paid.

(d) In order to receive approval of the commissioner for continuing education credit pursuant to KRS 304.9-295, a continuing education program shall meet the requirements of this regulation.

(2) Continuing education programs which qualify for approval for continuing education credit are those specified in KRS 304.9-295(4)(a).

(3) In order to obtain approval under subparagraphs 7, 8, and 9 of KRS

304.9-295(4)(a), a continuing education program shall meet the following requirements:

(a) The continuing education program shall contribute directly, at a professional level, to the competence of the agent or solicitor, by dealing with the following subjects:

1. Insurance, annuities and risk management;
2. Insurance laws and regulations;
3. Mathematics, statistics, and probability;
4. Economics;
5. Business law;
6. Finance;
7. Taxes;
8. Business environment, management, or organization; or
9. Areas other than those listed above if the agent or solicitor can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this regulation whether a particular subject qualifies under this paragraph rests within the sole discretion of the commissioner.

(b) However, continuing education programs on the following subjects shall not qualify for continuing education credit:

1. Any course used to prepare for taking an insurance agent or solicitor license examination;
2. Committee service of professional organizations;
3. Computer science courses;
4. Motivational or sales training courses; and
5. Any program not in accordance with this regulation.

(c) Program development and presentation:

1. The continuing education program shall have substantial intellectual or practical content to enhance and improve the knowledge and professional competence of participants;
2. The program shall be developed by persons who are qualified in the subject matter and instructional design;
3. The program content shall be current;
4. Each program shall have a written outline and study materials or texts;
5. Instructors shall meet the requirements of subsection (6) of this section;
6. The number of participants and physical facilities shall be consistent with the teaching method specified; and
7. All programs shall include some means of evaluating quality.

(d) Continuing education programs filed for approval under this subsection shall include information showing that the instructors are qualified, through training or experience, to instruct the continuing education program competently. The commissioner may disapprove or withdraw approval of a continuing education program if an instructor does not meet the qualifications of this paragraph or has committed any of the acts prohibited by KRS 304.9-440.

(5) Correspondence courses shall be subject to the following:

(a) A correspondence course shall require successful completion of a written examination;

(b) A specific correspondence course shall be used for continuing education credit only once every continuing education biennium;

(c) Agents and solicitors are limited to a maximum of twelve (12) credit hours for correspondence courses per continuing education biennium; and

(d) A correspondence course shall not be approved for continuing education credit of more than twelve (12) hours.

(6) The commissioner may withdraw approval of a continuing education program for any of the following reasons:

(a) The continuing education program teaching methods or program content no longer meet the requirements of KRS 304.9-295 or this regulation or have been materially changed without filing with or approval by the commissioner;

(b) The continuing education program provider has certified to the commissioner that an agent or solicitor has satisfactorily completed the program when, in fact, the agent or solicitor has not done so;

(c) The continuing education program provider fails to certify to the commissioner that an agent or solicitor has satisfactorily completed the program when, in fact, the agent or solicitor has done so; or

(d) There is other good and just cause to withdraw approval of a continuing education program.

(7) Providers shall renew approval of continuing education programs at the end of each continuing education biennium. At least sixty (60) days prior to the end of each continuing education biennium, the commissioner shall mail or deliver to each provider renewal information. Providers shall file renewal information with and pay the renewal fee specified in 806 KAR 4:010 to the commissioner no later than the end of the continuing education biennium.

Section 3. Measurement of Credit. Continuing education programs shall be credited for continuing education purposes in full hours, as the commissioner deems appropriate. In order to have assigned to it one hour of continuing education credit, each hourly period of a continuing education program must include at least fifty (50) minutes of continuous instruction or participation. For the purposes of this section, a one day continuing education program shall be granted eight (8) hours credit if the total elapsed time is approximately eight (8) hours and the program includes at least 400 minutes of classroom instruction or participation.

Section 4. Proof of Completion. (1) Upon completion of a continuing education program, the provider shall certify to the commissioner the names of all agents or solicitors who satisfactorily completed the continuing education program. The certification required by this section shall be in the form prescribed by the commissioner.

(2) The certificate of attendance shall be completed in triplicate for each agent or solicitor attending. The original shall be mailed to the department within thirty (30) days after the continuing education course is completed. The department shall accept only originals. The provider of the continuing education program shall furnish to the agent or solicitor attending the program a copy of the certificate and the agent or solicitor shall retain a copy of the certificate for at least three (3) years. The provider of the continuing education program shall retain a copy of the certificate for at least three (3) years. Providers of continuing education programs, agents, and solicitors, shall make available to the commissioner or his designee copies of

certificates upon the request of the commissioner.

Section 5. Carry Forward of Excess Credit Hours. Agents or solicitors may carry forward credit hours in excess of twenty-four (24) hours from a previous continuing education biennium. The number of excess credit hours carried forward pursuant to this section shall be limited to twelve (12).

Section 6. Lists of Approved Continuing Education Programs. The commissioner shall provide, upon written request accompanied by a fee of five (5) dollars pursuant to 806 KAR 4:010, a list of all continuing education programs which the commissioner has approved and the providers of those programs.

Section 7. Cancellation and Reinstatement of Licenses. (1) The commissioner shall notify a licensee and the licensee's sponsoring agent or insurer of cancellation of license for failure to comply with continuing education requirements. The notice shall be in writing and mailed to the resident address of the licensee on file with the commissioner and if that notice is returned as undeliverable the notice shall be sent to the business address of the licensee on file with the commissioner. Notices to sponsoring agents and insurers shall be mailed to their mailing addresses on file with the commissioner.

(2) Reinstatement shall be granted only after the licensee has satisfied the continuing education requirement for which the licensee is delinquent, filed the required application or appointment for a license, and has paid the required licensing fees.

[Section 8. Severability. If any provision of this regulation or the application of this regulation to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.]

[Section 9. Effective Date. This regulation shall be come effective upon completion of its review pursuant to KRS Chapter 13A.]

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: August 12, 1991
FILED WITH LRC: August 13, 1991 at 10 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for September 23, 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 September 23, 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 (5) 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: The proposed amendment is necessary to provide for renewal of approval of continuing education programs every two years. Since insurance, like many professions, constantly changes, a renewal process is necessary to assure that continuing education programs continue to meet the requirements of the Kentucky Insurance Code and department regulations. Under the proposed amendment, at least 60 days prior to the end of each continuing education biennium, the Commissioner of Insurance will mail or deliver to each continuing education provider renewal information. In order to receive renewal of approval, the continuing education provider must file renewal information and pay the renewal fee to the commissioner no later than the end of the continuing education biennium. The proposed amendment also makes technical changes to the regulation by eliminating Sections 8 and 9. When the regulation was originally promulgated, these standard provisions were not identified as causing a problem. Since that time, a staff attorney for the Administrative Regulation Review Subcommittee has identified provisions of this type as being objectionable, so they are being eliminated.

(1) Type and number of entities affected: There are 114 providers of continuing education courses, and they have received approval for 1,031 courses. 5,206 agents are subject to the continuing education requirement.

(a) Direct and indirect costs or savings to those affected:

1. First year: Renewal of approval must occur by July 1, 1992. Providers seeking renewal of approval will be required to pay the renewal fee of $5 per hour of continuing education credit, minimum of $10, maximum of $150.

2. Continuing costs or savings: Providers seeking renewal of approval in subsequent continuing education biennia must pay the fee specified above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The proposed amendment specifies that providers must complete the renewal information sent to them by the Commissioner of Insurance and return it to the commissioner in order to receive renewal of approval.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Department of Insurance will be required to bear the expense of issuing renewal information to providers and reviewing courses for renewal of approval.

2. Continuing costs or savings: At the conclusion of each continuing education biennium, the Department of Insurance will be required to send renewal information to providers and review continuing education courses for approval.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Department of Insurance will issue renewal documentation to providers.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons

why alternatives were rejected: The alternative to the proposed amendment would be to allow continuing education courses to become outdated so that insurance agents did not receive proper training. This would be a disservice to the public and an embarrassment to Kentucky, so this amendment has been proposed.
(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 continuing education courses have varying numbers of hours of continuing education credit. Thus, a more complex course requires more review in order to determine whether approval should be renewed. However, all continuing education courses must go through the process of renewal of approval.

CABINET FOR HUMAN RESOURCES
Commission for Health Economics Control in Kentucky
(Proposed Amendment)

902 KAR 20:006. Certificate of need process.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 13A.350, 216B.040, 216B.075
NECESSITY AND FUNCTION: KRS 216B.040, and KRS 216B.075 authorize the Commission for Health Economics Control in Kentucky to promulgate administrative regulations respecting application and review procedures. This regulation sets forth the application and review procedures and requirements for batching, issuing advisory opinions, cost escalations and progress reports.

Section 1. Definitions. Except as otherwise provided, for purposes of this regulation, the following definitions shall apply:
(1) "Capital expenditure authorized" means the amount of the capital expenditure approved by the commission to implement the proposal.
(2) "Chairman" means the chairman of the Commission for Health Economics Control in Kentucky.
(3) "Cost escalation" means an increase in the capital expenditure authorized on a certificate of need which has not been obligated as prescribed in KRS 216B.015(28).
(4) "Cost overrun" means an increase in the capital expenditure authorized on a certificate of need which has been obligated without commission approval.
(5) "Public information channels" means the Office of Communications in the Cabinet for Human Resources.
(6) "Review commences" means the date of public notice of the appropriate batching cycle for the particular application after it is deemed complete.

Section 2. Criteria. In determining whether to issue or deny a certificate of need, the commission shall utilize the following criteria:
(1) Consistency with plans. To determine conformance with this criterion the applicant shall address and the commission shall consider the relationship of the proposal to the state health plan.
(2) Need and accessibility. To determine conformance with this criterion the applicant shall address and the commission shall consider:
(a) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons and other underserved groups are likely to have access to those services.
(b) The contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women and handicapped persons), particularly those needs identified in the state health plan. In this regard, the commission shall consider:
1. The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations will use the proposed services if approved; and
2. The extent to which the applicant offers alternative means, other than through admission by a physician, by which a person will have access to its services (e.g., admission through a clinic or emergency room).
(c) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.
(d) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.
(e) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. These entities may include medical or other health professions schools, multidisciplinary clinics and specialty centers.
(3) Interrelationships and linkages. To determine conformance with this criterion the applicant shall address and the commission shall consider:
(a) The relationship of the services to be provided to the existing health care system of the area in which the services are proposed to be provided.
(b) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.
(c) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.
(4) Costs, economic feasibility, and resource

availability. To determine conformance with this criterion the applicant shall address and the commission shall consider:

(a) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded or relocated.

(b) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the cost of and charges for providing health services by the person proposing the service.

(c) The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of these resources for the provision of other health services.

(d) In the case of construction or renovation projects:

1. The costs and methods of the proposed construction or renovation, including the costs and methods of energy provision; and

2. The probable impact of the construction or renovation project reviewed on the costs of providing health services by the persons proposing the construction or renovation project and on the costs and charges to the public of providing health services by other persons.

(e) The factors which affect the effect of competition on the supply of the health services being reviewed.

(f) Improvements or innovations in the financing and delivery of health services which foster competition, and serve to promote quality assurance and cost effectiveness.

(5) Quality of services. To determine conformance with this criterion the applicant shall address and the commission shall consider the quality of care provided by the applicant in the past or the qualifications of the principals who will provide the health service which would assure that quality care will be provided and any perceivable detrimental effects of the proposal on the quality of similar services in the area.

Section 3. Proposed New Use. A certificate of need shall not be required for any project which meets the applicable requirements of KRS 216B.065 and 216B.066. If a person acquires major medical equipment not located in a health facility without a certificate of need and proposes at any time to use that equipment to serve inpatients of a health care facility, the proposed new use must be reviewed unless the equipment will be used to provide services to inpatients of a health care facility only on a temporary basis in the case of an emergency, a natural disaster, a major accident, or an equipment failure. For the purposes of this section "temporary basis" means on an occasional and irregular basis or until the applicant's proposal for permanent acquisition or regular use by a health care facility is reviewed under the formal or nonsubstantive review process.

Section 4. Formal Review. (1) At least thirty (30) days prior to submitting a certificate of need application, a letter of intent shall be filed with the chairman. No letter of intent is required when an applicant proposes to alter an outstanding certificate of need. The letter of intent shall be filed on a form provided by the commission.

(2) A letter of intent is valid for a period of one (1) year. If an application is denied, a new letter of intent shall be submitted in order to resubmit the application. However, if an application is withdrawn prior to a commission decision, the same letter may be used to resubmit the same application as long as the letter of intent is not over one (1) year old.

(3) The chairman of the commission shall acknowledge receipt of the letter of intent and send appropriate forms and instruction sheets to the applicant.

(4) The original certificate of need application and four (4) copies shall be submitted to the chairman.

(5) Fifteen (15) days after receipt of the application the chairman shall acknowledge receipt in writing to the applicant and shall notify the applicant whether or not the application is complete.

(6) If the application is not complete, the notice to the applicant shall give the applicant the option of submitting the additional information or of notifying the chairman, upon receiving the request for additional information, that he elects for the application to be processed as originally submitted.

(7) Upon receipt of the requested additional information by the chairman, or upon receipt of a letter from the applicant stating that he elects for the application to be processed as originally submitted, the chairman shall declare the application to be complete and to be placed on the next appropriate public notice in accordance with the batching review cycles. In order to submit additional information to be made a part of the record after the application has been declared complete, it must be introduced at a public hearing.

(8) Applications not declared complete within a year from the date the application was received shall not be retained by the commission.

(9) The chairman shall notify the applicant of the date the application was declared complete and the date public notice has been given of the commencement of the review process. Applications must be declared complete at least six (6) working days prior to the date of public notice in order to be included in such notice.

(10) The chairman shall give written notice to affected persons of the beginning of a review. The notice shall include the schedule for the review and the period within which a public hearing may be requested by affected persons. The review notice to members of the public and third party payors shall be provided through public information channels. Notice to all other affected persons shall be by mail.

(11) No review shall take longer than ninety (90) days from the commencement of the review unless the applicant requests a deferral of action in writing and the commission agrees to a deferral.

(12) Batching review cycles shall be as follows:

TYPE OF PROPOSAL	MONTH OF PUBLIC NOTICE, NINETY (90) DAYS PRIOR TO DECISION DATE	MONTH OF COMMISSION DECISION, 3RD WEDNESDAY OF:
(a) Acute, Psychiatric, Rehab, Chemical Dependency facilities and other related components in the SHP (except Specialized Equipment and Services) such as IC/CC, Neonatal, and Surgical Services (including Freestanding Ambulatory Surgical Center) and Birthing Centers.	November, February, May, August	February, May, August November
(b) Skilled Nursing, Nursing home, Intermediate Care or Nursing Facility.	December	March
(c) Personal Care or IC MR/DD	December, March, June, September	March, June, September, December
(d) Transplantation, Magnetic Resonance Imaging, Lithotripter, Radiation Therapy, C.T. Scanner, Cardiac Catheterization, Open Heart Surgery, and new Technological Developments.	January, July	April, October
(e) Day Health Care Center, Ambulatory Care Clinic, Rehab Agency, Hospice, Home Health or Home Health/Hospice.	November, February, June, August	February, May, September, November
(f) Ambulance, NE Health Transportation, and Air Ambulance Services.	December, February, May, July, September	March, May, August, October, December
(g) All Mobile Services except those covered under Specialized Equipment and Services.	November, January, March, May, July, September	February, April, June, August, October, December

(h) Any proposals not listed above will be placed in the most appropriate cycle as determined by the commission.

(i) Any proposal granted nonsubstantive review status as specified in KRS 216B.095(3)(a) through (g), plus technical modifications (CON) will be processed in accordance with KRS 216B.095(1).

(13) The chairman of the commission shall notify the applicant by certified mail and any party to the proceeding of the commission's final action on a certificate of need application by regular mail.

(14) The written notification shall include:

(a) Verification that the criteria have been met or, if the application is inconsistent with any criteria, the reasons for approval notwithstanding the inconsistency.

(b) If the commission's action on a certificate of need application is inconsistent with the recommendation made in the hearing report, the chairman shall include a statement of the reasons for the inconsistency.

(c) Amount of capital expenditure authorized, where applicable.

(d) If the application is disapproved, the reasons for the disapproval; and

(e) Notice of appeal rights.

Section 5. Certificate of Need Hearings. (1) Notice of the date, time and location of the hearing shall be mailed to all affected persons except third party payors and members of the public at least ten (10) days before the date of the hearing. Notice to third party payors and members of the public shall be provided through public information channels.

(2) Hearing requests may be withdrawn by officially notifying the chairman in writing at least three (3) working days in advance of the scheduled hearing date. In order for a public hearing to be cancelled, all persons who requested the hearing must withdraw the hearing requests in writing.

(3) The commission shall consider requests for reconsideration no later than thirty (30) days following receipt of such requests and shall make its decision on reconsideration no later than thirty (30) days following the public hearing.

(4) The commission or its designated hearing officer may conduct a prehearing conference to resolve issues not in dispute or not requiring an evidentiary record and may issue prehearing orders which shall determine the form and the manner in which the evidentiary hearing is conducted.

(5) The commission or hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument, and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(6) After the conclusion of the hearing, the hearing officer or the commission shall prepare written findings of fact, conclusions of law and recommendations.

(7) The chairman shall transmit a copy of the findings, conclusions and recommendations to each member of the commission, the person requesting the hearing and all persons deemed parties to the proceedings.

[(8) Each party to the proceedings may file exceptions with the chairman within ten (10) days of the date of the commission's recommended hearing report.]

[(9) In addition to the requirements of KRS 216B.015(18), the record shall also include any exceptions timely filed.]

[(10) Failure to file exceptions shall not constitute a failure to exhaust administrative remedies.]

Section 6. Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (g), nonsubstantive review status will be granted to applications for technical modifications to an approved certificate of need and in emergency circumstances which, if not promptly acted upon, would pose a threat to the life, health and safety of the patients. Emergency circumstances shall include acts of God, fire, vandalism, structural or mechanical failure and other situations which pose a threat to the life, health and safety of the patients. Any applicant acting under this subsection may proceed to relieve circumstances threatening the life, health and safety of the patients, provided the commission is consulted prior to such action and the application is submitted within thirty (30) days of the occurrence of the emergency.

(2) Procedures for nonsubstantive review shall be as follows:

(a) The original certificate of need application and four (4) copies, with a request for nonsubstantive review shall be submitted to the chairman.

(b) Within fifteen (15) days of the receipt of the application, the chairman shall acknowledge receipt of the application in writing to the applicant, and shall notify the applicant whether or not the application is complete.

(c) If the application is not complete, the notice to the applicant shall give the applicant the option of submitting the additional information or of notifying the chairman, upon receipt of the request for additional information, that he elects for the application to be processed as originally submitted.

(d) Upon receipt of the requested additional information by the chairman, or upon receipt of a letter from the applicant that he elects for the application to be processed as originally submitted, the chairman shall declare the application to be deemed complete.

(e) The chairman's notice to grant or deny nonsubstantive review status shall be provided to the applicant and notice of the decision to conduct a nonsubstantive review shall be provided to affected persons by mail no later than the tenth day after the application has been deemed complete. The notice of the review to members of the public and third party payors shall be provided through public information channels.

(f) If a certificate of need is denied following a nonsubstantive review and a formal review is requested, no letter of intent shall be required, but the filing of the request for nonsubstantive review shall be considered compliance with any requirement for a letter of intent.

Section 7. Conditions Relative to a Certificate of Need. (1) No person shall transfer from one legal applicant to another an approved certificate of need for the establishment of a new health facility or the replacement of an existing facility without

first obtaining a certificate of need. All other certificates of need may be transferred to the new owner of the facility or service if a change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) A certificate of need approved for establishment of a new health facility or the replacement of an existing facility and is issued only for the location stated on the certificate.

(3) A certificate of need holder shall notify the commission of any reduction or termination of a health service or a reduction in bed capacity for an approved project no later than the first progress report after the change has been determined.

(4) Cost escalations or cost overruns.

(a) A certificate of need shall not be required for an escalation or cost overrun of the capital expenditure authorized provided that the scope of the project as approved is not altered and the amount of the escalation or overrun does not exceed:

1. Twenty (20) percent of the capital expenditure authorized or $100,000, whichever is greater, in the case of projects with a capital expenditure of less than $500,000;

2. Twenty (20) percent of the capital expenditure authorized, in the case of projects with a capital expenditure of $500,000 or greater, but less than $5,000,000;

3. Ten (10) percent of the amount in excess of $5,000,000, plus $1,000,000, in the case of projects with a capital expenditure of $5,000,000 or greater, but less than $25,000,000;

4. Five (5) percent of the amount in excess of $25,000,000, plus $3,000,000, in the case of projects with a capital expenditure of $25,000,000 or greater, but less than $50,000,000; or

5. Two (2) percent of the amount in excess of $50,000,000, plus $4,250,000 in the case of projects with a capital expenditure of $50,000,000 or greater.

(b) The certificate of need holder shall submit, to the chairman, a standardized form approved by the commission which includes the amount of the escalation or overrun, the factors pertaining to the escalation or overrun, and information to assure that the scope of the project as approved originally by the commission has not changed. The chairman shall review the form submitted and within thirty (30) days of receipt shall notify the certificate of need holder whether the proposed escalation or overrun meets the requirements of subsection (a) of this section.

(c) The certificate of need holder shall submit to the chairman any additional certificate of need application fee required by the increased capital expenditure pursuant to the requirements of 902 KAR 20:135 with the prescribed form.

(d) A certificate of need holder who obligates an amount exceeding the capital expenditure authorized without receiving an approved escalation per paragraph (b) of this subsection is subject to the appropriate penalty per KRS 216B.990.

Section 8. Progress Reports. (1) As one of the conditions of a certificate of need, the certificate of need holder shall submit a report of progress every six (6) months or more frequently if required by the commission.

(2) All certificate of need holders shall be notified in writing that certificates of need, or portions thereof, will be revoked by the commission if satisfactory evidence towards the implementation of a proposal is not made within the time tables and standards set set by this regulation. The applicant shall provide the necessary evidence on forms provided by the chairman. The commission may revoke the certificate of need, or portions thereof, for failure to submit progress reports as required.

(3) Procedures for submission of progress reports.

(a) The chairman shall send notice to the certificate of need holder specifying the date each progress report is due. The first six (6) month report shall be due six (6) months from the date the certificate was issued.

(b) The holder shall send one (1) copy of the six (6) month progress report form to the commission.

(4) Criteria for review of progress.

(a) The first six (6) month progress report shall include the following:

1. On all projects for purchase of equipment only, a copy of the purchase order.

2. For all construction projects, a copy of the deed or the option to acquire the site.

(b) Within one (1) year after a certificate of need is issued, the second six (6) month report shall include documentation that:

1. All projects for conversion of beds are complete;

2. All projects for addition of new services, not involving construction, are complete;

3. Schematic plans have been submitted to the Department of Housing, Buildings and Construction and the Cabinet for Human Resources for construction projects. The second six (6) month report for all construction projects shall also include:

a. Schedule for project completion with projected dates;

b. Evidence of preliminary negotiation with financial agent;

c. Evidence of preliminary negotiation with contractors.

(c) Within eighteen (18) months after a certificate of need has been issued, the third six (6) month report shall include the following information regarding all construction projects:

1. Copy of deed or lease of land;

2. Evidence that holder has sufficient capital obligated to complete the project. If the source of capital is to be a financing agreement, the holder must have evidence that a final enforceable agreement or note has been executed;

3. Documentation that final plans have been submitted to the Department of Housing, Buildings and Construction and the Cabinet for Human Resources;

4. Enforceable contract with construction contractor;

(d) On all projects for purchase of equipment only, evidence that equipment has been installed.

(e) Within two (2) years after a certificate of need has been issued, the fourth six (6) month report shall verify that all construction projects have the walls and roof up and plumbing roughed in.

(f) Within six (6) months following completion of a project for which a certificate of need has been issued, for a specific service area, all certificate holders shall submit documentation

that services are being provided to all of the licensed service area.

Section 9. Commission Notification for Exemption. Before any existing health facility proceeds to provide health services on site pursuant to KRS 216B.020, the facility shall notify the commission, in writing, of the intent to offer the services prior to implementation.

Section 10. Advisory Opinions. The process for seeking an advisory opinion from the commission shall be as follows:

(1) Requests shall be filed, in writing, on a form prescribed by the commission.

(2) The commission may require verification of information and may request additional documentation, if necessary.

(3) Within thirty (30) days of receipt of the completed request for determination, the commission shall notify all affected persons, in writing, of the commission's final determination.

(4) A public hearing on a determination decision may be requested by writing within thirty (30) days of notice of the commission's decision.

Section 11. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

EDWARD A. WILSON, Chairman
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 9, 1991
FILED WITH LRC: August 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 18, 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: Edward A. Wilson

(1) Type and number of entities affected: Applicants for certificates of need for health facilities. Since the number of proposals varies between fiscal years, it is not possible to accurately estimate the number of affected parties.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs for applicants.

2. Continuing costs or savings: There will be no continuing savings for applicants.

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: None required.

(2) Effects on the promulgating administrative body: There will be minimal decreases in workload.

(a) Direct and indirect costs or savings: It is not possible to accurately estimate the effects on savings since the number of proposals varies between fiscal years.

1. First year: The effects on savings will be experienced the first year of implementation of this regulation and thereafter.

2. Continuing costs or savings: The savings will be continuing; however, an accurate estimate of savings is not possible since the number of proposals varies between fiscal years.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: None required.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.

(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. In order to be fair and unbiased, the certificate of need process is the same for all applicants.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:018. Operation and services; renal dialysis facilities.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.040, 216B.105(3)

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Cabinet for Human Resources [Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides for the licensure requirements for the operation and services of renal dialysis facilities.

[Section 1. Scope of Operation and Services. Renal dialysis facilities are freestanding or hospital based, public or private facilities that are established, equipped and operated to provide outpatient dialysis and related services to end stage renal disease patients.]

Section 1. [2.] Definitions. As used in this regulation, the following terms shall have the meanings set forth below:

(1) "Administrator" means a person who holds a baccalaureate degree or its equivalent and has at least one (1) year of experience in an ESRD unit.

(2) "Anti-HBs" means the antibody to the hepatitis B virus. Persons who are anti-HBs positive are immune to infection by the hepatitis B virus. Immunity may be conferred either by vaccination or infection.

(3) "Qualified dietician" means a person who:

(a) Is registered by the American Dietetic Association and has at least one (1) year of experience in clinical nutrition; or

(b) Has a baccalaureate or advanced degree

with major studies in food and nutrition or dietetics and has at least one (1) year of experience in clinical nutrition.

(4) "End stage renal disease (ESRD)" means that stage of renal impairment which is virtually always irreversible and permanent, and requires dialysis or kidney transplantation to ameliorate uremic symptoms and maintain life.

(5) "Facility" means renal dialysis facility.

(6) "HBsAg" means the hepatitis B antigen. This antigen is present in the blood of persons who are infected by the hepatitis B virus. Patients who test HBsAg positive are potential sources of infection (carriers).

(7) "HBV negative" means the absence of the hepatitis B virus, the hepatitis B antigen, and the antibody to the hepatitis B virus. Individuals who are HBV negative are susceptible to infection by the hepatitis B virus.

(8) "Medical director" means a licensed physician who is a board eligible or certified nephrologist, internist, or pediatrician with at least twelve (12) months experience or training in the case of ESRD patients.

(9) "Qualified medical record practitioner" means a person who has graduated from a program for medical record administrators or technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as a registered records administrator or an accredited record technician by the American Medical Record Association.

(10) "Qualified registered nurse" means a nurse who is licensed to engage in registered nursing practice pursuant to KRS 314.041; and

(a) Has at least twelve (12) months experience in clinical nursing and an additional six (6) months of experience in nursing care of ESRD patients; or

(b) Has eighteen (18) months experience in nursing care of ESRD patients. At least three (3) months of the total eighteen (18) months required ESRD experience shall be in training patients in self-care if the nurse is responsible for self-care dialysis training.

(11) "Qualified social worker" means a social worker licensed to practice in Kentucky, who has completed a course of study with specialization in clinical practice at, and holds a masters degree from, a graduate school of social work accredited by the Council on Social Work Education.

(12) "Renal dialysis center" means a hospital unit which is approved to furnish the full spectrum of diagnostic, therapeutic (including inpatient dialysis furnished directly or under arrangement), and rehabilitative services, except renal transportation, required for the care of ESRD dialysis patients.

(13) "Renal transplantation center" means a hospital unit which is approved to furnish directly, transplantation and other medical and surgical specialty services required for the care of the ESRD transplant patients, including inpatient dialysis furnished directly or under arrangement. A renal transplantation center may also be a renal dialysis center.

(14) "Self-care dialysis training" means a program which trains ESRD patients or their helpers, or both, to perform dialysis.

Section 2. Scope of Operation and Services. Renal dialysis facilities are freestanding or hospital based, public or private facilities that are established, equipped and operated to provide outpatient dialysis and related services to end stage renal disease patients.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the operation of the facility and for compliance with federal, state, and local laws and regulations pertaining to the operation of the facility.

(b) The licensee shall develop written policies for the administration and operation of the facility. Policies shall include:

1. Personnel practices and procedures;

2. Job descriptions for each level of personnel including authority and responsibilities of each classification;

3. Qualifications for medical staff membership;

4. Medical care practices and procedures;

5. Prevention and control of hepatitis, peritonitis and other infections including appropriate procedures for surveillance and reporting of infections, housekeeping, handling and disposal of waste and contaminants, and sterilization and disinfection, including the sterilization and maintenance of equipment; and

6. Procedures to be followed in medical and nonmedical emergencies, including fires, natural disasters and equipment failures.

(2) Administrator. The facility shall have an administrator who is responsible for the management of the facility including enforcement of written policies and protection of patient's personal and property rights.

(3) The facility shall have a permanent site of operation and maintain regularly scheduled hours during which dialysis services are available.

(4) Affiliation agreements. A renal dialysis facility shall have affiliation agreements or arrangements in writing with renal dialysis centers and renal transplantation centers which provide the following:

(a) In the case of renal transplantation centers agreements shall provide for medical and surgical specialty services required for the care of ESRD patients, including transplantation and inpatient dialysis furnished directly or under arrangement; and

(b) In the case of renal dialysis centers affiliation agreements shall provide the basis for effective working relationships under which inpatient hospital care or other hospital services are available promptly to the dialysis facility's patients when needed. The agreements between renal dialysis facilities and renal dialysis centers shall provide in writing that:

1. Timely transfer or referral of patients between the renal dialysis facility and the renal dialysis center shall be effected whenever it is determined to be medically appropriate by the physicians at the facility and the center.

2. Patient care plans and medical and other information necessary or useful in the care and treatment of patients transferred or referred between facilities shall be interchanged within one (1) working day of the transfer or referral.

(5) Personnel. An adequate number of personnel shall be present to meet the needs of patients including medical and nonmedical emergencies.

(a) Medical staff. The facility shall have an organized medical staff which shall be responsible for the quality of all medical care provided to patients in the facility and for the

ethical and professional practices of its staff.

(b) There shall be a medical director responsible for supervising the staff of the facility. The medical director shall be a full or part-time staff member and in his absence a similarly qualified medical staff member shall be either in the unit or immediately available in the community whenever patients are being dialyzed.

(c) The facility shall employ at least one (1) full-time qualified registered nurse who is responsible for nursing services. Whenever patients are undergoing dialysis, a nurse experienced in rendering ESRD care shall be on duty to oversee patient care.

(d) The facility shall employ or have contracts for services with the following ancillary personnel:

1. A qualified dietician;
2. A qualified medical records practitioner;
3. A qualified social worker.

(6) Incident and accident reports. The facility shall report all incidents or accidents that present a direct or immediate relationship to the health, safety or security of any patient or staff member. Examples of the type of incidents to be reported include but are not limited to the following: any incident requiring emergency treatment or hospitalization, cleaning agents left in a machine and used on a patient, contamination of the water supply, development of infection or communicable disease, etc. The reports shall be submitted to the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation, 4th Floor, East, 275 East Main Street, Frankfort, Kentucky 40621 within three (3) days of the occurrence on the forms provided by the cabinet. A copy of the report shall be retained at the facility and shall be made available for inspection by the cabinet.

Section 4. Services. (1) Each patient is admitted on the medical authority of, and is under the supervision of, the medical director. When absent from the facility the medical director shall designate a qualified physician to be responsible for admission and supervision of patients.

(2) Laboratory services. All renal dialysis facilities shall have access to laboratory facilities and services (other than the specialty of tissue pathology and histocompatibility testing) to meet the needs of the ESRD patients. All services shall be performed either by a laboratory in a licensed hospital or by a laboratory licensed by the Department for Human Resources pursuant to KRS Chapter 333 and regulations promulgated thereunder.

(3) Medical records.

(a) A current and complete medical record shall be maintained for each patient.

(b) Organization. The supervisor of medical records shall be responsible for the proper documentation, completion and preservation of all the facility's medical records.

(c) Indexing. Medical records shall be properly indexed and systematically filed.

(d) Ownership. Records of patients shall not be removed from the facility's custody except in accordance with a court order or subpoena.

(e) Confidentiality. Records of patients shall be available for inspection only to members of the professional staff, the patient, or an authorized individual acting in behalf of the patient. This shall not preclude the record being used for research or statistical investigation, providing that the patient's anonymity is protected.

(f) Content. Complete medical records shall be prepared for all patients admitted to the facility. A minimum medical record shall include at least the following information:

1. Name and address of the patient, and guardian or committee, if any;
2. Identification data (name, address, age, sex, marital status);
3. Date of admission;
4. Date of transfer to renal transplantation center if applicable;
5. Referring and attending physicians' name;
6. History and physical examination record prior to the initial treatment;
7. Treatment plans;
8. Records of special examinations, consultations, and clinical, laboratory, and x-ray services;
9. Doctor's orders, dated and signed;
10. Nurses' notes;
11. Dialysis chart including pulse, respiration and blood pressure;
12. Social evaluation and plan developed by the social worker; and
13. Orders for medication and treatment written in ink and signed by the prescribing physician.

(g) Retention of records. All medical records shall be retained for a minimum of five (5) years from the date the patient was last seen in the facility, or in the case of a minor, three (3) years after the patient reaches the legal age of majority, whichever is longest.

(4) Pharmaceutical services.

(a) The facility shall have provisions for promptly obtaining prescribed drugs and biologicals from licensed pharmacies.

(b) The facility shall provide appropriate methods and procedures for storage, control and administering of drugs and biologicals.

(c) All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical and Nurse Practice Acts. The medical record shall include a record of each dose administered including date and time of administration, type of medication, dosage, method of administration, name of physician who prescribed the medication, and name of the person who administered the medication.

(5) Social services. The qualified social worker shall be responsible for each patient's social evaluation and treatment, participating in team review of patient progress and recommending changes in treatment based on the patient's current social needs, providing casework and group work services to patients and their families, financial advice, referrals for vocational rehabilitation, and for identifying community social agencies and other resources and assisting patients and their families to utilize them.

(6) Dietetic services. The nutritional needs of each patient shall be evaluated by the attending physician and the qualified dietician. The dietician, in consultation with the attending physician, shall be responsible for assessing the nutritional and dietetic needs of each patient, recommending therapeutic diets, counseling patients and their families on

prescribed diets, and monitoring adherence and response to diets.

(7) Self-care dialysis support services. Renal dialysis facilities which offer self-care dialysis training shall make the following services available either directly, under agreement, or by arrangement with another ESRD facility upon completion of the patients' training:

(a) Monitoring the patients' home adaptation, including provisions for visits to the home or the facility;

(b) Consultation for the patient with a qualified social worker and a qualified dietician;

(c) A recordkeeping system which assures continuity of care;

(d) Installation and maintenance of dialysis equipment;

(e) Testing and appropriate treatment of the dialysis water;

(f) Ordering of supplies as needed; and

(g) Infection control (i.e., control of hepatitis and peritonitis).

Section 5. Physical Environment. (1) Building and equipment.

(a) All electrical and other equipment used in the facility shall be maintained free of defects which could be a potential hazard to patients or personnel. There shall be a program of preventive maintenance of equipment used in dialysis and related procedures in the facility.

(b) Water used for dialysis purposes shall be analyzed periodically and treated as necessary to maintain a continuous water supply that is biologically and chemically compatible with acceptable dialysis techniques. Records of test results and equipment maintenance shall be maintained at the facility.

(2) Hepatitis testing.

(a) Candidates for dialysis shall be screened for the hepatitis B surface antigen (HBsAg) and antibodies to the hepatitis B virus (Anti-HBs) within one (1) week before or at the time they enter the unit in order to determine their serologic status for surveillance purposes. All potential employees shall be screened within one (1) week prior to or within the first week of employment. Thereafter, routine serologic testing to monitor for hepatitis B infection shall be conducted in accordance with the following schedule:

TEST AND FREQUENCY

HBsAg

Serologic Status	Patients	Staff
Susceptible to infection (HBsAg and anti-HBs negative, i.e., HBV negative)	Quarterly	Quarterly
Infected (HBsAg positive)	Test both patients and staff monthly; then quarterly after two (2) consecutive positive monthly tests; if person remains positive for six (6) months then test annually	
Immune (Anti-HBs positive on two (2) consecutive-tive tests)	Not required for either patients or staff	

Anti-HBs

Serologic Status	Patients	Staff
Susceptible to infection (HBsAg and anti-HBs negative, i.e., HBV negative)	Monthly	Quarterly
Infected (HBsAg positive)	After two consecutive negative monthly tests for HBsAg, patients and staff shall have two (2) tests for Anti-HBs	
Immune (Anti-HBs positive on two (2) consecutive-tive tests)	Semiannually, if vaccinated*	Annually, if vaccinated*
	Annually, for unvaccinated patients	and staff**

*Vaccinated = three (3) doses of HB vaccine received and anti-HBs positive at a level of ten (10) sample ratio units by radioimmunoassay or positive by enzyme immunoassay.

**Unvaccinated = fewer than three (3) doses of HB vaccine.

(b) All candidates for dialysis shall be screened for alanine aminotransferase (ALT, previously SGPT) or aspartate aminotransferase (AST, previously SGOT) to determine potential non-A, non-B hepatitis infection within one (1) week before or at the time they enter the unit and monthly thereafter.

(3) Infection control.

(a) If dialysis of confirmed carriers of hepatitis is performed in the facility a unit which is adequately isolated from other units in the facility and only used for hepatitis carriers shall be used. Confirmed carriers of hepatitis may also be dialyzed in an adjacent or separate facility utilized only for hepatitis carriers, or in the patients' home.

(b) All facilities utilizing a central-batch delivery system shall provide either on the premises or through affiliation agreements sufficient individual delivery systems for the treatment of any patient requiring special dialysis solutions.

(4) Contamination prevention. The facility shall employ appropriate techniques to prevent cross contamination between the unit and adjacent hospital or public areas including, but not limited to, food service areas, laundry, disposal of solid waste and blood-contaminated equipment, and disposal of contaminants into sewage systems. Waste storage and disposal shall be carried out in accordance with applicable local laws and acceptable public health standards.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 26, 1991
FILED WITH LRC: August 5, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Department for Employment Services, 2nd Floor, Cabinet for Human Resources

Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 18, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/Ralph Von Derau, David Crane

(1) Type and number of entities affected: 23

(a) Direct and indirect costs or savings to those affected: There should be no additional cost to those affected.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: The costs should be minimal.

(a) Direct and indirect costs or savings: $500 for printing new regulation.

1. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with KRS Chapter 13A drafting requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:036. Operation and services; personal care homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.040, 216B.105[(3)]

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105[(3)] mandate that the Cabinet for Human Resources [Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of personal care homes and the services to be provided by personal care homes.

[Section 1. Scope of Operations and Services. Personal care homes are establishments with permanent facilities including resident beds. Services provided include continuous supervision of residents, basic health and health-related services, personal care services, residential care services and social and recreational activities. Residents in a personal care home must be sixteen (16) years of age or older and be ambulatory or mobile nonambulatory, and are able to manage most of the activities of daily living. Persons who are nonambulatory or nonmobile shall not be eligible for residence in a personal care home.]

Section 1. [2.] Definitions. (1) "Activities of daily living" means activities of self-help (example: being able to feed, bathe and/or dress oneself), communication (example: being able to place phone calls, write letters and understanding instructions), and socialization (example: being able to shop, being considerate of others, working with others and participating in activities).

(2) "Activities services" means social and recreation opportunities to stimulate physical and mental abilities, encourage and develop a sense of usefulness and self respect and encourage participation in a variety of activities.

(3) "Administrator" means a person who:

(a) Has sufficient education to: maintain adequate records; submit reports requested by the board; and interpret any written material related to all phases of facility operation and resident's care. The administrator must: be literate; be a high school graduate or have passed the General Education Development Test; be twenty-one (21) years of age or older; or

(b) Is licensed as a nursing home administrator as provided by KRS 216A.080.

(4) "Ambulatory" means able to walk without assistance.

(5) "Board" means the Commission for Health Economics Control in Kentucky [Health Facilities and Health Services Certificate of Need and Licensure Board].

(6) "License" means an authorization issued by the Certificate of Need and Licensure Board for the purpose of operating a personal care home and offering personal care services.

(7) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place, and self exit the building, with the use of a device such as a walker, crutches, or a wheelchair and capable of independent bed-to-chair transfer or bed-to-chair transfer with minimal assistance.

(8) "Nonambulatory" means unable to walk without assistance.

(9) "Nonmobile" means unable to move from place to place.

(10) "Qualified dietician or nutritionist" means a person who:

(a) Has a Bachelor of Science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) Has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) Has a Bachelor of Science degree in home economics and three (3) years of work experience with a registered dietician.

(11) "Personal care" means services to help residents to achieve and maintain good personal hygiene including but not limited to: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, washing, grooming and cutting of hair.

(12) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(13) "Residential care" means services which include but are not limited to: room accommodations, housekeeping and maintenance services, dietary services and laundering of resident's clothing and bed linens.

(14) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 2. Scope of Operations and Services. Personal care homes are establishments with permanent facilities including resident beds. Services provided include continuous supervision of residents, basic health and health-related services, personal care services, residential care services and social and recreational activities. Residents in a personal care home must be sixteen (16) years of age or older and be ambulatory or mobile nonambulatory, and are able to manage most of the activities of daily living. Persons who are nonambulatory or nonmobile shall not be eligible for residence in a personal care home.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the operation of the personal care home and for compliance with federal, state and local laws and regulations pertaining to the operation of the home.

(b) The licensee shall establish policies for the administration and operation of the service.

(2) Administrator. All personal care facilities shall have an administrator who shall be responsible for the operation of the facility and shall delegate such responsibility in his or her absence.

(3) Admission.

(a) Personal care homes shall admit only persons who are sixteen (16) years of age or older and who are ambulatory or mobile nonambulatory and whose care needs do not exceed the capability of the home. Persons who are nonambulatory or nonmobile shall not be eligible for admission to a personal care home.

(b) No personal care home may care or be responsible for the care of more residents than the capacity indicated on the license, regardless of where housed.

(c) Upon admission the resident and a responsible member of his family or committee shall be informed in writing of the established policies of the home to include but not be limited to fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) Upon admission each resident shall have a complete medical evaluation including medical history, physical examination and diagnosis (may be copy of discharge summary or health and physical report from physician, hospital or other health care facility if done within fourteen (14) days prior to admission).

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Adult and child protection. Personal care homes shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(6) Transfer procedures and agreements.

(a) Personal care homes shall have written transfer procedures and agreements for the transfer of residents to other health care facilities which can provide a level of inpatient care not provided by the personal care home. Any facility which does not have a transfer agreement in effect but has attempted in good faith to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) The administrator shall initiate transfer through the resident's physician, and/or appropriate agencies when the resident's condition is not within the scope of services of a personal care home.

(c) In the event of transfer to another health care facility a current summary of the resident's medical record shall accompany the resident. When a transfer is to another level of care within the same facility a copy of the resident's record or current summary thereof shall accompany the resident.

(7) Tuberculosis Testing. All employees and residents shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(8) Personnel.

(a) Current employee records shall be maintained and shall include a record of each employee's training and experience, evidence of current licensure, registration or certification where required by law, health records and evaluation of performance, along with employee's name, address and social security number.

(b) All employees must be of an age in conformity with state laws.

(c) Any employee contracting an infectious disease shall not appear at work until the infectious disease can no longer be transmitted.

(d) All dietary employees must wear hairnets.

(e) In-service training. All personal care home employees shall receive in-service training to correspond with the duties of their respective jobs. Documentation of in-service training shall be maintained in the employee's record and shall include: who gave the training, date and period of time training was given and a summary of what the training consisted of. In-service training shall include but not be limited to the following:

1. Policies of the facility in regard to the performance of their duties;

2. Services provided by the facility;
3. Recordkeeping procedures;
4. Procedures for the reporting of cases of adult and child abuse, neglect or exploitation to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335;
5. Patient rights as provided for in KRS 216.510 to 216.525;
6. Methods of assisting patients to achieve maximum abilities in activities of daily living;
7. Procedures for the proper application of physical restraints;
8. Procedures for maintaining a clean, healthful and pleasant environment;
9. The aging process;
10. The emotional problems of illness;
11. Use of medication; and
12. Therapeutic diets.

(f) Staffing requirements.

1. The number of personnel required shall be based on: the number of patients; amount and kind of personal care, supervision, and program needed to meet the needs of the residents as determined by the definitions of care and services required in this regulation.

2. If the staff/resident ratio does not meet the needs of the residents, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. The administrator shall designate a person for each of the following areas who will be primarily responsible for the coordination and provisions of services (personnel may be required to perform combined duties):

a. Recordkeeping;
b. Basic health and health related services; and
c. Activity services.

4. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and who shall be on duty a minimum of thirty-five (35) hours each week.

5. One (1) attendant shall be awake and on duty on each floor in the facility at all times.

(9) Medical records. The person in charge of medical records shall assure that a complete medical record shall be kept for each resident with all entries current, dated and signed. Entries should be made in ink, ballpoint, or typed. Each record shall include the following:

(a) Identification information, including:

1. Resident's name;
2. Social Security, Medicare and Medical Assistance identification number (if appropriate);
3. Marital status;
4. Birthdate;
5. Age;
6. Sex;
7. Home address;
8. Religion and personal clergyman, if any (with consent of resident);
9. Attending physician, dentist and podiatrist, if any; address and phone number for each one;
10. Next of kin and/or responsible person, address and telephone number;
11. Date of admission and discharge;
12. In the event of transfer, a copy of the summary of resident's records; and
13. Monthly recording of the resident's weight.

(b) If admitted from another facility a discharge summary or transfer summary.

(c) Admitting medical evaluation.

(d) Physician's report on annual medical evaluation of the resident.

(e) Physician progress notes indicating changes in resident's condition, at time of each visit by the physician and consultant.

(f) Physician orders for medication or therapeutic services.

(g) Nurses' or staff notes indicating changes in resident's condition as they occur.

(h) Reports of accidents or acute illnesses of any resident.

(i) Reports of social services, dental, laboratory, x-ray and special reports of consultants or therapists when the resident receives these services.

(j) Medication and treatment sheets including all medications, treatments and special procedures performed indicating date and time. Entries shall be initialed by the personnel rendering treatment or administering medication.

(k) Reports of the use of physical restraints, the procedures used, and the checks and releases of physical restraints.

(l) A record of resident's discharge destination.

(10) Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years, or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Basic health and health related services. All personal care homes shall provide basic health and health related services including: continuous supervision and monitoring of the resident to assure that the resident's health care needs are being met, supervision of self administration of medications, storage and control of medications, when necessary, and making arrangements for obtaining therapeutic services ordered by the resident's physician which are not available in the facility. All personal care homes shall meet the following requirements relating to the provision of basic health and health related services:

(a) The person in charge of the facility shall be responsible for obtaining medical care by a licensed physician promptly in cases of accident or acute illness of any resident. Such instances shall be recorded in the resident's medical record.

(b) Medications or therapeutic services shall not be administered or provided to any resident except on the order of a licensed physician. Administration of all medications and provisions of therapeutic services shall be recorded in the resident's medical record.

(c) If orders are received by telephone from a physician, the order shall be recorded on the individual's medical record and signed by the physician within fourteen (14) days.

(d) A written report of any incident or accident involving a resident (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator, and any staff member who may have been witness to the incident. The report shall be filed in an incident file.

(e) Controlled substances. No home shall keep

any controlled substances or other habit forming drugs, hypodermic needles, or syringes except under the specific direction of a physician. Controlled substances shall be kept under double lock (i.e., in a locked box in a locked cabinet). There shall be a controlled substances bound record book with numbered pages, in which is recorded the name of the resident; the date, time, kind, dosage, and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed Schedule II controlled substances count daily, and Schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the resident shall be destroyed in accordance with KRS 218A.230, or CFR 21-1307.21, or sent by registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

(f) All medicines must be plainly labeled with the resident's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. All medicines kept by the home shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration must be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use must be stored separately from those administered by mouth and injection. Provisions must also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with existing federal and state laws and regulations.

(g) If a resident manifests persistent behavior that may require psychiatric treatment, the resident's physician shall be notified in order to evaluate and direct the resident's care. If the resident's condition does not improve enough for his continued stay in a personal care facility, the physician shall initiate transfer of the resident to an appropriate facility as soon as possible.

(h) Use of restraints or protective devices. No form of restraints or protective devices shall be used except under written orders of the attending physician.

1. Protective devices. Protective devices may be used to protect the resident from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the resident the greatest possible degree of mobility. In no case shall a locking device be used.

2. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the resident's record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

3. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

(i) Special purpose areas for the protection or confinement of a resident shall not be permitted unless approved in writing by the Division of Licensure and Regulation of the Cabinet of Human Resources with specification of use of the area.

(j) Each resident shall have an annual medical evaluation by a physician. The results of this evaluation shall be recorded in the resident's medical record.

(k) Communicable diseases.

1. No personal care home shall knowingly admit a person suffering from a communicable disease which is reportable to the health department, except a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease; provided, however, that a "facility" may admit persons having Acquired Immune Deficiency Syndrome (AIDS) provided that the following conditions are met:

a. Staff of facility have completed a training program approved by the cabinet.

b. The facility has developed strict written procedures and protocols for staff to follow in order to avoid exposure to blood or body fluids of the AIDS patient; and to follow if such an exposure occurs.

c. The facility must apprise the public and the residents of the facility, that AIDS patients are admissible to that facility; but identifying information on AIDS patients shall not be disclosed except as provided by law or regulation of the Cabinet for Human Resources.

2. If, after admission, a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the resident with the communicable disease and the other residents.

(2) Residential care services. All personal care homes shall provide residential care services to all residents including: room accommodations, housekeeping and maintenance services, and dietary services. All personal care homes shall meet the following requirements relating to the provisions of residential care services:

(a) Room accommodations.

1. Each resident shall be provided a bed equipped with substantial spring, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the residents comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever

necessary. Beds occupied by residents shall be placed so that no resident may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The home shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors and a night light.

3. Residents shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for residents.

5. Residents may have personal items and furniture when it is physically feasible.

(b) Housekeeping and maintenance services.

1. The home shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen should be on hand at all times. Soiled clothing and linens shall receive immediate attention and should not be allowed to accumulate. Clothing or bedding used by one (1) resident shall not be used by another until it has been laundered or dry cleaned.

3. Laundering of resident's normal personal clothing and bed linens. Resident's personal clothing and bed linens shall be laundered by the home as often as is necessary. Resident's personal clothing shall be laundered by the home unless the resident or the resident's family accepts this responsibility. Residents capable of laundering their own personal clothing and wishing to do so may, instead, be provided the facilities to do so. Resident's personal clothing laundered by the facility shall be marked to identify the resident-owner and returned to the correct resident.

4. Safety. The home shall take appropriate precautions to insure safety of residents, visitors and employees.

5. Maintenance. The premises shall be well kept and in good repair. Requirements shall include but not be limited to:

a. The facility shall insure that the grounds are well kept and the exterior of the building and including the sidewalk, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. Care shall be taken to use the least toxic and least flammable effective insecticides and rodenticides. The compounds shall be stored under lock.

(c) Dietary services.

1. Dining area. A dining area shall be available for the residents.

2. Therapeutic diets. If the facility provides therapeutic diets, and the designated person responsible for food services is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

3. Menu planning.

a. Menus shall be planned in writing and rotated to avoid repetition. Nutrition needs of residents shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and menus shall be kept on file for thirty (30) days.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all residents. Adjustments shall be made when medically contraindicated.

d. Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be attractively served at the proper temperatures and in a form to meet individual needs. A file of tested recipes, adjusted to appropriate yield, shall be maintained. Food shall be cut, chopped, or ground to meet individual needs. If a resident refuses food served, substitutes shall be offered.

e. All opened containers or leftover food items shall be covered and dated when refrigerated.

f. Ice water must be readily available to the residents at all times.

5. Sanitation. Personal care homes shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(3) Personal care services. All personal care homes shall provide services to assist residents to achieve and maintain good personal hygiene including the level of assistance necessary with:

(a) Washing and bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with washing and bathing, the facility shall provide soap, clean towels, and wash cloths for each resident. Toilet articles such as towels, brushes and combs shall not be used in common.

(b) Shaving.

(c) Cleaning and trimming of fingernails and toenails.

(d) Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

(e) Washing, grooming, and cutting of hair.

(4) Activity services.

(a) All personal care homes shall provide social and recreational activities to: stimulate physical and mental abilities to the fullest extent; encourage and develop a sense of usefulness and self respect; prevent, inhibit or correct the development of symptoms of physical and mental regression due to illness or old age, be of sufficient variety that they meet the needs of the various types of residents in the home.

(b) All personal care homes shall meet the following requirements relating to the provision of activity services:

1. Staff. A person designated by the administrator shall be responsible for the activity program. (Volunteer groups may be enlisted to assist with carrying out the activities program.)

2. There shall be a planned activity period each day. The schedule shall be current and posted.

3. The program shall be planned for group and individual activities, both within and outside of the facility.

4. The person responsible for activities shall maintain a current list of residents on which precautions are noted regarding a resident's condition that might restrict or modify his participation in the program.

5. A living or recreation room and outdoor recreational space shall be provided for residents and their guests.

6. The facility shall provide supplies and equipment for the activities program.

7. Reading materials, radios, games and TV sets shall be provided for the residents.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 26, 1991
FILED WITH LRC: August 5, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Department for Employment Services, 2nd Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 18, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/Ralph Von Derau, David Crane

(1) Type and number of entities affected: 202

(a) Direct and indirect costs or savings to those affected: There should be no additional cost to those affected.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: The costs should be minimal.

(a) Direct and indirect costs or savings: $500 for printing new regulation.

1. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with KRS Chapter 13A drafting requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:041. Operation and services; family care homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.040[(2)], 216B.105

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources [Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of family care homes.

[Section 1. Scope of Operations and Services. Family care homes are operated and maintained to provide twenty-four (24) hour supervision and personal care services in residential accommodations for two (2) or three (3) individuals who are not related within the third degree of consanguinity to the licensee,are at least eighteen (18) years of age, and who because of impaired capacity for self care, elect to have or require a protective environment but do not have an illness, injury, or disability for which constant medical care or skilled nursing services are required. Residents must be ambulatory or mobile nonambulatory and able to manage most of the activities of daily living.]

Section 1. [2.] Definitions. (1) "Ambulatory" means able to walk without assistance.

(2) "Board" means the Commission for Health Economics Control in Kentucky [Health Facilities and Health Services Certificate of Need and Licensure Board].

(3) "Home" means a family care home.

(4) "Impaired capacity for self care" means mental or physical limitation which decreases the ability to function in a normal adult manner and requires supervision, assistance, or the use

of prescription medicines to normalize daily living.

(5) "Licensee" means the operator of the family care home.

(6) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place, and self exit the building, with the use of a device such as a walker, crutches, or wheelchair and capable of independent bed-to-chair transfer.

(7) "Protective environment" means an environment in which basic health care needs, personal care needs, nutritional needs and safety are insured for the resident who is not capable of providing these services in an effective manner.

(8) "Resident" means any person who is admitted to a family care home for the purpose of receiving personal care and assistance.

Section 2. Scope of Operations and Services. Family care homes are operated and maintained to provide twenty-four (24) hour supervision and personal care services in residential accommodations for two (2) or three (3) individuals who are not related within the third degree of consanguinity to the licensee, are at least eighteen (18) years of age, and who because of impaired capacity for self care, elect to have or require a protective environment but do not have an illness, injury, or disability for which constant medical care or skilled nursing services are required. Residents must be ambulatory or mobile nonambulatory and able to manage most of the activities of daily living.

Section 3. Operation and Management. (1) The licensee shall be legally responsible for the operation of the home and for compliance with all federal, state and local laws and regulations pertaining to the operation of the home.

(2) The licensee shall provide twenty-four (24) hour supervision and assistance to the residents and shall be a mature literate adult, at least eighteen (18) years of age, who has knowledge and understanding of adults who require supervision and personal care services.

(3) The licensee shall be the person directly responsible for the twenty-four (24) hour daily operation of the home or for delegating that responsibility to another similarly qualified individual when a temporary absence is necessary. The name of that individual to whom the responsibility may be designated shall be in writing and provided to the agents of the board inspecting the home.

(4) No employee of the home contracting an infectious disease shall appear for work until the infectious disease can no longer be transmitted.

(5) The licensee shall attend at least one (1) training program for family care home operators per year when offered or approved by the Cabinet for Human Resources.

(6) The home shall have no more than three (3) persons residing in the home who are not related to the operator within the third degree of consanguinity.

(7) The licensee shall provide opportunities for the residents to become involved in community activities and activities within the home. Residents in cooperation with the licensee and family shall be allowed to use areas of the home, other than their bedroom, such as living rooms, kitchen, dining areas, and recreation areas for entertainment, recreation, and visitation.

(8) The licensee shall maintain a notebook (record), located on the premises and available for inspection by the board's agents which contains the following information (typed or in ink) about each resident:

(a) Resident name and sex.

(b) Marital status.

(c) Birthdate and age.

(d) Religion and personal clergyman, if any (with consent of resident).

(e) Attending physician and dentist, if any; address and phone number for each.

(f) Next of kin and/or responsible person (or agency), address and telephone number.

(g) Date of admission and discharge.

(h) Other relevant information including physician visits and/or assessment reports.

(i) Amount charged per week or month as compensation for care.

(9) The licensee shall make arrangements with other health agencies and facilities for residents who, at some time, may require a transfer to a different level of care.

(10) The licensee shall have phone numbers of a hospital, an ambulance service, fire department, and a physician for emergencies posted by the telephone in large legible print if phone service is available in the area.

(11) The licensee shall have a written procedure for providing or obtaining emergency services.

(12) The licensee shall make a written report of any accident involving a resident, any incident involving a resident's health, welfare or safety, and any death of a resident. The licensee shall keep one (1) copy in the file and make the original available to the board's agents within seven (7) days of the incident. The original shall be sent to the Cabinet for Human Resources, Office of the Inspector General, Division for Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(13) The licensee shall provide for patient rights pursuant to KRS 216.510 to 216.525.

(14) All residents shall be at least eighteen (18) years of age.

(15) Representatives of the Division for Licensing and Regulation shall visit the home of the applicant for initial licensure. The Department for Social Services shall visit the home of the applicant upon notification by the Division of Licensing and Regulation and provide the division information relating to its prelicensure assessment of the applicant.

(16) Initial licenses may be denied and existing licenses may be revoked if the applicant for licensure or the licensee has been convicted of a crime that has a bearing upon the applicant's suitability to operate a family care home, unless the applicant shows that:

(a) The crime occurred more than five (5) years ago; and

(b) The applicant has been sufficiently rehabilitated.

(17) Initial licenses may be denied and existing licenses may be revoked if the applicant for licensure or the licensee:

(a) Has failed to assure that nutrition, medication, or treatment of individuals under their care is in accordance with acceptable professional practice;

(b) Has aided, abetted, sanctioned, condoned or participated in the commission of an illegal act involving individuals under their care; or

(c) Has had a license to operate any facility or service suspended or revoked during the three (3) years immediately proceeding an application for licensure.

(18) The licensee shall report all cases of abuse, neglect, or exploitation of adults or children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and 199.335.

Section 4. Services. (1) Basic health and health related services.

(a) All family care homes shall assure that residents obtain basic health and health-related services through the continuous supervision of and monitoring of the resident to assure that the resident's health care needs are being met, supervision of self-administration of medication, storage and control of medications, and making arrangements for obtaining therapeutic services or physician services as necessary.

(b) No licensee shall knowingly admit a person suffering from a communicable disease which is reportable to the health department, except a noninfectious tuberculosis patient under continuing medical supervision for his tuberculosis disease.

(c) If after admission, a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents, the licensee shall assure that a physician is contacted and that appropriate measures are taken on behalf of that resident and the other residents in the home.

(d) The licensee shall show evidence that the resident has obtained a physical examination by a physician within three (3) months prior to or upon admission to the home. If admitted from another health care facility, a discharge summary or transfer form shall be in the resident's record which includes a medical history, record of physical examination and diagnosis.

(e) It shall be the responsibility of the licensee to obtain the services of a physician in case of accident or acute illness of any resident.

(f) All prescription medications administered to residents shall be noted in writing, with the date, time and dosage, and signed by the person administering the medication.

(g) Medication shall not be administered to any resident except on the written order of a physician. When medication requires administration by licensed personnel, arrangement shall be made to procure the services of such personnel.

(h) Medications kept in the home shall be kept in a locked cabinet.

(i) Self-administration of prescription medications shall be allowed only upon the written instructions of the attending physician.

(j) Residents admitted or retained for care shall not require because of illness, injury or disease, a degree of care exceeding the skill of the operator to provide.

(2) Personal care services.

(a) Residents in family care homes shall be assisted to achieve and maintain good personal hygiene by providing assistance as required by individual needs with:

1. Washing and bathing of the body to maintain clean skin and freedom from offensive odors with the following items provided for each resident and not used by others: soap, clean towels and wash cloths, brushes and combs and other appropriate toilet articles.

2. Shaving.

3. Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with toothbrushes, a dentifrice, and denture containers, when applicable.

4. Washing, grooming and cutting of hair.

(b) The home shall provide each resident with a bureau or cupboard for storage of personal belongings.

(c) The home shall provide each resident with a bed equipped with substantial springs, a clean comfortable mattress, two (2) sheets, a pillow, and such bed covering as required for resident's health and comfort.

(d) Residents shall be provided the privilege of rest periods in their own beds if they so desire.

(3) Dietary services.

(a) Food shall be prepared with consideration for any individual dietary requirements and appetites.

(b) Menus shall be planned in writing and rotated to avoid repetition. A written record shall be kept of all foods served, including food offered as snacks.

(c) Nutritional needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council and adjusted for age, sex, and activity in accordance with physician's orders.

(d) Food returned from residents' dishes shall be discarded at the conclusion of the meal and not served again in any form.

(e) Therapeutic diets. Special diets or dietary restrictions shall be medically prescribed.

(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast. Snacks shall be provided if desired or requested by patients except when conflicting with special diets prescribed by a licensed physician.

(g) All food shall be stored above the floor in such a manner as to be protected from dust, flies, vermin, or other forms of contamination.

(h) Refrigerators shall have a complete seal, be clean, free of odors, and kept at a temperature below forty-five (45) degrees Fahrenheit. A thermometer shall be placed in each refrigerator and freezer.

(i) All food showing evidence of spoilage or infestation shall be disposed of immediately upon detection.

(4) Housekeeping and sanitation. Each family care home shall:

(a) Maintain a clean, uncluttered and safe facility with screens on doors and windows;

(b) Eliminate odors at their source by prompt and thorough cleaning of commodes, and other obvious sources;

(c) Maintain the premises in such a manner as to prevent infestation by rodents and insects;

(d) Bed linens shall be changed as often as necessary to provide a clean bed at all times. A mattress pad or other protective covering (excluding paper) shall be used on all residents mattresses;

(e) Give soiled clothing and linens immediate attention and not allow them to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned;
(f) Have appropriate toilet facilities which dispose of wastes in a sanitary manner into a public system where available, or if none is available into a system which shall meet the requirements of applicable plumbing codes. Outside toilets shall be allowed only if local county health department approves; and
(g) Collect and dispose of all garbage, refuse, trash, and litter in compliance with applicable state and local laws and regulations. Garbage containers shall be made of metal or other impervious material and shall be water tight and rodent proof and shall have tight-fitting covers.

Section 5. Accommodations. Each family care home shall:
(1) Be safe and of substantial construction and comply with applicable state and local laws relating to location, zoning, plumbing, and sanitation.
(2) Be adequately lighted by natural or artificial light including each hall, stairway, entryway, patient area, kitchen, and bathroom.
(3) Have a water supply of a safe, sanitary quality approved by the local health department or other qualified laboratory or agency.
(4) Have an ample supply of hot and cold running water available at all times for general use. The water temperature at any tap used by residents shall not exceed 110 degrees Fahrenheit.
(5) Have appropriate sanitary toilet and bathing facilities conveniently available for resident use with no less than one (1) toilet and lavatory per six (6) persons residing in the home.
(6) Have adequate ventilation in all areas used by residents. Toilet rooms shall be vented to the outside, if there is no window. There shall be an exterior window in each resident room which can be opened.
(7) Beds occupied by residents shall be placed so that no resident may experience discomfort due to proximity to radiators, heat outlets or exposure to drafts.
(8) Not use "bunk" beds.
(9) Have beds that are no less than thirty-three (33) inches wide and six (6) feet long.
(10) Not house residents in rooms or detached buildings or other enclosures which have not been previously inspected and approved for resident use, or in basements not constructed for sleeping quarters. Approved basements must have an outside door.
(11) Not be located in a house trailer or motor homes.
(12) Provide a heating system which can maintain an even temperature, and is capable of maintaining a minimum temperature of seventy-two (72) degrees Fahrenheit in resident occupied areas under winter conditions and a maximum temperature of eighty-five (85) degrees under summer conditions.
(13) Have telephone service, if available in the area, accessible to the residents.
(14) If the home accepts a resident confined to a wheelchair, appropriate measures must be taken to insure that the resident is able to exit the building without assistance (i.e., ramps, rails, etc.).
(15) Have a three (3) day supply of food on hand at all times.

Section 6. Safety. Each home shall take appropriate precautions to insure the safety of the residents and visitors by:
(1) Having all exterior grounds including sidewalks, steps, porches, ramps, and fences in good repair;
(2) Having all the home's interior including walls, ceilings, floors, floor coverings, steps, windows, window coverings, doors, plumbing, and electrical fixtures in good repair;
(3) Having a fire control and evacuation plan;
(4) Having an adequate number of ABC-rated fire extinguishers located throughout the home with a minimum of one (1) per floor or level of the residence;
(5) Having a person in charge thoroughly oriented in the evacuation of the residents in the event of a fire;
(6) Having all firearms and ammunition locked in a cabinet, drawer, or closet with the key not accessible to residents. Firearms shall not be loaded; and
(7) Having at least two (2) functioning smoke detectors in the home, one of which shall be in the resident bedroom(s) or in a hall adjacent to the resident bedroom(s).

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 26, 1991
FILED WITH LRC: August 5, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Department for Employment Services, 2nd Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 18, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/Ralph Von Derau, David Crane
(1) Type and number of entities affected: 480
(a) Direct and indirect costs or savings to those affected: There should be no additional cost to those affected.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: The costs should be minimal.
(a) Direct and indirect costs or savings: $500 for printing new regulation.
1. First year: $500 for printing costs.
2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with KRS Chapter 13A drafting requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.
(a) Necessity of proposed regulation if in conflict: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:106. Operation and services; ambulatory surgical center.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 216B.040, 216B.105
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources [Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides for the licensure requirements for the operation and services of ambulatory surgical centers.

[Section 1. Scope of Operation and Services. Ambulatory surgical centers are public or private institutions that are hospital based or freestanding, operated under the supervision of an organized medical staff and established, equipped, and operated primarily for the purpose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.]

Section 1. [2.] Definitions. (1) "Board" means the Commission for Health Economics Control in Kentucky [Health Facilities and Health Services Certificate of Need and Licensure Board].
(2) "Center" means an ambulatory surgical center.

Section 2. Scope of Operation and Services. Ambulatory surgical centers are public or private institutions that are hospital based or freestanding, operated under the supervision of an organized medical staff and established, equipped, and operated primarily for the purpose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

Section 3. Administration and Operation. (1) Licensee.
(a) The licensee shall be legally responsible for operation of the center and for compliance with federal, state, and local laws and regulations pertaining to operation of the center.
(b) The licensee shall develop written policies for the administration and operation of the center. All medical policies shall be approved by the medical staff. Policies shall include:
1. Personnel practices and procedures. These shall be available to all personnel.
2. Job descriptions for each level of personnel including the authority, responsibilities, and actual work to be performed in each classification.
3. Written infection control measures. There shall be written procedures which govern the use of aseptic techniques and procedures in all areas of the center.
4. Sterilization of supplies.
5. Disposal of patient waste and any other potentially infectious materials.
6. Examination by a pathologist of tissues removed by surgery. Policies shall identify those tissues which require examination and those which do not.
7. Instances in which consultations with other physicians, dentists, or podiatrists are required.
8. A list of surgical procedures which may be performed in the center.
9. Granting and withdrawal of medical staff surgical privileges and privileges for the administration of anesthetics.
(2) Personnel.
(a) Administrator. The center shall have an administrator responsible for the day to day operation of the center and for delegating that responsibility in his or her absence.
(b) Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required, and reports of all accidents occurring on duty.
(c) Medical staff requirements. The center shall have an organized medical staff responsible for the quality of medical care provided in the center and for the ethical and professional practices of its members.
1. The medical staff shall develop the center's medical care policies.
2. Surgical procedures shall be performed only by physicians, dentists, and podiatrists who are legally authorized to perform such procedures and have been granted privileges to perform such procedures by the center through its medical staff or governing body.
(d) Pharmaceutical, radiology and laboratory services provided directly by the center or through an agreement with another entity shall be provided under the direction of a licensed pharmacist, a physician specializing as a radiologist, and a physician specializing as a pathologist, respectively, on a full-time, part-time or regular consultative basis.
(e) The center shall employ registered nurses on a full-time basis for patient care in the operating and postanesthesia recovery room.
(f) The center shall employ other nursing personnel, aides and technicians as required to meet the needs of the patients served by the center including personnel to be responsible for supervision, indexing, and filing of medical records.
(3) The center shall not provide accommodations for overnight stays.
(4) The center shall not have provisions for obstetrical deliveries.
(5) Physician coverage. A physician shall be

present in the center until all patients have been discharged and have left the center.

(6) The center shall have a physician on the medical staff with admitting privileges in a nearby hospital who is responsible for admitting patients in need of inpatient care.

(7) The center shall arrange for transportation of patients who require hospital care and arrange for their admission.

(8) Medical records.

(a) Content. Adequate and complete medical records shall be prepared for all patients admitted to the surgical center. All notes shall be legibly written or typed and signed. A minimum medical record shall include the following information:

1. Name and address of person or agency responsible for patient;
2. Identification date (name, address, age, sex, martial status);
3. Date of admission and discharge;
4. Referring and attending physicians', dentists' and podiatrists' names;
5. History and physical examination record prior to surgery;
6. Surgical consent form signed by patient or his legal representative;
7. Special examinations, such as consultations, clinical, laboratory, x-ray;
8. Doctor's orders, dated and signed by the physician, dentist or podiatrist;
9. Nurses' notes;
10. Complete medical record signed by the operating surgeon, including anesthesia record, preoperative diagnosis, operative procedures and findings, postoperative diagnosis and where required tissue diagnosis by a pathologist on specimens surgically removed;
11. Charts including records of temperature, pulse, respiration, and blood pressure; and
12. A discharge summary completed at time of discharge which includes condition on discharge and postoperative instructions to patient.

(b) Indexing. Medical records shall be systematically filed for ready access to authorized personnel.

(c) Ownership. Records of patients shall not be removed from the center's custody except in accordance with a court order or subpoena. Medical records shall be made available when requested for inspection by duly authorized representatives of the board.

(d) The attending physician, dentist, or podiatrist shall complete and sign the medical record of each patient as soon as practicable after discharge, but not to exceed ten (10) days.

(e) Orders for medication and treatment shall be written in ink and signed by the prescribing physician, dentist or podiatrist and if given verbally, countersigned by him within forty-eight (48) hours except that all records for Schedule II drugs shall be signed immediately. A record of medication administered to the patient shall be included in the record and signed by the person administering the medication.

(f) Retention of records. All medical records shall be retained for a minimum of five (5) years or in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(9) Bedrails shall be available for all patients in the admitting and recovery rooms.

Section 4. Sanitary Environment. The surgical center shall provide a sanitary environment to avoid sources and transmission of infections.

(1) An infection committee composed of members of the medical and nursing staff shall be established and be responsible for controlling and preventing infections within the center.

(2) All nondisposable sterile supplies shall be reprocessed at least every thirty (30) days.

(3) The center shall have suitable equipment for rapid and routine sterilization of supplies, utensils and equipment and shall store them in a clean, convenient and orderly manner.

(4) There shall be continuing education provided to all surgical center personnel on the cause, effect, transmission, prevention and elimination of infections.

Section 5. Surgical Services. (1) The center shall provide treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

(2) Informed consent. The patient or the patient's legal representative shall sign a written informed consent prior to all surgical operations.

(3) The center shall have at least one (1) operating room.

(4) A medical history and physical evaluation shall be performed and entered into the medical record no more than thirty (30) days prior to surgery on all patients.

(5) Pertinent preoperative diagnostic studies and laboratory tests shall be performed and made a part of the medical record prior to surgery. The preoperative diagnosis shall be recorded in the medical record.

(6) All patients shall be examined by a physician immediately prior to surgery to evaluate the risk of anesthesia and of the procedure to be performed.

(7) A registered nurse shall be available to circulate at all times. The operating rooms shall be supervised by a registered nurse.

(8) The operating room supervisor shall have on file a list of all physicians, dentists and podiatrists with surgical privileges at the center and the privileges assigned to each by the medical staff.

(9) The center shall maintain a complete and up-to-date operating room register.

(10) The following equipment shall be available in the operating rooms: cardiac monitor, resuscitator, defibrillator, suction machine, thoracotomy, tracheotomy, and abdominal laparotomy sets.

(11) The center shall have arrangements for obtaining an adequate supply of blood in a timely manner to meet the center's needs.

(12) Rules and regulations governing the use of the operating rooms shall be posted.

(13) All physicians', dentists', or podiatrists' orders shall be in writing and signed by the physician, dentist, or podiatrist.

(14) In all cases other than those requiring only local infiltration anesthetics, a physician anesthesiologist or physician anesthetist or dentist anesthetist (or a registered nurse anesthetist acting under the direction of the operating surgeon) shall administer the anesthetics and remain present during the surgical procedures and until the patient is fully recovered from the anesthetics.

(15) The physician, dentist, or podiatrist in charge of the patient shall be responsible for

seeing that tissue removed during surgery is delivered to the center's pathologist and that an examination and report is made on such tissue, where required by the center's written policies.

(16) Voluntary interruption of pregnancies. All ambulatory surgical centers shall comply with the applicable Kentucky statutes concerning the voluntary interruption of pregnancies, including KRS 311.710 to 311.810.

Section 6. Recovery Room Services. (1) The center shall have at least one (1) postanesthesia recovery room.

(2) There shall be adequate staff available in the recovery room so that no patient is left alone at any time.

(3) A registered nurse shall be available to the recovery room at all times.

(4) The person(s) staffing this area shall be adequately trained in all aspects of postoperative and postanesthetic care.

(5) A nursing note on all patients shall be recorded by the recovery room nurse, noting postoperative abnormalities or complications, and stating the pulse, respiration, blood pressure, presence or absence of swallowing reflex and cyanosis and the general condition of the patient.

(6) Available equipment shall include suction machine, stethoscope, sphygmomanometer, emergency crash cart, necessary drugs, and oxygen.

(7) Patient accommodations.

(a) The surgical center shall provide suitable accommodations for all its patients. There shall be adequate floor space, furnishings, bed linens, and such other utensils, equipment and supplies as are reasonably required for the proper care of the patients accommodated.

(b) A satisfactory bed and mattress and one (1) or more pillows shall be provided for each patient.

Section 7. Pharmaceutical Services. (1) The center shall have a licensed pharmacy or have arrangements for promptly obtaining prescribed drugs and biologicals from licensed community or institutional pharmacies.

(2) The center shall provide appropriate methods and procedures for storage, control and administering of drugs and biologicals, developed with the advice of a licensed pharmacist. Drugs shall be properly labeled by the pharmacist for individual patients.

(3) All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical and Nurse Practice Acts. The medical record shall include a record of each dose administered including date and time of administration, type of medication, dosage, method of administration, name of prescribing physician, and name of person who administered the medication.

(4) Controlled substances. Controlled substances shall be kept under double lock (i.e., in a locked box in a locked cabinet). There shall be a controlled substances bound record book with numbered pages, in which is recorded the name of the patient; the date and time; kind, dosage, and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it. In addition, there shall be a recorded and signed Schedule II controlled substances count daily conducted by a member of the nursing staff and Schedule III, IV and V controlled substances count once per week by a member of the nursing staff.

Section 8. Radiology Services. The center shall provide radiology services directly through an agreement with a licensed hospital, or through an independent radiology service. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder. In either case:

(1) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards;

(2) A physician specializing in radiology shall supervise the department and interpret films that require specialized knowledge for accurate reading;

(3) Signed reports shall be promptly entered into the medical record and duplicate copies kept in the department; and

(4) X-ray examinations shall be made only upon the request of a physician, dentist or podiatrist.

Section 9. Laboratory Services. The center shall provide laboratory services directly through its own licensed laboratory, through an agreement with a laboratory in a licensed hospital, or through an agreement with a licensed laboratory nearby. The medical laboratory providing services to the center shall be licensed pursuant to KRS 333.030 and any regulations promulgated thereunder unless it is a part of a licensed hospital. In either case:

(1) Laboratory examinations shall be made only upon the request of a physician, dentist, or podiatrist;

(2) The laboratory shall provide tissue pathology and diagnostic cytology examinations. Tissues removed from patient at surgery shall be examined by a physician specializing in pathology where required by the center's written policies; and

(3) All laboratory and tissue pathology reports shall be signed and entered into the medical record.

Section 10. Utilization Review. (1) The surgical center shall have in effect a plan for utilization review of their services on at least a quarterly basis by a committee of physicians and/or dentists and podiatrists who have no financial interest in the center.

(2) Reviews shall be made of admissions and professional services furnished including utilization of surgical services and tissue reports.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 26, 1991
FILED WITH LRC: August 5, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Department for Employment Services, 2nd Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the

following office in writing by September 18, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/Ralph Von Derau, David Crane
(1) Type and number of entities affected: 16
(a) Direct and indirect costs or savings to those affected: There should be no additional cost to those affected.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: The costs should be minimal.
(a) Direct and indirect costs or savings: $500 for printing new regulation.
1. First year: $500 for printing costs.
2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with KRS Chapter 13A drafting requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.
(a) Necessity of proposed regulation if in conflict: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:111. Medical detoxification services

RELATES TO: KRS 216B.010 to 216B.131 [216B.130], 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 216B.040, 216B.105
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources [Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides for the licensure requirements of medical detoxification services.

[Section 1. Scope of Operation and Services. A facility with a medical detoxification service provides examination, diagnosis, treatment, and referral for intoxicated persons and persons evaluated by a physician to be alcoholics or abusers of other chemical substances in need of detoxification. Medical detoxification services are provided in a facility licensed as a hospital, psychiatric hospital or chemical dependency treatment service and are available on a twenty-four (24) hour basis.]

Section 1. [2.] Definitions. (1) "Detoxification" means the systematic reduction of the amount of a toxic agent in the body or the elimination of a toxic agent from the body.
(2) "Service" means a medical detoxification service.

Section 2. Scope of Operation and Services. A facility with a medical detoxification service provides examination, diagnosis, treatment, and referral for intoxicated persons and persons evaluated by a physician to be alcoholics or abusers of other chemical substances in need of detoxification. Medical detoxification services are provided in a facility licensed as a hospital, psychiatric hospital or chemical dependency treatment service and are available on a twenty-four (24) hour basis.

Section 3. Minimum Standards of Operation. (1) The medical detoxification service shall be provided on the premises of a facility licensed as a hospital, psychiatric hospital or chemical dependency treatment service under the applicable health service and health facility licensure regulations. The service shall have staff, operating procedures and records appropriate to the licensure category of the facility providing the service.
(2) A psychiatric hospital or chemical dependency treatment service providing medical detoxification shall have provisions for obtaining emergency medical treatment through a licensed hospital with an organized emergency department.
(3) The facility shall provide extended medical care of the patient within the primary facility or through cooperative arrangement with or referral to another licensed medical care facility if services required for the patient are not available in the primary facility.
(4) The service shall be operated by licensed staff trained in alcohol and drug treatment procedures who receive regular in-service training relating to their job activities. There shall be at least one (1) person on duty at all times who has received training in cardiopulmonary resuscitation.
(5) The service shall have twenty-four (24) hour capability, and shall provide examination, diagnosis, treatment, and appropriate referral for all patients.
(6) A physical examination shall be conducted prior to commencing detoxification or administering medications to determine whether the patient requires transfer to a more appropriate level of care. Admission for inpatient treatment shall be determined by an attending or examining staff physician. The medical care of the patient during detoxification shall be directed by a physician.
(7) Prior to discharge from the detoxification service an assessment of the patient's condition shall be conducted to determine an appropriate referral for continuing care.
(8) The facility shall designate the number of

beds to be available for detoxification services and assure space is available with reasonable privacy for examination, detoxification, observation, evaluation and treatment of the medical alcohol or drug emergency patient.

(9) The facility shall have written affiliation with other licensed alcohol and drug services available in the community such as: chemical dependency treatment services and services licensed under 902 KAR Chapter 3 including situation, identification, and disposition (SID) units, thirty (30) day residential units, halfway houses and outpatient services.

(10) The facility shall have the following equipment immediately available:

(a) Complete parenteral treatment equipment;

(b) Appropriate pharmaceutical supplies to include tranquilizers, anticonvulsants, oral and parenteral vitamins;

(c) Ventilation equipment including masks and cannulae for administration of oxygen and suction equipment; and

(d) An emergency crash cart.

(11) The facility shall have twenty-four (24) hour access to physician services on at least an on-call basis.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: July 26, 1991

FILED WITH LRC: August 5, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Department for Employment Services, 2nd Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 18, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/Ralph Von Derau, David Crane

(1) Type and number of entities affected: 2

(a) Direct and indirect costs or savings to those affected: There should be no additional cost to those affected.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: The costs should be minimal.

(a) Direct and indirect costs or savings: $500 for printing new regulation.

1. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with KRS Chapter 13A drafting requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:160. Chemical dependency treatment services and facility specifications.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990 (1), (2)

STATUTORY AUTHORITY: KRS 216B.040(2), 216B.105

NECESSITY AND FUNCTION: KRS 216.040 and 216B.105 mandate that the Cabinet for Human Resources [Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides the licensure requirements for the operation and services and facility specifications of chemical dependency treatment programs.

[Section 1. Scope of Operation and Services. A chemical dependency treatment service has a structured inpatient program which provides medical, social, diagnostic and treatment services to persons who suffer from illness related to the misuse or abuse of alcohol and other drugs. Chemical dependency treatment services last generally for a duration of less than thirty (30) days, are hospital based or freestanding with eight (8) or more patient beds and under the medical direction of a physician with continuous nursing services.]

Section 1. [2.] Definitions. (1) "Aftercare" means the process of providing continued contact following primary chemical dependency treatment which will support and increase the gains made in the treatment process.

(2) "Governing authority" means the individual, agency, partnership or corporation in which the ultimate responsibility and authority for the operation of the facility is vested.

(3) "Interdisciplinary team" means a group of at least four (4) professionals including a physician, registered nurse, certified chemical dependency counselor and a person with a master's degree in psychology, social work or counseling.

(4) "Qualified dietician" means:

(a) A person who has a Bachelor of Science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a Masters Degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a Bachelor of Science degree in home economics and three (3) years of work experience with a registered dietician.

(5) "Restraint" means any physical or mechanical device used to restrict the movement of the patient or the movement of a portion of the patient's body.

Section 2. Scope of Operation and Services. A chemical dependency treatment service has a structured inpatient program which provides medical, social, diagnostic and treatment services to persons who suffer from illness related to the misuse or abuse of alcohol and other drugs. Chemical dependency treatment services last generally for a duration of less than thirty (30) days, are hospital based or freestanding with eight (8) or more patient beds and under the medical direction of a physician with continuous nursing services.

Section 3. Administration and Operation. (1) Governing authority/licensee.

(a) The program shall have a recognized governing authority that has overall responsibility for the management and operation of the program and for compliance with federal, state and local laws and regulations pertaining to its operation.

(b) The governing authority shall appoint a program administrator who has a Bachelor's degree in a health or human services field or a Bachelor's degree in another field supplemented with one (1) year of work experience in the field of chemical dependency or who is a high school graduate with four (4) years of experience in the field of chemical dependency.

(c) The governing authority shall develop goals and objectives for the program and establish a written evaluation plan to assess the attainment of these goals and objectives on an annual basis.

(2) Program administrator.

(a) The program administrator shall be responsible for the daily management of the facility and provide liaison between the governing authority and staff members.

(b) The program administrator shall keep the governing authority fully informed of the operations of the facility through periodic reports and attendance at meetings of the governing authority.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity and reflect the programs of the facility.

(b) A written report of any incident or accident involving a patient (including medication errors and drug reactions), visitor or staff shall be made and signed by the program administrator and any staff member who witnessed the incident. The report shall be placed in an incident file.

(c) Licensure inspection reports, plans of correction and program evaluations shall be available to the public upon request at the facility.

(4) Policies.

(a) Administrative policies. The program shall have written administrative policies covering all aspects of the facility's operation to include:

1. A description of the organizational structure, staffing and allocation of responsibility and accountability;
2. A description of referral linkages with other facilities and providers;
3. A description of the services included in the program;
4. A policy for an expense and revenue accounting system following generally accepted accounting procedures;
5. A policy describing the use of volunteers in program activities; and
6. A policy for conducting program evaluation and quality assurance review.

(b) Patient care policies. Patient care policies shall be developed for all aspects of the program and include:

1. Actions to be taken when a patient is determined to be lost, unaccounted for or on other unauthorized absence;
2. A policy which specifies provisions for patient visitation and use of telephones;
3. A policy to specify the provision of emergency medical services; and
4. Admission and discharge policies including the categories of individuals accepted and not accepted by the program.

(c) Patient rights policies. There shall be written policies designed to enhance the dignity of all patients and to protect their rights as human beings. These policies shall assure that each patient:

1. Is informed of all rules and regulations governing patient conduct and responsibilities, including a procedure for handling grievances;
2. Is informed, prior to admission for rehabilitation, of the services available at the facility and of charges for treatment including any charges not covered under Medicare, Medicaid, or other third-party payor arrangements;
3. Is encouraged and assisted to understand and exercise patient rights, voice grievances and recommend changes in policies and services. Upon the patient's request the grievances and recommendations shall be conveyed within a reasonable time to an appropriate decision making level within the organization which has authority to take corrective action;
4. Is afforded the opportunity to participate in the planning of his/her treatment and to refuse to participate in experimental research;
5. Is assured confidential treatment of records and is afforded the opportunity to approve or refuse their release to any individual not involved in his care except as required by Kentucky law or third party payment contract; and
6. Is treated with consideration, respect and full recognition of personal dignity and individuality including privacy in treatment and in the care of personal health needs.

(5) Personnel.

(a) The licensee shall establish personnel policies for the program which shall be reviewed, revised, approved and updated on an annual basis.

(b) There shall be an individual personnel record for each person employed by the facility which shall include the following:

1. All employees shall have a test for tuberculosis either prior to or within the first week of employment and annually thereafter;

2. Evidence of education, training and experience of the individual along with a copy of the current license or certification credentials, if applicable;

3. Evidence that employees have received orientation to the facility's written policies within the first week of employment; and

4. Evidence of regular in-service training which corresponds with job duties and includes a list of training and dates completed.

(6) Staffing requirements. The program shall have adequate personnel to meet the needs of patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the individual treatment plans. If the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the program administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

(a) Medical director. There shall be a medical director who is a physician having responsibility for the medical direction of the program including admission of individuals, approving individual treatment plans and participating in the quality assurance review. The medical director or a physician designated by the medical director shall be available twenty-four (24) hours a day on at least an on-call basis.

(b) Interdisciplinary team. There shall be an interdisciplinary team responsible for developing the individual treatment plans, aftercare plans and conducting the quality assurance reviews.

(c) Treatment coordinator. The program shall have a full time treatment director whose qualifications are defined in writing and approved by the governing authority. The treatment director shall be responsible for:

1. Coordinating the interdisciplinary team in developing the individual treatment plans;

2. Initiating a periodic review of each patient's treatment plan for necessary changes;

3. Supervising the proper maintenance of patient records; and

4. Coordinating the interdisciplinary team in developing an aftercare plan for each patient which assures continuity of care.

(d) Nursing services. Nursing services shall be available on a twenty-four (24) hour basis. The program shall have at least one (1) full-time registered nurse. When a registered nurse is not on duty there shall be a licensed practical nurse present who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

(e) Medical supervision. A physician, or registered nurse under the direction of a physician, shall supervise implementation of the medical aspects of the treatment plan and all staff directly involved in patient medical care.

(f) In-service training. All personnel shall participate in ongoing in-service training programs relating to their respective job activities. These programs shall include thorough job orientation for new personnel and regular in-service training programs emphasizing professional competence and the human relationship necessary for effective health care.

(7) Patient records.

(a) An individual record shall be maintained for all patients with entries signed and dated by the person making the entry.

(b) At the time of admission the following information shall be entered into the patient's record:

1. Name, date of admission, birth date and place, marital status and social security number;

2. Person to contact in case of emergency;

3. Next of kin; and

4. Type and place of employment.

(c) The record shall contain documentation of all medical services provided during detoxification and rehabilitation including the results of physical examinations.

(d) The record shall contain the patient's treatment plan outlining goals and objectives for the individual during treatment. The record shall also contain documentation of how the plan was implemented and of patient progress in meeting the goals and objectives outlined in the treatment plan.

(e) The record shall contain notation of all medication administered including date, time, dosage, frequency of administration and the name of the person administering each dose.

(f) The record shall contain a discharge summary and a plan for aftercare.

(g) The discharge summary shall be entered in the patient's record within seven (7) days after discharge and include:

1. The course and progress of the patient with regard to the individual treatment plan;

2. The general observations of the patient's condition initially, during treatment and at discharge; and

3. The recommendations and arrangements for further treatment including prescribed medications and aftercare.

(h) If the patient is referred to other service providers after discharge, a copy of the discharge summary shall be promptly sent to the provider with the patient's permission.

(i) After a patient's death or discharge the completed record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longest.

(8) Linkage agreements. The program shall have linkages through written agreements with providers of other levels of care which may be medically indicated to supplement the services available in the program. These linkages shall include a hospital and an emergency medical transportation service in the area.

(9) Quality assurance. In order to determine the appropriateness and the quality of the services delivered the service shall have a quality assurance program that includes effective mechanisms for reviewing and evaluating patient care on a regular basis by the interdisciplinary team.

(10) Medications.

(a) All prescription and nonprescription medications administered to patients shall be noted in writing with the date, time and dosage and signed by the person administering the medication.

(b) All prescription medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, date, physician name, caution statement and directions for use.

(c) Prescription and nonprescription medication shall not be administered to any

patient except on the written order of a physician. All medications shall be administered by licensed personnel.

(d) All medicines shall be kept in a locked storage area which shall be well lighted and of sufficient size to permit storage without crowding. Medications requiring refrigeration shall be kept in a separate locked box in a refrigerator. Drugs for external use shall be stored separately from those administered by mouth or injection.

(e) Medication errors and drug reactions shall be reported immediately to the medical director and treatment coordinator and an entry made in the patient's record.

(f) An emergency medical kit, with contents approved by a physician, shall be maintained at the facility. It shall be inspected after use or at least monthly to remove deteriorated and outdated drugs and ensure completeness of content.

(11) Restraints. Requirements for the use of restraints shall be met pursuant to the Kentucky mental patients bill of rights, 902 KAR 12:020.

(12) Activities schedule. A daily schedule of program activities shall be posted in the facility.

Section 4. Provision of Services. (1) Detoxification. Medical detoxification services pursuant to the requirements of 902 KAR 20:111 shall be available directly or through another licensed provider for patients who require detoxification.

(2) Rehabilitation. The program shall provide at least the following services:

(a) Medical services as needed, provided under the supervision of a physician;

(b) Scheduled individual, group, and family counseling;

(c) Psychological testing and evaluation as needed;

(d) Education of patients on the subject of chemical dependency and related lifestyle issues including nutrition and communication skills;

(e) Recreational activities with facilities and equipment shall be available consistent with the patient's needs and the therapeutic program;

(f) Referral to other rehabilitative or community service agencies providing services not available through the program; and

(g) Aftercare services provided directly or through arrangement with other agencies.

(3) Physical examinations. Within ten (10) days prior to or three (3) days after admission for rehabilitation all patients shall have a physical examination with tests ordered by physician.

(4) Psychosocial history. All patients shall have a psychosocial history and assessment interview within seventy-two (72) hours after admission for rehabilitation entered into the patient record which includes:

(a) Drinking and drug use history;

(b) A determination of current emotional state;

(c) Vocational history;

(d) Familial relationships; and

(e) Educational background.

(5) Treatment plan. The interdisciplinary team, with the participation of the patient, shall develop an individual treatment plan within four (4) days after admission for rehabilitation based on the patient's medical evaluation and psychosocial history and assessment. The treatment plan shall:

(a) Specify the services required for meeting the patient's needs;

(b) Identify goals necessary for the patient to achieve, maintain or reestablish physical health and adaptive capabilities;

(c) Establish goals with both long-term and short-term objectives and the anticipated time expected to meet these goals; and

(d) Identify the locations and frequency of treatment procedures including referrals for any required services which are not provided by the program.

(6) The treatment plan shall be reviewed and updated at least weekly for the duration of the inpatient treatment.

(7) The patient's family or significant others shall be involved in the treatment process, if approved by the patient. Documentation shall be included in the medical record which establishes that an attempt was made to involve family members or significant others.

(8) Aftercare plan.

(a) There shall be a written individual aftercare plan developed by the interdisciplinary team, the patient and, with the patient's permission, the patient's family or significant others prior to the completion of treatment. The individual aftercare plan shall be designed to establish continued contact for the support of the patient.

(b) The aftercare plan shall include the methods and procedures whereby the needs of the individual are met by the aftercare personnel through direct patient contact or assistance from other community human services organizations.

(c) When aftercare services are provided directly, a periodic review and updating of the aftercare plan shall be conducted with the frequency of review determined by the interdisciplinary team, the patient, and with the patient's permission, the patient's family or significant others. If the patient is referred to another agency for aftercare services, follow-up shall be conducted to determine if services are being provided.

Section 5. Compliance with Building Codes, Ordinances and Regulations. (1) Nothing stated herein shall relieve the licensee from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(2) The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements for safety pursuant to 815 KAR 10:020, as amended;

(b) Requirements for plumbing pursuant to 815 KAR 20:010 through 20:191, as amended;

(c) Requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.

(3) The facility shall be currently approved by the Fire Marshal's office before licensing and relicensure is granted by the licensure agency.

(4) All facilities shall receive any necessary approval from appropriate agencies prior to occupancy and licensure.

(5) Physical and sanitary environment.

(a) The condition of the physical plant and overall facility environment shall be maintained in such a manner that the safety and well-being

of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (on site or off site) and housekeeping.

(c) The facility buildings, equipment, and surroundings shall be kept in good repair, neat, clean, free from all accumulations of dirt and rubbish and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in approved containers and kept separate from other cleaning materials.

5. The facility shall be kept free from insects and rodents with harborages for these eliminated.

6. Garbage and trash shall be stored in closed containers in areas separate from those used for the preparation and storage of food and shall be cleaned regularly and in good repair.

(d) The facility shall have available at all times a quantity of linen essential to the proper care and comfort of residents.

1. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose.

2. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in separate areas ventilated to the exterior of the building.

Section 6. Facility Requirements and Special Conditions. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) The maximum room capacity shall be six (6) patients.

(b) The minimum room areas exclusive of toilet rooms, closets, lockers, wardrobes or vestibules shall be 100 square feet in one (1) bed room and eighty (80) square feet per bed in multibed rooms.

(c) In multiperson rooms partitioning, cubicle curtains or placement of furniture shall be used to provide privacy. An ample closet and drawer space shall be provided for the storage of patient's personal property.

(d) The placement of patients in multibed rooms shall be appropriate to the ages and program needs of the patients.

(2) Lavatory. In single and multibed rooms with a private toilet room, the lavatory may be located in the toilet room. Where two (2) or more patients share a common toilet a lavatory shall be provided in each patient room.

(3) Centralized toilet area. Where a centralized toilet area is used, the facility shall provide the following for each sex on every floor: one (1) toilet for each eight (8) residents or a major fraction thereof. Toilets must be separated by a permanent partition and at least one (1) toilet for each sex must be designed for wheelchair use.

(4) Patient baths. There shall be one (1) shower stall or one (1) bathtub for each fifteen (15) patients not individually served. Each bathtub or shower shall provide space for the private use of the fixture and for dressing.

(5) Patients shall be encouraged to take responsibility for maintaining their own living quarters and for other day-to-day housekeeping activities of the program, as appropriate to their clinical status.

(6) Dietary services.

(a) The facility shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) qualified dietician to supervise the nutritional aspects of patient care and approve all menus on at least a consultative basis.

3. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with physician orders.

(c) Meals served shall correspond with the posted menu. When changes in the menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) Food shall be prepared by methods that conserve nutritive value, flavor and appearance, and shall be served at the proper temperature.

(e) At least three (3) meals shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and breakfast. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(f) The facility shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 26, 1991
FILED WITH LRC: August 5, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Department for Employment Services, 2nd Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 18, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/Ralph Von Derau, David Crane

(1) Type and number of entities affected: 4

(a) Direct and indirect costs or savings to those affected: There should be no additional cost to those affected.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: The costs should be minimal.
(a) Direct and indirect costs or savings: $500 for printing new regulation.
1. First year: $500 for printing costs.
2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with KRS Chapter 13A drafting requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.
(a) Necessity of proposed regulation if in conflict: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:220. Dual licensure of hospitals.

RELATES TO: KRS 216B.010 to 216B.131 [216B.130], 216B.990
STATUTORY AUTHORITY: KRS 216B.040, 216B.105, 216B.107[, Executive Order 86-366]
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. KRS 216B.107 authorizes the dual licensure of acute care hospitals. This regulation provides for the minimum licensure requirements for the operation of licensed acute care hospitals which provide, as an identifiable part thereof, acute, skilled nursing and intermediate care services.

[Section 1. Scope of Operations and Services. Hospitals which are issued a dual license in accordance with KRS 216B.107 shall designate a specific number of beds, as an identifiable part, for acute, skilled nursing and/or intermediate care. The identifiable part of a hospital, licensed as dual, shall provide appropriate facilities and services capable of maintaining a combined resident-mix of acute and long-term care patients.]

Section 1. [2.] Definitions. (1) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.
(2) "Unit" means a dual licensure unit.
(3) "Identifiable part" means an entire physically distinct unit consisting of all beds within that unit (such as a separate building, floor, wing or corridor).
(4) "Medical staff" means an organized body of physicians, and dentists where applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of hospital training.
(5) "Occupational therapist" means a person who is licensed pursuant to KRS Chapter 319A.
(6) "Speech pathologist" means a person who is licensed pursuant to KRS Chapter 334A.
(7) "Qualified dietician" or "nutritionist" means:
(a) A person who has a Bachelor of Science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or
(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or
(c) A person who has a Bachelor of Science degree in home economics and three (3) years of work experience with a registered dietician.
(8) "Qualified medical record practitioner" means a person who has graduated from a program for medical record administrators or technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as a Registered Records Administrator or an Accredited Record Technician by the American Record Association.
(9) "Qualified social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Work Education.
(10) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.
(11) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.
(12) "Physical therapist" means a person who is licensed pursuant to KRS Chapter 327.

Section 2. Scope of Operations and Services. Hospitals which are issued a dual license in accordance with KRS 216B.107 shall designate a specific number of beds, as an identifiable part, for acute, skilled nursing and/or intermediate care. The identifiable part of a hospital, licensed as dual, shall provide appropriate facilities and services capable of maintaining a combined resident-mix of acute and long-term care patients.

Section 3. Applicability. (1) General acute care hospitals which have a dual licensure unit

shall designate on their application for licensure the location and number of beds to be licensed as dual licensure beds and shall meet the requirements of 902 KAR 20:016 and the additional requirements contained in this regulation and shall be subject to approval by the Cabinet for Human Resources.

(2) Licensee. The hospital shall be legally responsible for the operation of dual licensed beds and for compliance with applicable federal, state and local laws and regulations.

(3) Capacity. Hospital beds, licensed as dual, shall not exceed the maximum limit established by KRS 216B.107.

Section 4. Administration and Operation. (1) General requirements.

(a) The hospital shall comply with the requirements of 902 KAR 20:016, Section 3 and the additional requirements contained in this section.

(b) The hospital shall comply with the requirements of Kentucky's Nursing Home Reform Law pursuant to KRS 216.535 to 216.593 and 900 KAR Chapter 2.

(2) Administrator. The unit within the hospital designated for dual licensure shall have a full-time administrator who is licensed as a nursing home administrator pursuant to KRS Chapter 216A. The administrator shall be responsible for the operation of all dual licensure beds and shall delegate such responsibilities in his/her absence. The administrator of the unit may be the hospital administrator, his/her assistant, or designee.

(3) Administrative records and reports. In addition to the requirements of 902 KAR 20:016, Section 3(3) the following records/reports are required:

(a) The hospital shall maintain a permanent, chronological patient registry, for the dual licensure unit, documenting the following:

1. Date of admission;
2. Name of patient;
3. Prior to admitting a patient in need of skilled or intermediate care, attempts to place the patient in any intermediate care facility or skilled nursing facility within the county of residence of the patient or of the hospital or the patient has been refused admission to such facility;
4. Date of transfers within the facility or across levels of care; and
5. Date of final discharge.

(b) The hospital shall require and maintain written recommendations or comments from consultants regarding the unit and its development on a per visit basis.

(4) Policies. The hospital requesting dual licensure beds shall meet the requirements of 902 KAR 20:016, Section 3(4) and the additional requirements contained in this section.

(a) Notification of changes in patient status and service cost. There shall be written policies and procedures relating to notification of responsible person(s) in the event of significant changes in patient status, patient charges, billings, and other related administrative matters.

(b) Long term care patient care policies. The unit shall have written policies to govern the skilled nursing and intermediate care patients and related medical and other services provided, which shall be developed by the medical staff. The medical staff shall be responsible for assuring compliance with and annual review of these policies. In addition to written policies for services, the unit shall have written policies to include:

1. Admission, transfer, and discharge policies including categories of patients accepted and not accepted to the unit;
2. Medical records;
3. Utilization review;
4. Coordination between nursing staff, medical staff, and business office concerning level of care changes; and
5. Update procedures for reimbursement.

(c) Adult and child protection. The unit shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(d) Missing patient procedures. The unit shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission. The hospital requesting dual licensure beds shall meet the requirements established in 902 KAR 20:016, Section 3(4)(b) and the additional requirements contained in this section.

(a) Patients shall be admitted to dual licensed beds only upon the referral of a physician. The unit shall not admit persons whose care needs exceed its capabilities.

(b) Upon admission of a skilled or intermediate care patient to a dual licensed bed the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form shall be obtained. A medical evaluation within forty-eight (48) hours of admission, unless an evaluation was performed within five (5) days prior to admission shall be obtained. The medical evaluation shall include current medical findings, rehabilitation potential, a summary of the course of treatment followed in the hospital or long term care facility (A current hospital discharge summary containing the above information shall be acceptable.)

(c) If physician's orders for the immediate care of a patient are unobtainable at the time of admission, the unit shall contact the physician with responsibility for emergency care to obtain temporary orders.

(d) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the hospital to include: fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(7) Discharge planning. The hospital shall conduct a discharge planning program for skilled or intermediate care patients in dual licensed beds to assure continuity of care for patients being transferred to another health care facility, across levels of care, or being discharged to the home.

(8) Transfer procedures and agreements. The hospital requesting dual licensure beds shall meet the requirements of 902 KAR 20:016, Section 3(7) and the additional requirements contained in this section.

(a) The unit shall have written transfer procedures and agreements for the transfer of patients to other health care facilities. Any unit which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients, shall establish responsibility for notifying the other institution promptly of the impending transfer or a patient and shall arrange for appropriate and safe transportation.

(b) The agreement shall provide for the transfer of personal effects, particularly money and valuables, and for the transfer of information related to these items.

(c) When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(d) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least the following: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(e) Except in an emergency, the patient, his next of kin, or responsible person(s) if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(9) Tuberculosis testing.

(a) All hospital personnel shall comply with the tuberculosis testing procedure outlined in 902 KAR 20:016, Section 3(9)(c)1 through 6.

(b) All hospital patients initially transferred to the dual licensure unit, for the purpose of obtaining acute care, skilled nursing or intermediate care, shall be tested and monitored for tuberculosis in accordance with 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(10) Personnel. The hospital requesting dual licensure beds shall meet the personnel requirements of 902 KAR 20:016, Section 3(9)(a) through (d) and the additional requirements contained in this section.

(a) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(b) Staffing classification requirements.

1. The unit shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number classification and assignment between the facility and the unit of personnel required shall be based on the number of patients, and the amount and kind of personal care, nursing care, supervision, and program needed to meet the needs of the patients, as determined by medical orders and by services required by this regulation.

2. If the staff/patient ratio does not meet the needs of the patients, the Division of Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

3. The hospital shall provide evidence that all nursing personnel engaged in the provision of direct care to skilled or intermediate care patients in dual licensed beds as well as nurses which supervise the delivery of such care have adequate training in the provision of long term care, including rehabilitation and the social aspects of patient care.

4. Pharmacist. Pharmaceutical services shall be provided to the unit on a full-time, part-time or consultant basis. Separate contracting shall not be required.

5. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

6. The administrator shall designate a person for each of the following areas who will be responsible for:

a. Medical records. The person responsible for the records shall maintain, complete and preserve all medical records. If the person is not a qualified medical record practitioner he shall be trained by, and receive regular consultation from a qualified medical record practitioner.

b. Social services. There shall be a full-time or part-time social worker employed by the unit, or a person who has training and experience in related fields to find community resources, to be responsible for the social services. If the unit does not have a qualified social worker on its staff, consultation shall be provided by a qualified social worker. The person responsible for this area of service shall have information promptly available on health and welfare resources in the community.

c. Patient activities. This person shall have training or experience in directing group activities.

(c) In-service educational programs.

1. There shall be an in-service education program in effect for all nursing personnel at regular intervals in addition to a thorough job orientation for new personnel. Opportunities shall be provided for nursing personnel to attend training courses in rehabilitative nursing and other educational programs related to the care of long-term patients. Skill training for nonprofessional nursing personnel shall begin during the orientation period, to include demonstration, practice, and supervision of simple nursing procedures applicable in the individual unit. It shall also include simple rehabilitative nursing procedures to be followed in emergencies. All patient care personnel shall be instructed and supervised in the care of emotionally disturbed and confused patients, and

shall be assisted to understand the social aspects of patient care.

2. Social services training of staff. There shall be provisions for orientation and in-service training of staff directed toward understanding emotional problems and social needs of sick and infirm aged persons and recognition of social problems of patients and the means of taking appropriate action in relation to them. Either a qualified social worker on the staff, or one from outside the unit, shall participate in training programs, case conferences, and arrangements for staff orientation to community services and patient needs.

(11) Medical records. The hospital requesting dual licensure beds shall meet the medical records requirements of 902 KAR 20:016, Section 3(11), and the additional requirements contained in this subsection.

(a) Name and telephone number of patients' personal physician.

(b) Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, visits by physician and phone calls to the physician, medically prescribed diets and restorative nursing measures.

(c) Nursing supervisors written assessment of the patient's monthly general condition.

(d) Changes in patient's response to the activity and therapeutic recreation program.

Section 5. Provision of Services. The hospital shall comply with the requirements of 902 KAR 20:016, Section 4 and the additional requirements contained in this section.

(1) Medical staff/physician services. The hospital requesting dual licensure beds shall meet the medical staff requirements of 902 KAR 20:016, Section 4(1) and the additional requirements contained in this subsection.

(a) The health care of every patient shall be under the supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients requiring skilled nursing care shall be evaluated by a physician at least once every thirty (30) days for the first ninety (90) days following admission. Subsequent to the 90th day following admission, the patients shall be evaluated by a physician every sixty (60) days. There shall be evidence in the patient's medical record of the physician's visits to the patient at appropriate intervals.

(c) Patients requiring intermediate nursing care shall be evaluated by a physician as often as necessary and in no case less often than every sixty (60) days, unless justified and documented by the attending physician in the patient's medical record.

(2) Nursing services. The hospital requesting dual licensure beds shall meet the nursing service requirements of 902 KAR 20:016, Section 4(2), and the additional requirements contained in this subsection.

(a) Patient care plan. A written patient care plan shall be developed and maintained for each patient by the nursing staff in coordination with the attending physician.

1. Plan indicates the type of care to be provided, goals to be accomplished and who is responsible for each element of care.

2. Patient care plan is reviewed and updated as necessary by all professional personnel.

(b) Administration of medications including oral, rectal, hypodermic, and intramuscular.

(c) Written monthly assessment of the patient's general condition by licensed nursing personnel.

(d) Treatments such as: enemas, irrigations, catheterizations, applications of dressings or bandages, supervision of special diets.

(e) The recording of any changes, as they occur, in the patient's condition, actions, responses, attitudes, appetite, etc.

(f) Implementing a regular program to prevent decubiti with emphasis on the following:

1. Procedures to maintain cleanliness of the patient, his clothes and linens shall be followed each time the bed or the clothing is soiled. Rubber, plastic, or other type of linen protectors shall be properly cleaned and completely covered to prevent direct contact with the patient.

2. Special effort shall be made to assist the patient in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient cannot move himself, he shall have his position changed as often as necessary but not less than every two (2) hours.

(g) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(h) Rehabilitative nursing care to achieve and maintain the highest degree of function, self-care and independence. Rehabilitative nursing measure shall be taught to all nursing personnel and practiced on a twenty-four (24) hour, seven (7) day week basis. Those procedures requiring medical approval shall be ordered by the attending physician. Rehabilitative measure shall include:

1. Positioning and turning. Nursing personnel shall encourage and assist patients in maintaining good body alignment while standing, sitting, or lying in bed.

2. Exercises. Nursing personnel shall assist patients in maintaining maximum joint range of motion or active range of motion.

3. Bowel and bladder training. Nursing personnel shall make every effort to train incontinent patients to gain bowel and bladder control.

4. Training in activities of daily living. Nursing personnel shall encourage and when necessary teach patients to function at their maximum level in appropriate activities of daily living for as long as, and to the degree that, they are able.

5. Ambulation. Nursing personnel shall assist and encourage patients with daily ambulation unless otherwise ordered by the physician.

6. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary; and

7. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(3) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribes specific modalities to be used and frequency of physical, speech and occupational therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his/her evaluation of patients by applying muscle, nerve, joint, and functional ability tests; and/or

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which includes:

a. Service in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders; and/or

c. Determination and recommendation of appropriate speech and hearing services.

3. Occupational therapy services which includes:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests; and/or

b. Guiding the patient in his use of therapeutic creative and self-care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the unit such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services.

(a) All dual licensure units shall provide services to assist patients to achieve and maintain good personal hygiene including the level of assistance necessary with:

1. Bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the unit shall provide soap, clean towels, and wash cloths for each patient. Toilet articles such as brushes and combs shall not be used in common.

2. Shaving.

3. Cleaning and trimming of fingernails and toenails.

4. Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All patients shall be provided with toothbrushes, a dentifrice, and denture containers, when applicable.

5. Washing, grooming, and cutting of hair.

(b) The staff shall encourage and assist the patients to dress in their own street clothing (unless otherwise indicated by the physician).

(5) Dental services. The unit shall assist patients to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(6) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(7) Patient activities and therapeutic recreation.

(a) All dual licensure units shall provide a program to stimulate physical and mental abilities to the fullest extent, to encourage and develop a sense of usefulness and self respect and to prevent, inhibit or correct the development of systems of physical and mental

regression due to illness or old age. The program shall provide sufficient variety to meet the needs of the various types of patients in the facility. When possible, the patient shall be included in the planning of activities.

(b) All dual licensure units shall meet the following program requirements:

1. Staff. A person designated by the administrator shall be responsible for the program.

2. A program shall be developed for each patient and shall be incorporated in the patient's plan of care and revised according to the patient's needs. Changes in his response to the program shall be recorded in the medical record.

3. There shall be a planned and supervised activity period each day. The schedule shall be current and posted.

4. The program shall be planned for group and individual activities, both within and outside of the unit, weather permitting.

5. The person responsible for activities shall maintain a current list of patients on which precautions are noted regarding a patient's condition that might restrict or modify his participation in the program.

6. The unit shall provide supplies and equipment for the activities program.

7. Reading materials, radios, games and TV sets shall be provided for the patients.

8. The program may include religious activities for each patient if it is the desire of the patient to participate. Requests from a patient to be seen by a clergyman shall be acted upon as soon as possible, and an area for private consultation shall be made available.

9. The unit shall allow the patient to leave the facility to visit, shop, attend church, or other social activities provided this does not endanger his health or safety;

(8) Transportation.

(a) If transportation of patients is provided by the unit to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The unit shall arrange for appropriate transportation in case of medical emergencies.

(9) Pharmaceutical services. The hospital requesting dual licensure beds shall meet the pharmaceutical requirements outlined in 902 KAR 20:016, Section 4(5) and the additional requirements contained in this subsection.

(a) Medication services. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician. Telephone orders for skilled or intermediate care patients shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. The registered nurse or the pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review each patient's medications at the time of the medical evaluation pursuant to Section 5(1)(b) through (c) of this regulation. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

(b) Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act of (KRS Chapter 314). Each dose administered shall be recorded in the medical record.

1. The nursing station shall have readily available items necessary for the proper administration of medications.

2. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

3. Medications prescribed for one (1) patient shall not be administered to any other patient.

4. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

5. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

6. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff, (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

(10) Dietary services. The hospital requesting dual licensure beds shall meet the dietary services requirements outlined in 902 KAR 20:016, Section 4(3) and the additional requirements contained in this subsection.

(a) Nutritional needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex, and activity, and in accordance with physician's orders.

(b) Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

1. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted.

2. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

Section 6. Facility Requirements and Special Conditions. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) Maximum room capacity: four (4) patients;

(b) Patient rooms shall be designed to permit no more than two (2) beds side by side parallel to the window wall. Not less than a four (4) foot space shall be provided between beds, and at least a three (3) foot space between the side of a bed and the nearest wall, fixed cabinet, or

heating/cooling element. A minimum of four (4) feet is required between foot of bed and opposite wall, or foot of opposite bed in multibed rooms.

(2) The number of beds in a nursing unit shall not exceed sixty (60) unless additional services are provided, as deemed necessary by the licensure agency. At least two (2) rooms per nursing unit shall be designed for single person occupancy (one (1) bed) and shall have private toilet rooms with bath. At least sixty (60) percent of the beds shall be located in rooms designed for one (1) or two (2) beds.

(3) Patient's dining, TV viewing and recreation areas.

(a) The total areas set aside for these purposes shall be adequate to meet the needs of the facility's dual licensure program.

(b) Storage shall be provided for recreational equipment and supplies (e.g., wall cabinets and closets).

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 26, 1991
FILED WITH LRC: August 5, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Department for Employment Services, 2nd Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 18, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/Ralph Von Derau, David Crane

(1) Type and number of entities affected: 30

(a) Direct and indirect costs or savings to those affected: There should be no additional cost to those affected.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: The costs should be minimal.

(a) Direct and indirect costs or savings: $500 for printing new regulation.

1. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with KRS Chapter 13A drafting requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:230. Comprehensive physical rehabilitation hospital; facility specifications.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.040[(2)] to 216B.105[, Executive Order 86-366]

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Cabinet for Human Resources regulate health facilities and health services. [Executive Order 86-366 transferred the authority to regulate health services and health facilities from the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to the Office of the Inspector General.] This regulation provides the licensure requirements for the structural specifications and physical plant requirements for new construction and alteration and maintenance of comprehensive physical rehabilitation hospitals. Comprehensive physical rehabilitation hospitals licensed prior to the effective date of this regulation shall meet the structural specifications in force on the date of their most recent licensure inspection.

Section 1. Definitions. (1) "Certificate of need" means an authorization by the Commission for Health Economics Control in Kentucky to proceed to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service pursuant to KRS Chapter 216B.

[(2) "Commission" means the Commission for Health Economics Control in Kentucky.]

(2) [(3)] "Facility" means a comprehensive physical rehabilitation hospital.

(3) [(4)] "License" means an authorization issued by the Commission for the purpose of operating a hospital facility.

(4) [(5)] "Licensure agency" means the Division for Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

Section 2. Preparation and Approval of Plans and Specifications. After receiving a certificate of need, the following procedures shall be followed:

(1) Before construction is begun for the erection of new buildings or alterations to existing buildings or any change in a facility, the licensee or applicant shall submit plans to the licensure agency for approval.

(2) All architectural, mechanical and electrical drawings shall bear the seal of an architect registered in the Commonwealth of Kentucky or the seal of a professional engineer registered in the Commonwealth of Kentucky, or both.

(3) Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(4) All such plans and specifications must be approved by the licensure agency prior to commencement of construction of new buildings or alterations of existing buildings.

(5) Plans and specifications in specific detail as required by the Kentucky Building Code shall be submitted, together with architectural and/or engineering stamps as required by KRS Chapters 322 and 323, to the Department of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. All such plans and specifications must be approved by the Department of Housing, Buildings and Construction. Appropriate local building permits shall be obtained prior to commencement of construction.

Section 3. Submission of Plans and Specifications for Facilities. (1) First stage, schematic plans.

(a) Single line drawings of each floor shall show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room shall be noted. Drawings shall include typical patient room layouts scaled (one-half (1/2) inch = one (1) foot) with dimensions noted. The proposed roads and walks, service and entrance courts, parking and orientation shall be shown in a plot plan.

(b) If the project is an addition, or is otherwise related to existing buildings on the site, plans shall show the existing facilities and general arrangements of those buildings.

(2) Second stage, preliminary plans. Preliminary sketch plans shall include the following:

(a) Architectural.

1. Plans of basement, floors and roof showing space assignment, sizes, and outline of fixed and movable equipment;

2. All elevators and typical sections;

3. Plot plan showing roads, parking, and sidewalks;

4. Areas and bed capacities by floors.

(b) Mechanical.

1. Single line layout of all duct and piping systems;

2. Riser diagrams for multistory construction;

3. Scale layout of boilers and major associated equipment and central heating, cooling, and ventilating units.

(c) Electrical.

1. Plans showing space assignments, sizes and outlines of fixed equipment such as transformers, main switch and switchboards, and generator sets;

2. Simple riser diagram for multistory building construction, showing arrangement of feeders, subfeeders, bus work, load centers, and branch circuit panels.

(d) Outline specifications.

1. General description of the construction, including interior finishes, types and locations of acoustical material, and special floor covering;

2. Description of the air-conditioning, heating, and ventilation systems and their controls; duct and piping systems; and dietary, laundry, sterilizing and other special equipment;

3. General description of electrical service including voltage, number of feeders, and whether feeders are overhead or underground.

(3) Third stage, contract documents.

(a) Working drawings. Working drawings shall be complete and adequate for bid, contract, and construction purposes. Drawings shall be prepared for each of the following branches of the work: architectural, structural, mechanical, and electrical. They shall include the following:

1. Architectural drawings.

a. Approach plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new building structures, roadways, walks, and parking areas;

b. Plan of each basement, floor, and roof;

c. Elevations of each facade;

d. Sections through building;

e. Required scale and full-size details;

f. Schedule of doors, windows, and room finishes;

g. Layout of typical and special rooms indicating all fixed equipment and major items of movable equipment. Equipment not included in contract shall be so indicated;

h. Conveying systems. Details of construction, machine and control spaces necessary, size and type of equipment, and utility requirements for the following: dumbwaiters: electric, hand, hydraulic; elevators: freight, passenger, patient; loading dock devices; pneumatic tube systems.

2. Structural drawings.

a. Plans for foundations, floors, roofs, and all intermediate levels with sizes, sections, and the relative location of the various structural members;

b. Dimensions of special openings;

c. Details of all special connections, assemblies, and expansion joints.

3. Mechanical drawings.

a. Heating, steam piping, and air-conditioning systems. Radiators and steam heated equipment such as sterilizers, warmers, and steam tables; heating and steam mains and branches with pipe sizes; diagram of heating and steam risers with pipe sizes; sizes, types, and capacities of boilers, furnaces, hot water heaters with stokers, oil burners, or gas burners; pumps, tanks, boiler breeching, and piping and boiler room accessories; air-conditioning systems with required equipment, water and refrigerator piping, and ducts; supply and exhaust ventilation systems with heating/cooling connections and piping; air quantities for all room supply and exhaust ventilating duct openings.

b. Plumbing, drainage, and standpipe systems - size and elevation of: street sewer, house drains, street water main, and water service into the building; location and size of soil, waste, and water service with connection to house drains, clean-outs, fixtures, and equipment; size and location of hot, cold and circulating branches, and risers from the service entrance, and tanks; riser diagram for all plumbing stacks with vents, water risers, and fixture connections; gas, oxygen, and vacuum systems; standpipe and sprinkler systems where required; all fixtures and equipment that require water and drain connections.

4. Electrical drawings.

a. Electric service entrance with switches and feeders to the public service feeders, characteristics of the light and power current, transformers and their connections if located in the building;

b. Location of main switchboard, power panels,

light panels, and equipment. Diagram of feeders and conduits with schedule of feeder breakers or switches;

c. Light outlets, receptacles, switches, power outlets and circuits;

d. Telephone layout showing service entrance telephone switchboard, strip boxes, telephone outlets and branch conduits;

e. Nurses' call systems with outlets for beds, duty stations, door signal light, annunciators, and wiring diagrams;

f. Emergency electrical system with outlets, transfer switch, sources of supply, feeders, and circuits;

g. All other electrically operated systems and equipment.

(b) Specifications. Specifications shall supplement the drawings to fully describe types, sizes, capacities, workmanship, finishes and other characteristics of all materials and equipment and shall include:

1. Cover or title sheet;

2. Index;

3. Sections describing materials and workmanship in detail for each class of work.

(c) Access to the work. Representatives of the appropriate state agencies shall have access at all reasonable times to the work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

Section 4. Compliance with Building Codes, Ordinances and Regulations. (1) This section may be administered independently from other sections of this regulation.

(2) General. Nothing stated herein shall relieve the sponsor from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(3) The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements for safety pursuant to 815 KAR 10:020, as amended;

(b) Requirements for plumbing pursuant to 815 KAR 20:010-191, as amended;

(c) Requirements for air contaminants for incinerators pursuant to 401 KAR 59:020 and 401 KAR 61:010;

(d) Requirements for elevators pursuant to 815 KAR 4:010;

(e) Requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.

(4) Prior to occupancy the facility shall have final approval from appropriate agencies.

(5) All facilities shall be currently approved by the Fire Marshal's office in accordance with the Life Safety Code before relicensure is granted by the licensing agency.

Section 5. Facility Requirements and Special Conditions. (1) A copy of the narrative program as submitted in the Certificate of Need application for each project shall be provided by the sponsor which describes the functional space requirements, staffing patterns, departmental relationships, and other basic information relating to the fulfillment of the objectives of the facility.

(2) The extent (number and types of rooms) of the diagnostic, clinical, and administrative facilities to be provided shall be determined by the services contemplated and the estimated patient load as described in the narrative program.

(3) Facilities shall be available to the public, staff, and patients who may be physically handicapped with special attention given to ramps, drinking fountain height, and mirrors.

Section 6. Nursing Unit. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) Maximum room capacity shall be four (4) patients.

(b) Minimum room areas exclusive of toilet rooms, closets, lockers, wardrobes, or vestibules shall be 125 square feet in one (1) bed rooms and 100 square feet per bed in multibed rooms.

(c) Multibed rooms shall be designed to permit no more than two (2) beds side by side parallel to the window wall with not less than a four (4) foot space provided between beds, and at least a three (3) foot space between the side of a bed and the nearest wall, fixed cabinet, or heating/cooling element. A minimum of four (4) feet is required between foot of bed and opposite wall, or foot of the opposite bed in multibed rooms.

(d) Window. All patient rooms must have windows operable without the use of tools and shall have sills not more than three (3) feet above the floor. Window area shall be at least eight (8) percent of patient room floor area.

(e) Nurses' calling system. See Section 34(7) of this regulation.

(f) Lavatory. In single and two (2) bed rooms with private toilet room, the lavatory may be located in the toilet room. Where two (2) patient rooms share a common toilet, a lavatory shall be provided in each patient room.

(g) Wardrobe or closet for each patient. Minimum clear dimensions shall be one (1) foot ten (10) inches by one (1) foot and eight (8) inches with full length hanging space, clothes rod and shelf.

(h) Cubicle curtains, or equivalent built-in devices shall be provided to furnish complete privacy for each patient at any one time in multibed rooms. Design for privacy shall not restrict patient access to the toilet, lavatory, or room entrance.

(i) No patient room shall be located more than 120 feet from the nurses' station, the clean workroom and the soiled workroom. No room shall be used as a patient room where the access is through another patient's room. At least sixty (60) percent of the beds in the nursing unit shall be located in rooms designed for one (1) or two (2) beds.

(2) Service areas in each nursing unit. The size and disposition of each service area will depend on the number of beds and types of disabilities to be served. Although identifiable spaces are required for each of the indicated functions, consideration will be given to multiple-use design solutions which provide equal, though unspecified, areas. Certain service areas may be arranged and located to serve more than one (1) nursing unit, but at least one (1) such service area shall be provided on each nursing floor unless noted otherwise. Service areas shall include:

(a) Administrative center or nurses' station

for charting, doctors' charting, communications, and storage for supplies and nurses' personal effects.

(b) Clean workroom or clean holding area. The clean workroom shall contain a work counter, hand-washing and storage facilities. The clean holding room shall be part of a system for storage and distribution of clean and sterile supplies and shall be similar to the clean workroom except that the work counter and hand-washing facilities may be omitted.

(c) Soiled workroom or soiled holding room. The soiled workroom shall contain a clinical sink or equivalent flushing rim fixture, sink equipped for hand washing, work counter, waste receptacle, and linen receptacle. A soiled holding room shall be part of a system for collection and disposal of soiled materials and shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted.

(d) Lounge and toilet room(s) for staff including lockers for storage of personal effects readily accessible. (May serve more than one (1) nursing unit.)

(e) Multipurpose room for conferences, demonstrations and consultation. (May serve more than one (1) nursing unit.)

(f) Medicine area. Provision shall be made for convenient and prompt twenty-four (24) hour distribution of medicine to patients. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system. If used, a medicine preparation room or unit shall be under the nursing staff's visual control and a work counter, refrigerator, and locked storage for biologicals and drugs. A medicine dispensing unit may be located at the nurses' station, in the clean workroom, or in an alcove or other space under direct control of the nursing or pharmacy staff. The controlled substances locker must be under double lock. A hand-washing facility shall be provided.

(g) Clean linen storage. There shall be an enclosed storage space for clean linen. This area may be designated within the clean workroom. If a closed cart system is used, storage may be in an alcove.

(h) Nourishment station. This shall contain a sink equipped for hand-washing equipment for serving between scheduled meals, refrigerator, storage cabinets, and ice making-dispenser units to provide patient service and treatment. (May serve more than one (1) nursing unit on the same floor.)

(i) Stretcher and wheelchair parking area or alcove. This shall be located out of the path of normal traffic. (May serve more than one (1) nursing unit on the same floor.)

(j) Janitor's closet for storage of housekeeping supplies and equipment with a floor receptor or service sink. (May serve more than one (1) nursing unit on the same floor.)

(k) Equipment storage room with sufficient space for equipment such as I.V. stands, inhalators, air mattresses, and walkers. (May serve more than one (1) nursing unit on the same floor.)

(l) Emergency equipment storage. Space for equipment such as crash carts shall be provided and be under direct control of the nursing staff in close proximity to the nurses' station and out of traffic. (May serve more than one (1) nursing unit on the same floor.)

(3) Patients' bathing facilities. There shall be at least one (1) shower stall or one (1) bathtub for each twelve (12) beds not individually served. Each tub or shower shall be in an individual room or privacy enclosure which provides space for the private use of the bathing fixture, for drying and dressing, and for a wheelchair and an assisting attendant. Showers and central bathing facilities shall be at least four (4) feet square without curbs, and designed to permit use by a wheelchair patient.

(4) Patient toilet rooms.

(a) The minimum dimensions of a room containing only a water closet shall be five (5) feet by six (6) feet. Additional space shall be provided if a lavatory is located within the same room. The configuration of patient toilet rooms must provide for side transfers.

(b) A toilet room shall be directly accessible from each patient room without going through the general corridor. One (1) toilet room may serve two (2) patient rooms, but not more than four (4) beds. (The lavatory may be omitted from the toilet room if one is provided in each patient room.)

(c) Doors to toilet rooms shall have a minimum width of two (2) feet ten (10) inches to admit a wheelchair.

(5) Isolation room. If provided for in the program narrative, isolation room(s) shall be required for those prone to infections as well as those suffering from infections. Each isolation room shall have:

(a) Only one (1) patient per room;

(b) Separate toilet room with bath or shower and lavatory for the exclusive use of the patient allowing for direct entry from the patient bed area; and

(c) Facilities outside and immediately adjacent to the patient room for maintaining aseptic conditions.

Section 7. Outpatient Suite. (1) General. Facilities for outpatient clinic care shall be provided if included in the narrative plan.

(2) Outpatient department. If outpatient services are provided, the extent of the administrative, clinical and diagnostic facilities to be provided will depend on the estimated patient load as described in the program narrative. The planning of outpatient facilities shall provide for the privacy and dignity of the patient during interview, examination, and treatment. Facilities shall be located so that outpatients do not traverse inpatient areas and the following shall be provided:

(a) Entrance at grade level which is sheltered from weather and able to accommodate wheelchair access.

(b) Reception and control area located near the entrance and waiting area(s).

(c) Wheelchair storage out of the line of direct traffic.

(d) Public waiting area with toilet facilities, public telephone and drinking fountain.

(e) Interview space(s) for private interviews relating to social service, credit and admissions.

(f) General purpose examination room(s) for medical examinations. Each room shall have a minimum floor area of eighty (80) square feet, excluding such spaces as vestibule, toilet, closet and work counter. Examination table shall

be placed to provide at least thirty (30) inches clearance to each side and at the foot of the table. A lavatory or sink equipped for hand washing shall be provided in each room.

(g) Patient toilet facilities shall be provided. The number required will depend on the actual patient load of the department.

(h) Nurses' station for nurses' charting, doctors' charting, communications and storage for supplies and nurses' personal effects.

(i) Staff toilet room located convenient to the nurses' station.

(j) Clean workroom. It shall contain a work counter, sink equipped for hand washing, and storage space for clean and sterile supplies.

(k) Soiled workroom. It shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle and linen receptacle.

(l) Drug distribution station for storage and preparation of medication. It shall contain a work counter, sink equipped for hand washing, and storage facilities. Controlled substances shall be under double lock.

(m) Wheelchair and stretcher alcove located convenient to the entrance to the department.

(n) Janitor's closet. It shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment for exclusive use in the outpatient department.

(o) Equipment storage room.

Section 8. Radiology Suite. If the facility provides diagnostic radiology services directly, then the suite shall contain the following:

(1) Radiographic room(s);

(2) Film processing facilities;

(3) Viewing and administrative area(s);

(4) Film storage facilities;

(5) Toilet room with hand-washing facility. It shall be located directly accessible from each fluoroscopy room without entering the general corridor area;

(6) Dressing area(s) for ambulatory patients with convenient access to toilets;

(7) Waiting room or alcove for ambulatory patients;

(8) Holding area for stretcher patients. It shall be located out of the direct line of normal traffic; and

(9) Hand-washing facilities shall be provided in each radiographic room unless the room is used only for routine diagnostic screening such as for chest x-rays.

Section 9. Laboratory Suite. Facilities shall be provided directly or through an effective contract arrangement with a nearby hospital for laboratory service for the following:

(1) Hematology;

(2) Clinical chemistry. An acid-shower and eyewashing facility shall be provided nearby;

(3) Urinalysis. A specimen toilet with hand-washing facility shall be provided nearby;

(4) Cytology;

(5) Bacteriology;

(6) Waiting area for ambulatory patients;

(7) Administrative support areas;

(8) Blood storage facilities;

(9) Blood specimen collection area. It shall contain work counter, hand-washing facilities, and space for patient seating;

(10) Glass-washing and sterilizing facilities; and

(11) Recording and filing facilities.

Section 10. Physical Therapy Suite. Each rehabilitation facility shall provide physical therapy services; however, the physical therapy area can be shared with the occupational therapy services, if called for in the program narrative. Each physical therapy suite shall contain the following items:

(1) Office space;

(2) Waiting space;

(3) Treatment area(s) for thermotherapy, diathermy, ultrasonics, hydrotherapy, etc. Cubicle curtains around each individual treatment area shall be provided for privacy purposes. Hand-washing facilities shall be provided but one (1) lavatory or sink may serve more than one (1) treatment cubicle. Facilities for collection of wet and soiled linen or other material shall be provided;

(4) Exercise area(s);

(5) Storage for clean linen, supplies, and equipment;

(6) Patients' dressing areas, showers, lockers and toilet rooms;

(7) Janitor's closet with floor receptor or service sink and storage space for housekeeping supplies and equipment; and

(8) Wheelchair and stretcher storage area. (Items contained in subsections (1), (2), (5), (7) and (8) of this section may be planned and arranged for shared use by occupational therapy patients and staff if the approved narrative program reflects this sharing concept.)

Section 11. Occupational Therapy Suite. Each rehabilitation facility shall provide occupational therapy services; however, the occupational therapy area can be shared with the physical therapy services, if called for in the program narrative. The following shall be provided:

(1) Office space;

(2) Waiting space;

(3) Work areas and counters suitable for wheelchair access;

(4) Hand-wash facilities;

(5) Storage for supplies and equipment.

Section 12. Social Work Suite. Each rehabilitation facility shall contain a social work suite. The following shall be provided:

(1) Office space(s) for staff.

(2) Office space for private interviewing and counseling for all family members.

Section 13. Psychological Services Suite. Each rehabilitation facility shall contain a psychological service suite. The following shall be provided:

(1) Office(s).

(2) Workspace for testing, evaluation, and counseling.

Section 14. Speech and Language Therapy Suite. Each rehabilitation facility shall contain a speech and language therapy suite. The following shall be provided:

(1) Office(s) for therapists.

(2) Space for evaluation and treatment.

(3) Space for equipment and storage.

Section 15. Area for Teaching Activities of Daily Living (should be combined with rehabilitative engineering function, as needed).

(1) An area for teaching activities shall be provided.

(2) It shall include a bedroom, bath, kitchen, and space for stairs.

Section 16. Prosthetics and Orthotics Service. Depending on the needs of those served and the stated institutional goals, the facility shall provide or make arrangements for the following:
(1) Work space for technician(s).
(2) Space for evaluation and fittings (with a provision for privacy).
(3) Space for equipment, supplies, and storage.

Section 17. Vocational Therapy Services. Depending upon the needs of those served and the stated institutional goals, the facility shall provide or make arrangements for the following:
(1) Office(s).
(2) Workspace for vocational services activities such as evaluation (prevocational and vocational).
(3) Training.
(4) Counseling and placement.

Section 18. Respiratory Therapy Services. Depending upon the needs of those served and the stated institution goals, the facility shall provide or make arrangements for the following:
(1) Storage for equipment and supplies.
(2) Space and utilities for cleaning and sanitizing equipment.
(3) Service facilities for calibrating, adjusting, servicing, and minor repairs and equipment.
(4) Respiratory services shall be conveniently accessible on a twenty-four (24) hour basis to the facility.
(5) If respiratory services such as testing and demonstration for outpatients are part of the program, additional facilities and equipment shall be provided as necessary for appropriate function of the service, including but not limited to:
(a) Patient waiting area with provision for wheelchairs.
(b) Reception and control station.
(c) Patient toilets and hand-washing facilities.
(d) Room(s) for patient education and demonstration.

Section 19. Pharmacy Suite. If required by program, the size and type of services to be provided in the pharmacy will depend upon the type of drug distribution system to be used and whether the facility proposes to provide, purchase, or share pharmacy services. This shall be explained in the narrative program. Provision shall be made for the following functional areas:
(1) Dispensing area with hand-washing facility.
(2) Editing or order review area.
(3) Area for compounding.

Section 20. Dietary Department. Food facilities shall be designed and equipped to meet requirements of the narrative program. If a commercial service will be used, dietary areas and equipment shall be designed to accommodate the requirements for sanitary storage, processing, and handling. The department shall include the following facilities unless acceptable commercially prepared dietary services, meals, and or disposables are to be used:
(1) Control station for the receiving of food supplies.
(2) Food preparation facilities. Conventional food preparation systems require space and equipment for preparing, cooking, and baking. Convenience food service systems such as frozen prepared meals, bulk packages entrees, and individual package portions, or systems using contractual commissary services require space and equipment for thawing, portioning, cooking and/or baking.
(3) Hand-washing facility(ies) located conveniently accessible in the food preparation area.
(4) Patients' meals service facilities. Examples are those required for tray assembly and distribution.
(5) Dishwashing space. It shall be located in a room or alcove separate from the food preparation and serving area. Commercial-type dishwashing equipment shall be provided. Space shall also be provided for receiving, scraping, sorting and stacking of soiled dishware and tableware prior to cleanup. The area shall be designed to allow clean dishware and tableware to be removed at a different location than the one used for the soiled dishware and tableware. A hand-washing lavatory shall be conveniently located.
(6) Pot-washing facilities.
(7) Refrigerated storage to accommodate a three (3) day minimum supply.
(8) Dry storage to accommodate a three (3) day minimum supply.
(9) Storage areas and sanitizing facilities for cans, carts and mobile tray conveyors.
(10) Waste storage facilities shall be located in a separate room easily accessible to the outside for direct pickup or disposal.
(11) Dining space for ambulatory patients, staff and visitors.
(12) Office(s) or desk spaces for dieticians or the dietary service manager.
(13) Toilets with hand-washing facilities for use by the dietary staff shall be immediately available.
(14) Janitor's closet located within the department. It shall contain a floor receptor or service sink with storage for housekeeping supplies and equipment to be used exclusively in this area.

Section 21. Patient's Dining, Recreation, and Day Spaces. The following areas shall be provided and may be in separate or adjoining spaces:
(1) Inpatients and residents. A total of twenty-five (25) square feet per bed.
(2) Outpatients. A total of twenty (20) square feet per person when dining is a part of their day care program. (If dining is not part of the program, provide at least ten (10) square feet per person for recreation and day spaces.)
(3) Storage. Storage spaces shall be provided for recreational equipment and supplies.

Section 22. Administrative and Public Areas. The following shall be provided:
(1) Lobby. It shall include:
(a) Storage space for wheelchairs;
(b) Reception and information counter or desk;
(c) Waiting space(s); and
(d) Public toilet facilities designed for use by the physically handicapped.
(2) Interview space(s) for private interviews relating to social services, credit, and admissions.

(3) Director of nurses' office.
(4) Staff toilet rooms.
(5) Medical library facilities.
(6) General or individual office(s) for business transactions, medical and financial records, administrative and professional staffs use.
(7) Administrator's office.
(8) Multipurpose room(s) for conferences, meetings, and health education purposes including provisions for showing visual aids.
(9) Storage for office equipment and supplies.

Section 23. Medical Records Unit. This unit shall include:
(1) Medical records administrator/technician office or space;
(2) Active record storage area;
(3) Record review and dictating room; and
(4) Work area for sorting, recording, and microfilming.

Section 24. Sterilizing Facilities. A system for the sterilization of equipment and supplies shall be provided. Storage area for clean supplies and sterile supplies shall be provided.

Section 25. Central Stores. The following shall be provided:
(1) Off-street unloading facilities.
(2) Control station for receiving supplies.
(3) General storage rooms which are adequate in size to meet the needs of the facility.

Section 26. Laundry. On-site processing and off-site processing.
(1) If linen is to be processed on the site, the following shall be provided:
(a) Soiled linen receiving, holding, and sorting room with hand-washing facilities.
(b) Laundry processing room with commercial-type equipment which can process seven (7) days of linen needs within a regularly scheduled work week. Hand-washing facilities shall be provided.
(c) Storage for laundry supplies.
(d) Clean linen inspection and mending room.
(e) Clean linen storage, issuing, and holding room or area.
(f) Janitor's closet. It shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment to be utilized exclusively in this department.
(g) Cart storage and cart sanitizing facilities.
(h) Arrangement of equipment and procedures shall be in a manner to permit an orderly work flow with a minimum of cross traffic that might mix clean and soiled operations.
(2) If linen is to be processed off the site, the following shall be provided:
(a) Soiled linen holding room with a hand-washing facility conveniently accessible.
(b) Clean linen receiving, holding, inspection and storage room(s).

Section 27. Employees' Facilities. (1) Female locker room. This room shall have lounge space, lockers for personal effects and a separate toilet room. The area shall be designed for use by the physically handicapped. In some cases shower facilities may be appropriate depending on the size of the facility.
(2) Male locker room. This room shall have lockers and a separate toilet room. The area shall be designed for use by the physically handicapped. In some cases shower facilities may be appropriate depending on the size of the facility.

Section 28. Engineering Service and Equipment Areas. The following shall be provided:
(1) Room(s) or separate building(s) for boilers, mechanical equipment and electrical equipment;
(2) Engineer's office;
(3) Maintenance shop;
(4) Storage room for building maintenance supplies;
(5) Storage room for central housekeeping equipment and supplies;
(6) Office and administrative support space for person(s) in charge of central housekeeping; and
(7) Yard equipment storage.

Section 29. Waste Processing Services. Rehabilitation facilities which are part of an acute care hospital may share waste processing. Freestanding facilities shall provide the following:
(1) Storage and disposal. Space and facilities shall be provided for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, removal or by a combination of these techniques.
(2) Incinerator. A gas, electric, or oil-fired incinerator shall be provided for the complete destruction of pathological and infectious waste. Infectious waste includes, but is not limited to, waste materials from isolation rooms, dressings and material from open wounds and laboratory specimens. The incinerator may be shared by two (2) or more institutions located on a common "campus."sterilization or incineration.
(a) The incinerator capacity required will vary with the type and quantity of waste to be processed. If approved by local authorities and described in the functional program, items of small mass such as dressings, isolation room waste, laboratory specimens, may be sterilized on site by autoclaving or rendered safe by other acceptable procedure and disposed of in municipal landfill or incinerator. Waste tissue and contaminated combustible solids shall be rendered safe by such methods as sterilization or incineration. Culture plates, tubes, sputum cups, contaminated sponges, swabs and the like shall be sterilized before they are washed and discarded.
(b) Consideration shall be given to the recovery of waste heat from on-site incinerators which are used to dispose of large amounts of waste materials.

Section 30. Details and Finishes. (1) Details.
(a) All doors to patient-room toilets and patient-room bathrooms shall swing outward or be equipped with hardware that will permit access in an emergency.
(b) Windows and outer doors which may be frequently left in an open position shall be provided with insect screens.
(c) Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use by wheelchairs and carts and shall be constructed to resist passage of smoke.
(d) The location and arrangements of lavatories and sinks equipped with blade handles

for hand-washing purposes shall provide a minimum of sixteen (16) inches clearance to each side of the centerline of the fixture.

(e) Provisions for hand drying shall be included at all hand-washing facilities except scrub sinks. These shall be single use, separate paper or cloth units enclosed in such a way as to provide protection against dust or soil and insure single unit dispensing. Hot air dryers are permitted provided that installation is such as to minimize contamination by recirculated air.

(f) Grab bars shall be provided at all patients' toilets, showers, and tubs. The bars shall have one and one-half (1 1/2) inches clearance to walls and shall be of sufficient strength and anchorage to substain a concentrated load of 250 pounds for a period of five (5) minutes.

(g) Handrails shall be provided on both sides of corridors used by patients. A clear distance of one and one-half (1 1/2) inches shall be provided between the handrail and the wall, and the top of the rail shall be about thirty-two (32) inches above the floor, except for special care areas such as those serving children.

(h) Ends of handrails and grab bars shall be constructed to prevent snagging the clothes of patients.

(i) Location and arrangement of hand-washing facilities shall permit their proper use and operation. Particular care should be given to clearance required for blade-type operating handles. Lavatories intended for use by handicapped patients shall be installed to permit wheelchairs to slide under them.

(j) Recessed soap dishes shall be provided at all showers and bathtubs.

(k) Mirrors shall be arranged for convenient use by patients in wheelchairs as well as by patients in a standing position.

(l) Protection requirements of x-ray and gamma-ray installations shall be approved by the Radiation and Product Safety Branch, Office of Consumer Health Protection, Department for Health Services, Cabinet for Human Resources.

(m) The minimum ceiling height shall be eight (8) feet, with the following exceptions:

1. Boiler rooms shall have ceiling clearances not less than two (2) feet six (6) inches above the main boiler header and connecting piping.

2. Radiographic, and other rooms containing ceiling-mounted equipment or ceiling-mounted light fixtures shall have sufficient height to accommodate the equipment or fixtures and their normal movement.

3. Ceiling and corridors, storage rooms, and toilet rooms shall be not less than seven (7) feet eight (8) inches. Ceilings in small minor spaces which are normally unoccupied may be reduced to seven (7) feet.

4. Suspended tracks, rails, and pipes located in the path of traffic for patients in beds and/or stretchers, including service areas for inpatients shall be not less than seven (7) feet above the floor.

(n) Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated shall not be located directly over patient bed areas, unless special provisions are made to minimize such noise.

(o) Rooms containing heat-producing equipment such as boiler rooms, laundries, and food preparation areas shall be insulated and ventilated to prevent any floor surface from exceeding a temperature of ten (10) degrees Fahrenheit above the ambient room temperature.

(p) Noise reduction criteria. Partition, floor, and ceiling construction in patient areas shall comply with Table 1, Section 35 of this regulation.

(2) Finishes.

(a) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. Floors in areas used for food preparation or food assembly shall be water-resistant and grease-proof. Joints in tile and similar material in such areas shall be resistant to food acids. In all areas subject to frequent wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet, such as shower and bath areas, kitchens and similar work areas, shall have a nonslip finish.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an unbroken surface.

(c) Walls generally shall be washable; and in the immediate area of plumbing fixtures, the finish shall be smooth and moisture-resistant. Finish, trim, and floor and wall construction in dietary and food preparation areas shall be free from spaces that can harbor rodents and insects.

(d) Wall bases in kitchens, and other areas subject to frequent wet cleaning methods shall be made integral and coved with the floor, tightly sealed within the wall, and constructed without voids that can harbor harmful bacteria.

(e) Ceilings throughout the facility shall be easily cleanable. Ceilings in dietary and food preparation areas shall have a finished ceiling covering all overhead piping and ductwork. Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas and similar spaces, unless required for fire-resistive purposes.

(f) Acoustical type ceilings shall be provided for corridors in patient areas, nurses' stations, dayrooms, recreation rooms, dining areas, and waiting areas.

Section 31. Elevators. General. All buildings having patients' facilities, such as bedrooms, dining rooms or recreation areas, or critical services, such as diagnostic or therapy areas, located on other than the main entrance floor shall have elevators.

(1) Number of elevators.

(a) At least one (1) hospital-type elevator shall be installed where one (1) to fifty-nine (59) patient beds are located on any floor other than the main entrance floor.

(b) At least two (2) hospital-type elevators shall be installed where sixty (60) to 200 patient beds are located on floors other than the main entrance floor, or where the major inpatient services are located on a floor other than those containing patient beds.

(c) At least three (3) hospital-type elevators shall be installed where 201 to 350 patient beds are located on floors other than the main entrance floor, or where the inpatient services are located on a floor other than those containing patient beds.

(d) For facilities with more than 350 beds number of elevators shall be determined from a study of the facility plan and the estimated vertical transportation requirements.

(2) Cars and platforms. Cars of hospital-type elevators shall have inside dimensions that will

accommodate a hospital bed and attendant and shall be at least five (5) feet wide by seven (7) feet and six (6) inches deep. The car door shall have a minimum clear opening of not less than three (3) feet and eight (8) inches.

(3) Leveling. Elevators shall have automatic leveling of the two (2) way automatic maintaining type with accuracy within plus or minus one-half (1/2) inch.

(4) Operation. Elevators, except freight elevators, shall be equipped with a two (2) way special service switch to permit cars to bypass all landing button calls and be dispatched directly to any floor.

Section 32. Construction. (1) Design. Every building and every portion thereof shall be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards, including seismic forces when applicable.

(2) Foundations. Foundations shall rest on natural solid bearing, if a satisfactory bearing is available at reasonable depths. Proper soil-bearing values shall be established in accordance with recognized standards. If solid bearing is not encountered at practical depths, the structure shall be supported on driven piles, augured piles, poured caissons or equivalent designed to support the intended load without detrimental settlement, except that one (1) story buildings may rest on a fill designed by a soils engineer. When engineered fill is used, site preparation and placement of fill shall be done under the direct full-time supervision of the soils engineer. The soils engineer shall issue a final report on the compacted fill operation and certification of compliance with the job specifications. All footings shall extend to a depth not less than one (1) foot below the estimated frost line.

(3) Natural disasters. Special provisions shall be made in the design of buildings in geographic areas where local experience reflects loss of life or extensive damage to buildings resulting from tornadoes, floods, earthquakes, etc.

Section 33. Mechanical Requirements. (1) General. Prior to completion of the contract and final acceptance of the facility, the architect and/or engineer shall obtain from the contractor certification in writing that all mechanical systems have been tested and that the installation and performance of these systems conform with the final plans and specifications.

(2) Incinerators. The design and installation shall comply with the current Kentucky standards for control of air contaminants for incinerators regulations as applicable to hospitals.

(3) Steam and hot water systems.

(a) Boilers. If boilers are used, a minimum of two (2) shall be provided and the combined capacity of the boilers, based upon the published Steel Boiler Institute or Institute of Boiler and Radiation Manufacturer's net rating, must be able to supply 150 percent of the normal requirements for all systems and equipment in the facility.

(b) Boiler accessories. Boiler feed pumps, condensate return pumps, fuel oil pumps, and circulation pumps shall be connected and installed to provide normal and standby service.

(c) Valves. Supply and return mains and risers of cooling, heating, and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends except that vacuum condensate returns need not be valved at each piece of equipment.

(4) Thermal and acoustical installation.

(a) Insulation shall be provided on the following within the building:

1. Boilers, smoke breeching, and stacks;
2. Steam supply and condensate return piping;
3. Hot water piping above 120 degrees Fahrenheit at all hot water heaters, generators and converters;
4. Chilled water, refrigerant, other process piping and equipment operating with fluid temperatures below ambient dew point;
5. Water supply and drainage piping on which condensation may occur;
6. Air ducts and casings with outside surface temperature below ambient dew point or temperature above eighty (80) degrees Fahrenheit; and
7. Other piping, ducts, and equipment as necessary to maintain the efficiency of the system.

(b) Insulation on cold surfaces shall include an exterior vapor barrier.

(5) Air-conditioning, heating and ventilation systems.

(a) Temperatures for areas occupied by inpatients, the indoor winter design temperature shall be seventy-five (75) degrees Fahrenheit. For all other occupied areas, the indoor winter design temperature shall be seventy-two (72) degrees Fahrenheit. For all other occupied areas, the indoor summer design temperature shall be seventy-five (75) degrees Fahrenheit.

(b) Ventilation system details. All air-supply and air-exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates as shown on Table 2, Section 35 of this regulation, shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates.

1. Outdoor air intakes shall be located as far as practical but not less than twenty-five (25) feet from exhaust outlets of ventilation systems, combustion equipment stacks, medical surgical vacuum systems, plumbing vent stacks, or from areas which may collect vehicular and other noxious fumes. Plumbing and vacuum vents that terminate above the level of the top of the air intake may be located as close as ten (10) feet. The bottom of outside air intakes serving central air systems shall be located as high as practical but not less than six (6) feet above ground level or if installed above the roof, three (3) feet above roof level.
2. The ventilation systems shall be designed and balanced in accordance with the pressure relationship as shown in Table 2, Section 35 of this regulation.
3. Where two (2) filter beds are required in central ventilation and air-conditioning equipment, Filter Bed No. 1 shall be located upstream of the air-conditioning equipment and Filter Bed No. 2 shall be located downstream of the supply fan, any recirculating spray water system, and water reservoir type humidifiers. Where only one (1) filter bed is required, it shall be located upstream of the air-conditioning equipment unless an additional prefilter is employed. In this case, the prefilter shall be

located upstream of the equipment and the main filter may be located further downstream.

4. All room supply, return and exhaust outlets shall be located not less than three (3) inches AFF.

5. All central ventilation or air-conditioning systems shall be equipped with filters having minimum efficiencies as listed below:

Area Designation	Minimum No. of Filters	Filter Efficiencies % No 1.	No. 2
Burn Care Unit	2	25	90
Patient Care, Treatment, Diagnostic and Related Areas	2	25	90*
Food Preparation and Laundry	1	80	--
Administrative, Storage, and Soiled Holding	1	25	--

*May be reduced to eighty (80) percent for systems using all-outdoor air.

6. All filter efficiencies as listed above shall be average atmospheric dust spot efficiencies tested in accordance with ASHRAE Standard 52-76.

7. Filter frames shall be durable and carefully dimensioned, and shall provide an airtight fit with the enclosing ductwork. All joints between filter segments and the enclosing ductwork shall be gasketed or sealed to provide a positive seal against air leakages.

8. A manometer or its equivalent shall be installed across each filter bed in central air systems.

9. Ducts which penetrate construction intended for x-ray or other ray protection shall not impair the effectiveness of the protection.

10. Laboratories shall be provided with outdoor air at a rate of two (2) air changes per hour. If this ventilation rate does not provide the air required to ventilate fume hoods and safety cabinets, additional outdoor air shall be provided. A filter with ninety (90) percent minimum efficiency shall be installed in the air supply system at its entrance to the media transfer room.

11. Laboratory hoods for general use shall have a minimum average face velocity of seventy-five (75) feet per minute. Hoods in which infections or highly radioactive materials are processed shall have a face velocity of 100 feet per minute and each hood shall have an independent exhaust system with the fan installed at the discharge point of the system. Hoods used for processing infectious materials shall be equipped with a means of disinfection.

12. Duct systems serving hoods in which highly radioactive materials and strong oxidizing agents are used shall be constructed of stainless steel for a minimum of ten (10) feet from the hood and shall be equipped with washdown facilities.

13. Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates of equipment and reasonable temperatures in the rooms and in adjoining areas.

(6) Plumbing systems. All plumbing systems shall be designed and installed in accordance with the requirements of the current Kentucky plumbing standards regulations applicable to hospitals.

(a) Plumbing fixtures.

1. The material used for plumbing fixtures shall be of nonabsorptive acid-resistant material.

2. Lavatories and sinks required in patient care areas shall have the water supply spout mounted so that its discharge point is a minimum of five (5) inches above the rim of the fixture. All fixtures used by medical and nursing staff and all lavatories used by patients and food handlers shall be equipped with valves which can be operated without the use of hands. Where blade handles are used for this purpose, they shall not exceed four and one-half (4 1/2) inches in length, except that handles on scrub sinks and clinical sinks shall be not less than six (6) inches long.

3. Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

4. Shower bases and tubs shall provide nonslip surfaces for patients.

(b) Water supply systems.

1. Systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand periods.

2. Each water service main, branch main, riser and branch to a group fixture shall be valved. Stop valves shall be provided at each fixture.

3. Backflow preventers (vacuum breakers) shall be installed on hose bibbs, laboratory sinks, janitors' sinks, bedpan flushing attachments, and all other fixtures to which hoses or tubing can be attached.

4. Flush valves installed on plumbing fixtures shall be of a quiet operating type.

5. Bedpan flushing devices shall be provided in each patient toilet room and in the soiled workrooms located in the patient nursing units.

6. An auxiliary water supply shall be available to provide potable water in case of emergencies.

(c) Hot water heating systems.

1. The hot water heating equipment shall have a sufficient capacity to supply water at the temperature and amounts indicated below:

	Hot-water Use		
	Clinical	Dishwasher	Laundry
Gal/hr/bed	6 1/2	4	4 1/2
Temp. F.	110 [125]	180*	160**

*Temperature may be reduced to 160 degrees Fahrenheit if a chloritizer is used. Required temperatures must be provided throughout the wash and rinse cycles.

**Required temperature of 160 degrees Fahrenheit is that measured in the washing machine and shall be supplied so that the temperature will be maintained over the entire wash and rinse cycles.

2. Storage tank(s) shall be fabricated or corrosive-resistant metal or be lined with noncorrosive material.

(d) Drainage systems.

1. Drain lines from sinks in which acid wastes may be poured shall be fabricated from an acid-resistant material.

2. Piping over food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage or condensation from necessary overhead piping systems.

3. Building sewers shall discharge into a community sewerage system. Where such a system

is not available, a facility providing sewage treatment shall be installed which conforms to all applicable local and state regulations.

4. Nonflammable medical gas systems. If used, nonflammable medical gas systems installations shall be in accordance with the requirements of NFPA Standard 56A and 56F.

5. At least two (2) patient rooms in each nursing unit and the examination/treatment rooms shall have oxygen and vacuum outlets.

6. In patient rooms with oxygen and vacuum outlets, one (1) set of those outlets may serve two (2) beds.

Section 34. Electrical Requirements. (1) General.

(a) All material including equipment, conductors, controls, and signaling devices shall be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facilities shown in the specifications or indicated on the plans. All materials shall be listed as complying with applicable standards of Underwriters' Laboratories, Inc., or other similarly established standards.

(b) All electrical installations and systems shall be tested to show that the equipment is installed and operates as planned or specified. A written record of performance tests on special electrical systems and equipment shall be supplied to the owner.

(2) Switchboard and power panels. Circuit breakers or fusible switches that provide disconnecting means and overcurrent protection for conductors connected to switchboards and panel boards shall be enclosed or guarded to provide a dead-front type of assembly. The main switchboard shall be located in a separate enclosure accessible only to authorized persons. The switchboard shall be convenient for use, readily accessible for maintenance, clear of traffic lanes, and in a dry ventilated space devoid of corrosive fumes or gases. Overload devices shall be suitable for operating properly in the ambient temperature conditions.

(3) Panel boards. Lighting and appliance panel boards shall be located on the same floor as the circuits they serve.

(4) Lighting.

(a) All spaces occupied by people, machinery, and equipment within buildings, and the approaches thereto, and parking lots shall have lighting.

(b) Patients' bedrooms shall have general lighting and night lighting. A reading light shall be provided for each patient. Flexible light arms shall be mechanically operated to prevent the bulb from coming in contact with the bed linen. Patients' reading lights and other fixed lights not switched at the door shall have switch controls located convenient to the luminaire. A fixed type night light, mounted at approximately sixteen (16) inches above the floor, shall be provided in each patient room. All switches for control of lighting in patient areas shall be of the quiet operating type. Switches in patients' rooms shall be installed not more than forty-eight (48) inches above the floor to be reached from a wheelchair.

(c) Nursing unit corridors shall have general illumination with provisions for reduction of light levels at night. Refer to Table 3, Section 35 of this regulation.

(5) Receptacles (convenience outlets).

(a) Bedroom. Each patient bedroom shall have duplex receptacles as follows: one (1) on each side of the head of the bed; one (1) for the television, if used; and one (1) on another wall. Receptacles for general use shall be located convenient for use from a wheelchair.

(b) Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart and within twenty-five (25) feet of ends of corridors.

(6) Equipment installation in special areas.

(a) X-ray and gamma-ray installations. X-ray stationary installations and mobile equipment shall conform to the current Kentucky standards for radiographic and radioisotope equipment and use regulations applicable to hospitals.

(b) X-ray film illuminator units. At least two (2) units shall be installed in the x-ray viewing room.

(c) The electrical circuit(s) to fixed or portable equipment in hydrotherapy units shall be provided with five (5) milliampere ground fault interrupters.

(7) Nurses' calling system.

(a) General. In general patient areas, each room shall be served by at least one (1) calling station and each bed shall be provided with a call button. Two (2) call buttons serving adjacent beds may be served by one (1) calling station. Calls shall register at an annunciator panel at the nurses' station and shall actuate a visible signal in the corridor at the patient room door, in the clean workroom, the soiled workroom, the nourishment station, and the nurses' lounge of the nursing unit. In multicorridor nursing units, additional visible signals shall be installed at corridor intersections. In rooms containing two (2) or more calling stations, indicating lights shall be provided at each station. Nurses' calling systems which provide two (2) way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating.

(b) Patients' emergency. A nurses' call emergency button shall be provided for patients' use at each patient's toilet, bath, and shower room on the nursing unit floors. Such buttons shall be usable by a collapsed patient lying on the floor; inclusion of a pull cord will satisfy this requirement.

(8) Fire alarms and fire detection systems. The design and installation of these systems must be approved by the State Fire Marshal's Office.

(9) Emergency electrical.

(a) General. To provide electricity during interruption of the normal electric supply, an emergency source of electricity shall be provided and connected to certain circuits for lighting and power.

(b) Sources. The source of this emergency electric service shall be as follows:

1. An emergency generating set, when the normal service is supplied by one (1) or more central station transmission lines.

2. An emergency generating set or a central station transmission line, when the normal electric supply is generated on the premises.

(c) Emergency generating set. The required emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical system. Generator sets shall be self-sufficient insofar

as possible without dependency on public utilities that may be subject to cutoff or outages. Exception: a system of prime movers which are ordinarily used to operate other equipment and alternately used to operate the emergency generator(s) will be permitted provided that the number and arrangement of the prime movers are such that when one (1) of them is out of service (due to breakdown or for routine maintenance), the remaining prime mover(s) can operate the required emergency generator(s) and provided that the connection time requirements as listed in Section 34(9)(e) of this regulation are met. The emergency generator set shall be of sufficient kilowatt capacity to supply all lighting and power load demands of the emergency electrical system. The power factor rating of the generator shall be not less than eighty (80) percent.

(d) Emergency electrical connections. Emergency electric service shall be provided to circuits as follows:

1. Lighting.

a. Exitways and all necessary ways of approach thereto, including exterior of exits, exit doorways, stairways, and corridors.

b. Laboratory, nursing station, medication preparation dispensing area.

c. Generator set location, switch-gear location, mechanical room and boiler room.

d. Elevator cabs.

e. Night light in patient rooms.

2. Equipment. Essential to life safety and for protection of important equipment or vital materials:

a. Nurses' calling system.

b. Paging or speaker systems, if intended for issuing instructions during emergency conditions. Alarms required for medical gas systems.

c. Fire pump and jockey pump, if installed.

d. Pump for central suction system.

e. Sewerage or sump lift pump, if installed.

f. Blood bank refrigerator.

g. Duplex receptacles in patient corridors, and at least one (1) duplex receptacle located on the patient headwall in each patient room.

h. Elevator service that will reach every patient floor. Manual throw over facilities shall be provided to allow temporary operation of any elevator for the release of persons who may be trapped between floors.

i. Equipment necessary for maintaining telephone service.

3. Heating. Equipment for heating general patient rooms; except that service for heating of those rooms will not be required under either of the following conditions:

a. The design temperature is higher than twenty (20) degrees Fahrenheit, based on the Median of Extremes as shown in the current edition of the ASHRAE Handbook of Fundamentals.

b. The facility is supplied by two (2) or more electrical services supplied from separate generating sources, or a utility distribution network having multiple power light sources and arranged to provide mechanical and electrical separation, so that a fault between the facility and generating sources will not likely cause an interruption of the facility service feeders.

(e) Details. The emergency electrical system shall be so controlled that after interruption of the normal electric power supply, the generator is brought to full voltage and frequency and it must be connected within ten (10) seconds through one (1) or more primary automatic transfer switches to all emergency lighting systems; alarms systems; blood banks; nurses' calling systems; equipment necessary for maintaining telephone service; pump for central suction system; and task illumination and receptacles in patient rooms and patient corridors. All other lighting and equipment required to be connected to the emergency system shall either be connected through the above described primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification. Storage-battery-powered lights, provided to augment the emergency lighting or for continuity of lighting during the interim of transfer switching immediately following an interruption of the normal service supply, shall not be used as a substitute for the requirement of a generator. Where stored fuel is required for emergency generator operation, the storage capacity shall be sufficient for not less than twenty-four (24) hours of continuous operation.

Section 35. Table 1 - Sound Transmission Limitations for Rehabilitation Facilities. Table 2 - Pressure Relationships and Ventilation of Certain Rehabilitation Areas. Table 3 - Lighting Levels for Rehabilitation Facilities.

Table 1.
Sound Transmission Limitations
in Rehabilitation Facilities.

Location	Airborne Sound Transmission Class (STC) a*		Impact Insulation Class (IIC) b*
	Partitions	Floors	Floors
Patients' room to patients' room	45	45	45
Public space to patients' room d*	50	50	50 c*
Service areas to patients' room e*	55	55	55 c*

a* - Sound transmission class (STC) shall be determined by tests in accordance with the methods set forth in ASTM Standard E-90 and ASTM Standard E-413.

b* - Impact insulation class (IIC) shall be determined in accordance with criteria set forth in HUD FT/TS-24, "A Guide to Airborne, Impact and Structure Borne Noise - Control in Multifamily Dwellings."

c* - Impact noise limitation applicable only when corridor, public space, or service area is over patients' room.

d* - Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar spaces.

e* - Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above patients' rooms, offices, nurses' stations and similar occupied spaces shall be effectively isolated relating to noise transmission.

Note: The requirements set forth in this table assume installation methods which will not appreciably reduce the efficiency of the assembly as tested.

Table 2.
Pressure Relationships and
Ventilation of Certain Rehabilitation Areas.

Area Designation	Pressure Relationship to Adjacent Areas	Minimum Air Changes of Outdoor Air per Hour	Minimum Total Air Changes per Hour	All Air Exhausted Directly to Outdoors	Recirculated Within Room Units
Isolation anteroom	N	2	8	Yes	No
Isolation room	E	2	8	Yes	No
Dental operatory	N	2	6	Optional	No
Patient room	V	1	4	Optional	Optional
Patient area corridor	N	1	4	Optional	Optional
Occupational therapy	N	1	4	Optional	Optional
Physical therapy and hydrotherapy	N	2	6	Optional	Optional
Speech & hearing unit	V	1	4	Optional	Optional
Soiled workroom and clean holding	N	2	8	Yes	No
Clean workroom and clean holding	P	1	4	Optional	Optional
Activities of daily living	V	1	4	Optional	Optional
X-ray, diagnostic	V	2	6	Optional	Optional
Treatment room	V	2	6	Optional	Optional
Laboratory	N	2	6	Optional	Optional
Dark room Y	N	2	10	Yes	Yes
Toilet room and locker rooms	N	Optional	10	Yes	No
Bedpan room	N	Optional	10	Yes	No
Bathroom	N	Optional	10	Yes	No
Janitor's closet	N	Optional	10	Yes	No
Sterilizer equipment room	N	Optional	10	Yes	No
Linen and trash chute room	N	Optional	10	Yes	No
Food preparation center	N	Optional	10	Yes	No
Ware-washing room	N	2	10	Yes	No
Personal care room	N	Optional	10	Yes	No
Dietary day storage	V	Optional	2	Optional	No
Laundry, general	V	2	10	Yes	No
Soiled linen sorting and storage	N	Optional	10	Yes	No
Clean linen storage	P	Optional	4	Optional	Optional

P = Positive N = Negative E = Equal V = May Vary

Table 3.
Lighting Levels for Rehabilitation Facilities

Area	Foot-candles*
Administrative and lobby areas, day	100
Administrative and lobby areas, night	20
Chapel and quiet area	30
Corridors and interior ramps	30
Corridor night lighting	10
Dining area and kitchen	50
Doorways	10
Examination and treatment room:	
General	50
Examining table	100
Exit stairways and landings	30
Janitor's closet	20
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk or counter, for charts and records	150
Nurses' medicine area, preparations and storage	100
Occupational therapy	30
Patient care unit or room, general	10
Patient care room, reading	50
Patient care room, night light (variable)	.5 to 1.5
Physical therapy	30
Stairways other than exits	50
Toilet and bathing facilities	30
Clean workroom	100
Soiled workroom	100
Nurses' lounge	30
Laundry, general	50

*Minimum on task at anytime.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 26, 1991
FILED WITH LRC: August 5, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Department for Employment Services, 2nd Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 18, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel,

Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/Ralph Von Derau, David Crane

(1) Type and number of entities affected: 4

(a) Direct and indirect costs or savings to those affected: There should be no additional cost to those affected.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: The costs should be minimal.

(a) Direct and indirect costs or savings: $500 for printing new regulation.

1. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with KRS Chapter 13A drafting requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:240. Comprehensive physical rehabilitation hospital services.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.040(2), 216B.105[, Executive Order 86-366]

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. [Executive Order 86-366 transferred the authority to regulate health services and health facilities from the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to the Office of the Inspector General.] This regulation provides the minimum licensure requirements for inpatient comprehensive physical rehabilitation services including the provision of rehabilitation services in hospitals which have a rehabilitation unit.

[Section 1. Scope of Operation and Services. Comprehensive physical rehabilitation programs are provided in permanent institutions with inpatient beds. These programs include medical, nursing, therapeutic, restorative, psychosocial, vocational and educational services which enable an individual with an injury or disability, either acquired or congenital, to function at their maximum potential. Comprehensive physical rehabilitation programs offer a wide range of therapeutic services provided by registered, certified, licensed or degreed professionals utilizing a multidisciplinary, goal-oriented, team approach with treatment plans designed specifically for the individual patient's needs.]

Section 1. [2.] Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the institution staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of facility training.

(3) "Registered records administrator" means a person who is certified as a Registered Records Administrator by the American Medical Record Association.

(4) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an Accredited Record Technician by the American Medical Record Association.

(5) "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(6) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(9) "Full-time equivalent" (FTE) for this regulation only means one (1) employee working thirty-seven and five-tenths (37.5) hours per week or a combination of the hours worked by more than one (1) part-time employee totaling thirty-seven and five-tenths (37.5) hours per

week.

(10) "Institution" means the freestanding speciality hospital or a general hospital based unit utilized for the delivery of inpatient comprehensive physical rehabilitation services.

Section 2. Scope of Operation and Services. Comprehensive physical rehabilitation programs are provided in permanent institutions with inpatient beds. These programs include medical, nursing, therapeutic, restorative, psychosocial, vocational and educational services which enable an individual with an injury or disability, either acquired or congenital, to function at their maximum potential. Comprehensive physical rehabilitation programs offer a wide range of therapeutic services provided by registered, certified, licensed or degreed professionals utilizing a multidisciplinary, goal-oriented, team approach with treatment plans designed specifically for the individual patient's needs.

Section 3. Administration and Operation. (1) Governing authority.

(a) The institution shall have a governing authority that has overall responsibility for the management and operation of the institution and for compliance with federal, state, and local laws and regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority and accountability are defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall be responsible for the daily management of the institution and provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed concerning the conduct of the institution through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at such meetings on a regular basis, and shall report to such departments, as well as to the governing authority the pertinent activities of the institution.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity and reflect the programs of the institution. Such reports shall include: minutes of the governing authority and staff meetings, financial records and reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The institution shall maintain a patient admission and discharge register.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The institution shall have written policies and procedures governing all aspects of the operation of the institution and the services provided including:

(a) A written mission statement of the comprehensive physical rehabilitation service shall be made available to the general public upon request;

(b) A written program narrative which describes in detail the rehabilitation problems and conditions for which the institution provides services, the delivery of these services, and the goals and treatment;

(c) A written description of the organizational structure of the facility including lines of authority, responsibility and communication, and departmental organization;

(d) Admission policies which assure that patients shall be admitted to the institution in accordance with policies of the medical staff;

(e) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(f) Financial requirements for patients on admission;

(g) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(h) Procedures for recording accidents involving a patient, visitor or staff, and incidents of drug reactions, medication errors, etc. and for reporting in writing through the appropriate committees;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Discharge and termination of services; and

(k) A policy describing the use of volunteers in program activities.

(5) Patient identification. The institution shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, date of admission, and name of case manager).

(6) Discharge planning.

(a) The discharge decision and plan shall be established with the participation of the person served, if possible, or a significant other person. Discharge planning shall begin early in the treatment phase; all professions involved with the person shall participate in formulating the discharge plan, including professionals from agencies outside the institution who have been or will be involved in the patient's care, if possible.

(b) A discharge authorization and summary shall be prepared for each person who has been discharged or transferred from the institution to a supportive service. The summary shall contain the reason for referral, the diagnosis, the rehabilitation problem, the services provided, the results of services, and any referral action recommended; it shall note procedures and activities to be utilized by the person served and the family to assist the individual to maintain or improve postdischarge functioning and increased independence.

(c) The individual family, appropriate staff of the institution, the referring source and other community agencies that will be working with the patient, shall receive advance notice concerning the discharge decision and plan. The requirements for notice of discharge will vary depending upon the complexity of the individual's presenting problems, the discharge plan, and the kinds and extent of resources required to implement the plan.

(7) Patient follow-up.

(a) The institution shall establish and follow procedures for follow-up of persons served.

Follow-up shall be conducted when the person served is discharged from the institution, transferred from the program to a supportive service, or is placed in an inactive status.

(b) Follow-up reports shall be prepared which detail the individual's current status as it relates to program goals and objectives.

(8) Transfer procedures and agreements.

(a) The institution shall have written patient transfer procedures and agreements with other health care facilities which provide a level of inpatient care not provided by the institution. Any institution which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each facility assumes in the transfer of patients and shall establish responsibility for notifying the other facility promptly of the impending transfer of a patient and for arranging appropriate and safe transportation.

(b) If the patient is transferred to another health care facility a transfer form shall accompany the patient. The transfer form shall include at least: the attending physician's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to the other health care facility within fifteen (15) days of the patient's discharge.

(9) Medical staff.

(a) The institution shall have a medical staff organized by bylaws approved by the governing authority, which is responsible to the governing authority of the facility for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership. For purposes of this document, medical staff shall mean physicians and dentists, when applicable.

2. Define and describe the responsibilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges, to include credentials review.

3. Provide a mechanism for appeal of decisions regarding staff membership and privileges.

4. Provide a method for the selection of officers of the medical staff.

5. Establish requirements regarding the frequency of, and attendance at, general staff and department/service meetings of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the institution. These committees may include: executive committee, credentials committee, medical records committee, infections control committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(10) Director of rehabilitation. The institution shall have a director of rehabilitation who provides services on a full-time basis for a freestanding speciality hospital or at least twenty (20) hours per week for a general hospital-based unit, is a physician, and has had, after completing a one (1) year facility internship, at least two (2) years of training or experience in the medical management of inpatients requiring rehabilitation services.

(11) Quality assurance and review.

(a) There shall be a planned and systematic process for monitoring and evaluating the quality and appropriateness of patient care and for resolving identified problems.

(b) The quality and appropriateness of patient care shall be monitored and evaluated in all major clinical functions of the comprehensive physical rehabilitation program. Such monitoring and evaluating shall be accomplished through the following means:

1. Routine collection of information about important aspects of rehabilitation care; and

2. Periodic assessments of the collective information in order to identify important problems in patient care and opportunities to improve care. Objective criteria shall be established and applied that reflect current knowledge and clinical experience concerning the services offered by the institution.

(c) When important problems in patient care or opportunities to improve care are identified:

1. Action shall be taken; and

2. The effectiveness of the action shall be evaluated.

(d) The findings from and conclusions of monitoring, evaluating, and problem-solving activities and the actions taken to resolve problems and improve patient care, and information about the impact of the actions taken, shall be documented and shall be reported to the administrator and appropriate committees.

(e) When an outside source(s) provides rehabilitation services the quality and appropriateness of patient care provided shall be monitored and evaluated, and identified problems resolved.

(12) Personnel.

(a) The institution shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services. Written personnel policies and procedures shall be available to all personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary. Where a job description includes activities which are subject to professional licensure, the employee shall have the appropriate current license.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for preemployment and periodic health examination. The institution shall comply with the following tuberculosis testing requirements:

1. The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin

testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually on or before the anniversary of their last skin test.

2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis, or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Employees whose initial skin test shows ten (10) or more millimeters of induration shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if symptoms persist.

3. The institution director shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the institution administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) or more millimeters of induration; names of staff who have a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5. Prophylaxis of persons with recent infection but no disease. Any resident or staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated by a licensed physician. Medications shall be administered to patients only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

(d) Current personnel records shall be maintained for each employee which shall include the following:

1. Name, address, and social security number;

2. Health records;

3. Evidence of current registration, certification or licensure of personnel;

4. Records of training and experience;

5. Records of performance evaluation;

6. Evidence that employees have an orientation to the facility's written policies initiated within the first month of employment; and

7. Evidence of regular in-service training which corresponds with job duties and includes a list of training and dates completed.

(13) Physical and sanitary environment.

(a) The condition of the physical plant and overall institution environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) The institution's buildings, equipment and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

(d) The institution shall be kept free from insects and rodents with harborages and entrances for these eliminated.

(e) Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(f) Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed containers and kept separate from other cleaning materials.

(g) The institution shall have available at all times a quantity of linen essential for the proper care and comfort of patients.

1. Linens shall be handled, stored and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in separate areas.

(h) Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and aggregated in rigid disposable containers immediately after use. Needles and syringes shall not be cut, dismantled, or destroyed after use, but shall be placed intact directly into a rigid container. The rigid containers of sharp wastes shall be incinerated on site or off site, and disposed of in a sanitary land fill approved pursuant to 401 KAR 47:020.

(14) Patient case records.

(a) The institution shall have a case records service with administrative responsibility for case records. A case record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the facility or receiving outpatient services.

(b) The case records service shall be directed by a registered record administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time basis, and shall have available a sufficient number of regularly assigned employees so that case record services may be

provided as needed.

(c) All case records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is longer.

(d) Provision shall be made for written designation of specific location(s) for storage of case records in the event the facility ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the institution to safeguard both the record and its content against loss, defacement, and tampering.

(e) A system of identification and filing to insure the prompt location of a patient's case record shall be maintained.

1. There shall be a system for coordinating the inpatient/outpatient case record of any patient who has received both inpatient and outpatient services.

2. All clinical information pertaining to a patient's stay shall be centralized in the patient's case record.

(f) Records of patients are the property of the institution and shall not be taken from the institution except by court order. This does not preclude the routing of the patients records, or a portion thereof, including x-ray film, to physicians for consultation.

1. Only authorized personnel shall be permitted access to the patients records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of the estate.

(g) Case record review.

1. The institution shall review and evaluate its case records and related policies and procedures regularly; representatives of its service units shall participate to evaluate their adequacy and to propose improvements in the recordkeeping system.

2. A case record committee, representative of the major professional services and responsible to the administrator, shall be established. The committee shall:

a. Review, at least quarterly, an appropriate sample of the case records to measure their adequacy and fulfillment of recordkeeping requirements; and

b. Review, at least annually, the policies and procedures concerning case records and reports, and make recommendations which should be considered by the chief executive.

(h) Statements of professional judgment and reports of services to an individual shall be signed by the person qualified by professional competency and official position. The case record shall confirm, in writing, that services recommended and planned actually have been received by the individual patient at the time stated. Such assurances may be in the form of the signature of the staff person rendering the service.

(i) Individual case records shall be maintained on a current basis; clinical information shall be recorded within forty-eight (48) hours of the event, and discharge summaries recorded within two (2) weeks following discharge. Completed case records shall include:

1. Case identification data including name, address and next of kin;

2. The name and address of the personal representative, conservator, guardian, and/or representative payee, if one has been appointed for the person served;

3. Pertinent history, diagnosis of disability, rehabilitation problem, goals, and prognosis;

4. Reports from referring sources;

5. Reports of service referrals;

6. Reports from outside consultation, and from laboratory, radiology, orthotic and prosthetic services, etc.;

7. Designation of the program manager for the individual. A written policy identifying who is responsible for the plan management of given groups would remove the necessity for this information in the case record;

8. Evidence of the individual's participation in the decision making process of his or her own plan;

9. Evaluation reports from each service;

10. Reports of staff conferences;

11. The individual's total treatment plan;

12. Treatment plans from each service;

13. Signed and dated service and progress reports from each service;

14. Correspondence pertinent to the person being served;

15. When information and/or photographs have been released or used, there shall be a signed and dated authorization from the person served or the parent or guardian as appropriate, to release the information or use the photograph;

16. Discharge report; and

17. Follow-up reports.

Section 4. Provision of Services. (1) General requirements.

(a) No medication or treatment shall be given without a written order signed by a physician or dentist, when applicable. Telephone orders for medications shall be given only to a registered nurse or a pharmacist and signed by the medical staff member within twenty-four (24) hours from the time the order is given.

(b) Medications shall be administered by a physician, registered nurse, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

(c) No form of patient restraint or protective device other than bed rails, and wheelchair safety belts shall be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary, the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

(d) Patient physical. A physician shall conduct a physical examination, and a determination that the patient can benefit from a rehabilitation program through the use of therapies provided by the institution shall be made within twenty-four (24) hours after admission.

(e) Psychosocial history. All patients shall have a history and assessment interview within seventy-two (72) hours after admission for rehabilitation entered into the patient record which includes:

1. A determination of current emotional state;

2. Vocational history;

3. Familial relationships;

4. Educational background;

5. Social support system; and

6. A determination that the patient can benefit from a rehabilitation program through

the use of therapies provided by the institution.

(f) Basic cardiopulmonary resuscitation shall be available within the institution twenty-four (24) hours a day, seven (7) days a week.

(2) Staffing requirements.

(a) The program shall have adequate personnel to meet the needs of patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the individual treatment plans. If the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the program administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

(b) The staffing ratio of therapists and pathologists to patients shall be equal to or greater than one (1) full-time equivalent for every three (3) patients. Only licensed or certified therapists or speech and language pathologists in the areas of physical therapy, occupational therapy, speech and language pathology, or psychology shall be utilized in the computation of this ratio. Certified or licensed assistants shall not be utilized in the computation of this ratio. The staffing for the whole facility shall be utilized in the computation of this ratio rather than on a department by department basis.

(c) There shall not be more than one (1) aide or assistant for each licensed or certified therapist or speech and language pathologist on staff.

(3) Medical staff services.

(a) Medical care provided in the institution shall be under the direction of the medical director or a medical staff member in accordance with staff privileges granted by the governing authority.

(b) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(c) There shall be sufficient medical staff coverage for services provided in the institution in keeping with the size of the institution, the scope of services provided and the types of patients admitted to the facility.

(d) An individual rehabilitation program plan shall be developed for each patient under the supervision of a physician. The attending physician shall attend and actively participate in conferences concerning those served.

(e) The attending physician shall complete the discharge summary and sign the records within fifteen (15) days of discharge.

(f) The physician responsible for the patient's rehabilitation program shall have specialized training or experience in rehabilitation.

(g) There shall be direct individual contact by a physician on any day in which there is an active interdisciplinary treatment program.

(4) Nursing services.

(a) These services provide prevention of complications of disability, restoration of optimal functioning, and adaptation to an altered lifestyle through the use of the nursing process (assessment, planning, intervention, and evaluation).

1. The institution shall have a nursing department organized to provide basic nursing services as well as rehabilitation nursing services. A registered nurse with training and experience in rehabilitative nursing shall serve as director of the nursing department.

2. There shall be a registered nurse on duty at all times.

a. There shall be registered nurse supervision of nursing staff personnel for each nursing unit to insure immediate availability of a registered nurse with rehabilitation experience for all patients on a twenty-four (24) hour basis.

b. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the services of a registered nurse.

c. Nursing care shall be documented on each shift by persons rendering care to patients. This documentation shall describe the nursing care provided and include information and observations of significance which contribute to the continuity of patient care.

(b) Rehabilitation nursing services. Services shall include physical and psychosocial assessment of function of the following:

1. All body systems related to the patient's physical rehabilitation nursing needs, with special emphasis on skin integrity, bowel and bladder function, and respiratory and circulatory systems function;

2. Self-care skills development;

3. Interpersonal relationships;

4. Adaptation mechanisms and patterns used to manage stress; and

5. Sleep and rest patterns.

(c) Nursing services shall also include the following interventions:

1. Health maintenance and discharge teaching;

2. Prevention of the complications of immobility;

3. Physical care including hygiene, skin care, physical transfer from one place to another, positioning, and bowel and bladder care;

4. Psychosocial care including socialization, adaptation to an altered lifestyle; and

5. Reinforcement of the multidisciplinary treatment plan.

(d) As appropriate, nurses collaborate with the patient, family, other disciplines and agencies in discharge planning and teaching.

(e) Rehabilitation nursing shall monitor the degree of achievement of individualized nursing patient care goals.

(5) Multidisciplinary team. There shall be a multidisciplinary team responsible for developing the individual treatment plans, discharge plans and conducting the quality assurance reviews. The multidisciplinary team should include a physician, rehabilitation nurse, social worker, or psychologist, and those therapists involved in the patient's care. At a minimum, a team must include a physician, rehabilitation nurse and two (2) therapists.

(6) Program manager.

(a) A single program manager shall be designated for each patient served. The provision of services by the institution to each patient shall be organized through the patient's program manager. The program manager shall:

1. Assume responsibility for the patient during the course of treatment;

2. Coordinate the treatment plan; and

3. Cultivate the patient's participation in the program.

(b) When more than one (1) major program is being provided simultaneously, there shall be only one (1) program manager. When the patient's plan changes sequentially from one (1) program area to another, a new program manager may be

assigned.

(c) The patient's program manager shall evaluate regularly the appropriateness of the treatment plan in relation to the progress of the patient toward the attainment of stated goals. The program manager shall assure that:

1. The person is adequately oriented;
2. The plan proceeds in an orderly, purposeful, and timely manner; and
3. The discharge decision and arrangements for follow-up are properly made.

(7) Treatment plan.

(a) The multidisciplinary team, with the participation of the patient shall, within seven (7) days after admission for rehabilitation, develop an individual treatment plan based on the patient's medical evaluation and psychosocial history and assessment, and which should be reviewed at least biweekly. The treatment plan shall include:

1. A multidisciplinary assessment of the biological, social and psychological needs of the patients performed by qualified health care professionals;
2. A description of the patient's capacities, strengths, disabilities, and weaknesses;
3. Identification of the patient's rehabilitation goals stated in functional, performance and behavioral objectives relative to the performance of life tasks and capabilities, with criteria for termination of treatment or discharge from the program;
4. Participation of the patient and his/her family, to the extent possible;
5. Physician input relative to both the general medical and rehabilitation medical needs of the patient;
6. Discharge planning addressed as part of goal setting as early as possible in the rehabilitation process;
7. Time intervals at which treatment or service outcomes will be reviewed;
8. Anticipated time frame(s) for the accomplishment of the individual's specified goals;
9. The measures to be used to access the effects of treatment or services; and
10. The person(s) responsible for implementation of the plan.

(b) The institution shall obtain and retain a signed consent form where applicable.

(c) The institution shall adopt a procedure to protect against the release of the person served to an unauthorized individual when individuals served are unable to represent their own interests.

(8) Therapeutic services.

(a) In addition to physician and nursing services the institution shall provide the following allied services directly or under contract. These services shall be provided at an intensity appropriate to the disability and to the patient's response to treatment with a minimum average level of three (3) to five (5) hours of therapeutic service per person per day at least five (5) days per week.

(b) Occupational therapy services shall be provided by or under the supervision of an individual certified by the American Occupational Therapy Association as an occupational therapist. Services shall include:

1. Assessment and treatment of functional performance; independent living skills; prevocational/work adjustment skills; educational, play/leisure and social skills.
2. Assessment and treatment of performance components; neuromuscular, sensori-integrative, cognitive and psychosocial skills.
3. Therapeutic interventions, adaptations and prevention.
4. Individualized evaluations of past and current performance shall be achieved through observation of individual or group tasks, standardized tests, record review, interviews, or activity histories.
5. Assess architectural barriers in home and workplace, and recommend equipment, adaptations, and different arrangements.
6. Treatment goals shall be achieved through use of selected modalities and techniques which include:

a. Tasks oriented activities; simulation or actual practice of work, self-care, home management, leisure and social skills and their components, creative media, games, computers and other equipment;
b. Prevocational training;
c. Sensorimotor activities;
d. Patient/family education and counseling;
e. Design, fabrication and application of orthotic devices;
f. Guidance in use of adaptive equipment and prosthetic devices;
g. Adaptation to physical and social environment, and use of therapeutic milieu;
h. Joint protection/body mechanics;
i. Positioning;
j. Work simplification/energy conservation; and
k. Cognitive remediation.

7. Occupational therapy services monitor the extent to which goals are met relative to assessing and increasing patient's functional abilities in daily living skills.

(c) Physical therapy services shall be provided by or under the supervision of a licensed physical therapist employed on a full-time basis by a freestanding specialty hospital, or at least twenty (20) hours per week for a general hospital based unit.

1. Services shall include the following:

a. An initial physical therapy evaluation and assessment of the patient prior to the provision of services;
b. Development of treatment goals and plans in accord with the initial evaluation findings with treatment aimed at preventing or reducing disability or pain, and restoring lost function;
c. Therapeutic interventions which focus on posture, locomotion, strength, endurance, balance, coordination, joint mobility, flexibility, and restoring loss of function.

2. Physical therapy services monitor the extent to which services have met therapeutic goals relative to the initial and all subsequent examinations, and the degree to which improvement occurs relative to the identified movement dysfunction or reduction of pain associated with movement.

(d) Psychological services shall be provided by or under the supervision of a licensed psychologist.

1. Assessment areas shall include psychological, vocational, and neuropsychological functioning.
2. Interventions include individual and group psychotherapy; family consultation and therapy; and design of such specialized psychological intervention programs as behavior modification, behavioral treatment regimens for chronic pain patients, and the use of biofeedback and

relaxation procedures.

3. Psychological services monitor the cognitive and emotional adaptation of the patient and family to the patient's disability.

(e) Speech–language services shall be provided by or under the supervision of a licensed speech–language pathologist who meets the standards for the Certificate of Clinical Competency by the American Speech–Language, and Hearing Association. Services shall include:

1. Screening to identify individuals who require further evaluation to determine the presence or absence of a communicative disorder.

2. When the speech and language competencies of individuals are evaluated, the pathologist plans, directs and conducts habilitative, rehabilitative, and counseling programs to improve language, voice, cognitive linguistic skills, articulation, fluency, and adjustment to hearing loss, and assesses and provides alternative and augmentative communicative devices.

3. Plans for discharge and provides for the patient's understanding of communication abilities and prognosis.

4. Services are monitored for effectiveness of actions taken to improve communication skills of patients.

(9) The institution shall provide the following services directly or through a contractual arrangement with other providers as needed in accordance with the institution's program narrative:

(a) Social work services shall be provided by an individual with a masters degree in social work from a curriculum accredited by the Council for Social Work Education.

1. The scope of rehabilitation social services shall include the following areas related to work assessment and interventions to facilitate rehabilitation:

a. Assessment of the personal coding history and current psychosocial adaptation to the disability;

b. Assessment of immediate and extended family and other support persons relative to increasing support networks;

c. Assessment of housing, living arrangements, and stability and source of income relative to facilitating discharge plans; and

2. Intervention strategies, aimed at increasing effectiveness of coping, strengthening informal support systems, and facilitating continuity of care, shall include at least the following:

a. Discharge planning activities;

b. Casework with individual patients;

c. Family counseling and therapy;

d. Group work focused on both education and therapy; and

e. Community service linkage/referrals.

3. Social work services monitor the achievement of goals relative to discharge planning activities designed to meet the basic sustenance, shelter, and comfort needs of patients and their families.

(b) Audiology services provided by or under the supervision of a licensed audiologist, and certified by the American Speech–Language, and Hearing Association. When the range, nature, and degree of the patient's auditory and vestibular function using instrumentation such as audiometers, electroacoustic emittance equipment, brain stem evoked response equipment, and electronystagmographic equipment is determined; the professional plan directs and conducts aural habilitation and rehabilitation programs. These shall include:

1. Hearing aid and assistive listening device selection and orientation;

2. Counseling, guidance and auditory training; and

3. Speech reading.

(c) Vocational and vocational rehabilitation services. These services provide assessment and evaluation of the patient's/client's need for services to enable return to productive activity through the use of testing, counseling, and other service related activities. These identified needs are met either directly or through appropriate referrals. Services shall include:

1. Evaluation and assessment focusing on maximizing the independent productive functioning of the individual, and;

2. Comprehensive services shall include, at a minimum, the following areas:

a. Physical and intellectual capacity evaluation;

b. Interest and attitudes;

c. Emotional and social adjustment;

d. Work skills and capabilities;

e. Vocational potential and objectives; and

f. Job analysis.

3. Appropriate instruments, equipment and methods, under supervision of a qualified therapist shall be used.

4. A written report with interpretation and recommendations shall be prepared and shared with the individual and referral source.

5. Services shall monitor the degree to which appropriate work skills are achieved; the improvement in independent functioning relative to work skill capability; and, the achievement of vocational objectives.

(d) Prosthetic and/or orthotic services.

1. These services shall be provided by authorized specialists who are qualified to manage the orthotic (prosthetic) needs of disabled persons by performing an examination; by participating in the prescribing of needed specialized equipment; by designing and fitting such equipment; and by following up to ensure that the equipment is properly functioning and fitting.

2. Monitoring of prosthetic and/or orthotic services shall include:

a. Documented evidence of communication with the prescribing physician; and

b. Patient satisfaction with the orthosis or prosthesis relative to function and fit of the equipment.

(e) Therapeutic recreation services shall be provided by or under the supervision of a therapeutic recreation specialist, or under the supervision of an occupational therapist. These services may be provided in conjunction with occupational therapy services. Services shall include the following:

1. Assessment of the patient's leisure/social/recreational abilities, deficiencies, interests, barriers, life experiences, needs, and potential;

2. Treatment services designed to improve social, emotional, cognitive and physical functional behaviors as a necessary prerequisite to future leisure/social involvement;

3. Leisure education designed to help the patient acquire knowledge, skills and attitudes needed for independent leisure/social

involvement, community adjustment, responsible decision-making, and use of free time; and

4. Monitoring which measures the extent to which goals are achieved relative to the use of leisure time and socialization skills.

(f) Pharmaceutical services. The institution shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and regulations. An adequate supply and other medicinal agents shall be available at all times to meet the requirements of the institution. They shall be stored in a safe manner and kept properly labeled and accessible. Controlled substances and other dangerous or poisonous drugs shall be handled in a safe manner to protect against their unauthorized use. Controlled substances must be under double lock. There shall be adequate refrigeration for biologicals and drugs which require refrigeration. The existing laws, rules and regulations governing drugs and poisons shall be complied with.

1. An institution which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the program.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Facilities not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall not be dispensed by a registered pharmacist in this area. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the institution on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(c) Records shall be kept of all transactions of the pharmacy or drug room and correlated with other institution records where indicated.

3. In accordance with accounting procedures of the institution, the pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the institution for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

4. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

5. The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

a. The administration of medications only upon the order of an individual who has been assigned medical clinical privileges or who is an authorized member of the house medical staff;

b. Review of the physician's, or dentist's when applicable, original order, or a direct copy, by the pharmacist dispensing the drugs;

c. The establishment and enforcement of automatic stop orders;

d. Proper accounting for and disposition of unused medications or special prescriptions returned to the pharmacy as a result of the patient being discharged, or when such medications/prescriptions do not meet sterile and label requirements;

e. Provision for emergency pharmaceutical services; and

f. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

6. Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

a. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

b. There shall be available a formulary or list of drugs accepted for use in the institution which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

g. Radiology services.

1. The institution shall provide diagnostic radiology services directly or through arrangements with a radiology service which has a current license or registration pursuant to KRS 211.842 to 211.850 and any regulations promulgated thereunder. If the institution provides radiology services directly:

a. The institution shall have a radiologist, on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

b. Personnel adequate to supervise and conduct the services shall be provided.

2. There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

a. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

b. Radiologic services shall be performed only upon written order of a physician or dentist, and the order shall contain a concise statement of the reason for the service/examination.

c. Reports of interpretations shall be written or dictated and signed by the radiologist.

d. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

3. The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(h) Laboratory services. The institution shall provide laboratory services directly or through arrangements with a licensed facility which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

1. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the institution or through a contractual arrangement as specified in subsection (10) of this section.

b. If services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the institution.

2. Dated reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

b. The laboratory report shall have the name of the technologist who performed the test.

c. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by a medical staff member.

3. If laboratory services are provided directly, there shall be a basic clinical laboratory which provides services necessary for routine examinations.

a. Equipment necessary to perform the basic tests shall be provided by the facility.

b. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

c. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

d. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. Laboratory services shall be under the direction of a pathologist on a full-time, part-time, or a consultative basis. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

(i) Dietary services.

1. The institution shall provide dietary services directly or by contract.

2. The dietary service shall be organized, directed and staffed to provide quality food service and optimal nutritional care.

a. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

b. The dietary service shall have at least one (1) qualified dietician or nutritionist, either full time, part time, or on a consultative basis, to supervise the nutritional aspects of patient care.

c. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

d. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage, handling, and preparation.

e. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

3. Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

4. Meals shall correspond with the posted menu. When changes in menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

5. All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect diet or eating habits.

6. Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

7. If a patient refuses foods served, nutritious substitutions shall be offered.

8. At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

9. The institution shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(10) When services are provided under contract, the contract shall:

1. Assure that services are provided in accordance with the plan of care approved by the physician responsible for the patient's care (except in the case of an adverse reaction to a specific treatment).

2. Specify the geographical areas in which services are to be furnished;

3. Provide that personnel and services contracted for meet the same requirements as those which would be applicable if the personnel and services were furnished directly;

4. Provide that personnel will participate in conferences required to coordinate the care of an individual patient, as needed;

5. Provide for the preparation of treatment records, with progress notes and observations, and for the prompt incorporation of such into the clinical records of the institution;

6. Specify the period of time the contract is to be in effect and the manner of termination or renewal.

(11) Outpatient services.

(a) An institution which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical

records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, the needs of the patient it serves, and the program narrative.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the facility or a laboratory in a licensed facility or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

(f) Case records shall be maintained and, where appropriate, coordinated with other institution case records.

1. The outpatient medical record shall be filed in a location which ensures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 26, 1991
FILED WITH LRC: August 5, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Department for Employment Services, 2nd Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 18, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/Ralph Von Derau, David Crane

(1) Type and number of entities affected: 4

(a) Direct and indirect costs or savings to those affected: There should be no additional cost to those affected.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: The costs should be minimal.

(a) Direct and indirect costs or savings: $500 for printing new regulation.

1. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with KRS Chapter 13A drafting requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:250. Specialized medical technology services.

RELATES TO: KRS 216B.010 through 216B.131, 216B.990(1), (2), 311.241 through 311.247, 311.990

STATUTORY AUTHORITY: KRS 13A.100, 216B.040, 216B.105[, Executive Order 86-366]

NECESSITY AND FUNCTION: KRS 216B.105 mandates that the Cabinet for Human Resources regulate health facilities and health services. This regulation provides minimum licensure requirements for the operation of specialized medical technologies and services within the Commonwealth.

[Section 1. Scope of Operation and Services. "Specialized medical technologies" describes a particular medical technology service which improves some aspect of diagnosis, therapy or related capability. Advanced technologies are often translated to medical equipment which has a high capital and/or operating cost. For the purpose of this regulation, specialized medical technology services shall be in a fixed/freestanding location or located within a hospital and operated independently from the hospital's governing authority. The following specialized medical technology services include Magnetic Resonance Imaging (MRI), Computed Tomography (CT) Scanning, Lithotripters, Cardiac Catheterization, Radiation Therapy, X-Ray, and other Diagnostic Imaging Services requiring a certificate of need.]

Section 1. [2.] Definitions. (1) "Governing authority" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

[(2) "Commission" means the Commission for Health Economics Control in Kentucky.]

[(3) "Health service" means clinically related services which require a certificate of need and are provided within the Commonwealth to two (2) or more persons, including but not limited to diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services.]

(2) [(4)] "License" means an authorization issued by the cabinet for the purpose of operating a specialized medical technology service.

[(5) "Certificate of need" means an authorization by the commission to proceed to acquire, to establish, to offer, or to substantially change a health service as covered by KRS Chapter 216B.]

[(6) "Cabinet" means the Cabinet for Human Resources.]

(3) [(7)] "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(4) [(8)] "Qualified Urologist" means a person who is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and who is board certified or is in the process of being certified by the American Board of Urology or the American Osteopathic Board of Surgery and who otherwise meets criteria established by the specialized medical technology service's governing authority.

(5) [(9)] "Magnetic Resonance Imaging (MRI)" means a diagnostic imaging modality which utilizes magnetic resonance, an interaction between atoms and electromagnetic fields, to project images of internal body structures.

(6) [(10)] "Computed Tomography (C.T.) Scanning" means a radiological diagnostic imaging procedure that shows cross sectional images of internal body structures.

(7) [(11)] "Lithotripter" means a noninvasive treatment technique that utilizes shock waves to shatter kidney stones.

(8) [(12)] "Licensure agency" means the Division for Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

(9) [(13)] "Qualified anesthesiologist" means a person who is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and who is board certified or in the process of being certified by the American Board of Anesthesiology or the American Osteopathic Board of Surgery and who otherwise meets the criteria established by the specialized medical technology service's governing authority.

Section 2. Scope of Operation and Services. "Specialized medical technologies" describes a particular medical technology service which improves some aspect of diagnosis, therapy or related capability. Advanced technologies are often translated to medical equipment which has a high capital and/or operating cost. For the purpose of this regulation, specialized medical technology services shall be in a fixed/freestanding location or located within a hospital and operated independently from the hospital's governing authority. The following specialized medical technology services include magnetic resonance imaging (MRI), computed tomography (CT) scanning, lithotripters, cardiac catheterization, radiation therapy, X-ray, and other diagnostic imaging services requiring a certificate of need.

Section 3. Administration. (1) Licensee.

(a) The licensee shall be legally responsible for the service and for compliance with federal, state and local laws and regulations pertaining to the operation of the service[, limited to the scope of the service's certificate of need].

(b) The licensee shall establish lines of authority and designate an administrator who shall be principally responsible for the daily operation of the service.

(2) Policies. The service shall follow written administrative policies covering all aspects of operation, including:

(a) A description of organizational structure, staffing and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail the service(s) offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of the service(s);

(e) A description of the administrative and patient care records and reports; and

(f) Procedures to be followed in the storage, handling and administration of drugs and biologicals.

(3) Personnel.

(a) The facility shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services. The licensee shall provide written personnel policies which are available to all employees and are reviewed and revised on an annual basis. If the staff/patient ratio does not meet the needs of the patients, the Division of Licensing and Regulation shall determine and inform the program administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

(b) Medical director. The service shall have a medical director who is a licensed physician responsible for all medical aspects of the service.

(c) There shall be a written job description for each position which shall be reviewed and revised as necessary.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address and social security number;
2. Evidence of current registration, certification or licensure of personnel;
3. Records of training and experience; and
4. Records of performance evaluation.

(4) In-service training. All personnel shall participate in ongoing in-service training programs relating to their respective job activities including thorough job orientation for new employees.

(5) Medical records.

(a) The service shall maintain medical records which contain at least the following:

1. Medical or social history, including data obtainable from other providers relevant to the services provided;
2. Name of referring physician and physicians orders for services;

3. Description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;
4. Reports of all physical examinations, laboratory, x-ray, and other test findings relevant to the services provided; and
5. Documentation of all referrals made, including reason for referral, to whom patient was referred, and any information obtained from referral source.
(b) Confidentiality of all patient records shall be maintained at all times.
(c) Transfer of records. The service shall follow written systematic procedures to assist in continuity of care where the patient moves to another source of care, and the service shall, upon proper release, transfer medical records or an abstract thereof when requested.
(d) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longer.
(e) A specific location shall be designated by the specialized medical technology service for the maintenance and storage of the service's medical records.
(f) Provision shall be made for written designation of specific locations for the storage of medical records in the event the specialized medical technology service ceases to operate because of disaster, or for any other reason. The licensee shall safeguard the record and its content against loss, defacement and tampering.

Section 4. Provision of Services. A licensed specialized medical technology service shall comply with the requirements listed in Sections 3 and 5 of this regulation, and the additional requirements in this section specific to that particular technology or service.
(1) Diagnostic imaging services.
(a) Diagnostic imaging services are those services which produce an image, either through film or computer generated video, of the internal structures of a patient. These services include:
1. MRI;
2. CT scanning;
3. X-ray;
4. Ultrasound;
5. Mammography;
6. Fluoroscopy; and
7. Xerography.
(b) Any specialized medical technology service which provides diagnostic imaging services shall comply with the following:
1. Diagnostic imaging services shall be performed only on the order of a physician, except for mammography services;
2. The services shall prepare a record for each patient to the date of the procedure, name of the patient, description of the procedures ordered and performed, the referring physician, the name of the person performing the procedure, and the date the name of the physician to whom the results were sent;
3. Equipment used for direct patient care shall be fully approved by the Federal Drug Administration (FDA) for clinical use;
4. The service shall follow a written preventive maintenance program to ensure that imaging equipment is operative, properly calibrated, and shielded to protect the operator, patient, environment, and the integrity of the images produced;
5. Imaging services shall have a current license or registration pursuant to applicable Kentucky Statutes and any regulations promulgated thereunder;
6. All personnel engaged in the operation of imaging equipment shall have adequate training and be currently licensed, registered or certified in accordance with applicable state statutes and regulations;
7. There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the imaging equipment;
8. There shall be a physician's verbal order which specifies the reason the procedure is required, the area of the body to be exposed, and the number of images to be obtained and the views needed, which shall be immediately reduced to writing and signed by the physician within forty-eight (48) hours; and
9. There shall be sufficiently trained on duty personnel with adequate equipment to provide emergency resuscitation services in the event of a patient emergency.
(2) Other specialized services. These services include specialized lithotripter services, cardiac catheterization services, and radiation therapy services.
(a) The following standards shall apply to all other specialized services.
1. Other specialized services shall be performed only on the order of a physician;
2. Other specialized services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of this specific service offered;
3. Other specialized service shall prepare a record for each patient to include the date of the procedure, name of the patient, description of the procedures ordered and performed, the referring physician, and the name of the person performing the procedure.
4. There shall be a physician's signed order which specifies the reason the procedure is required, the area of the body to be exposed, and the anticipated outcome of treatment;
5. There shall be sufficiently trained on duty personnel with adequate equipment to provide emergency resuscitation services in the event of a patient emergency; and
6. There shall be a written description of procedures to be followed in the event a patient has a medical emergency.
7. There shall be a written training plan utilized to instruct personnel in the safe and proper usage of the equipment.
(b) Specialized lithotripter services. A specialized lithotripter service is a health service which provides for a noninvasive technique for removing kidney or ureteral stones through the use of lithotripter. The following standards shall apply to specialized lithotripter services:
1. Policies. A lithotripter service shall develop patient care policies with the advice of a group of professional personnel that includes at least one (1) qualified urologist and one (1) qualified anesthetist. At least one (1) member shall not be a member of the lithotripter service staff. The policies shall include:

a. A description of how a patient will be transported between the hospital and the lithotripter service;

b. A description of guidelines for the review and evaluation of the service on an annual basis; and

c. Policies and protocols governing the utilization and responsibilities of associated hospital staff, if any, in the delivery of lithotripter services;

2. Personnel. The lithotripter service shall employ at least one (1) lithotripter technician, and shall employ or make arrangements with the qualified urologist to be present in the unit during the delivery of lithotripsy services, and one (1) qualified anesthetist to be available for procedures requiring anesthesia;

3. Lithotripsy equipment used for direct patient care shall comply with the following:

a. Lithotripsy equipment shall be fully approved by the Federal Drug Administration (FDA) for clinical use;

b. The licensee shall follow a written preventive maintenance program to ensure that equipment shall be operative, properly calibrated, properly shielded, and safe for the patient, operator, and environment;

c. All personnel engaged in the operation of lithotripsy equipment shall have adequate training and be currently licensed, registered or certified in accordance with applicable state statutes and regulations; and

d. There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the equipment.

(c) Cardiac catheterization services and radiation therapy services. These services shall also comply with the following:

1. The services shall assure that sufficient personnel shall be present to supervise and conduct the services provided, including at least one (1) certified radiation operator, or one (1) physician with specialized training and experience in the area of the services provided.

2. These services shall have a current license, registration or certification pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder;

3. There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices;

4. Reports of interpretations shall be written or dictated and signed by the radiologist or physician;

5. The use of all x-ray apparatus shall be limited to certified radiation operators or physicians. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes;

6. The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire, explosion, electrical and radiation hazards;

7. These services shall have a written credentialing and peer review system to ensure that only properly licensed, registered, certified, and trained personnel shall be involved in the delivery of services; and

8. Cardiac catheterization procedures shall be performed by a physician with specific training in the areas of cardiac catheterization.

Section 5. Physical Environment. (1) Accessibility. The facility shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.

(2) Fire safety. The facility shall be approved by the Fire Marshal's office before licensure and relicensure is granted by the licensure agency.

(3) Housekeeping and maintenance services. (a) Housekeeping. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other sources.

(b) Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

1. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened;

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly;

4. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock;

5. Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and aggregated in rigid disposable containers immediately after use. Needles and syringes shall not be cut, dismantled, or destroyed after use, but shall be placed intact directly into a rigid container. The rigid containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020.

6. The facility shall establish a written policy for the handling and disposal of all infectious, pathological, and contaminated waste. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

a. Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness. A bag, when full, shall not exceed twenty five (25) pounds. All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the specialized medical technology service from which the waste is being removed and shall be attached to the bag in a conspicuous manner.

b. All unpreserved tissue specimens shall be incinerated on or off site.

c. The following wastes shall be sterilized before disposal or be disposed of by incineration if they are combustible:

(i) Dressings and materials from open or contaminated wounds;

(ii) Waste materials and disposable linens from isolation rooms;

(iii) Culture plates;

(iv) Test tubes;
(v) Sputum cups; and
(vi) Contaminated sponges and swabs.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 26, 1991
FILED WITH LRC: August 5, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Department for Employment Services, 2nd Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 18, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/Ralph Von Derau, David Crane
(1) Type and number of entities affected: 21
(a) Direct and indirect costs or savings to those affected: There should be no additional cost to those affected.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: The costs should be minimal.
(a) Direct and indirect costs or savings: $500 for printing new regulation.
1. First year: $500 for printing costs.
2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with KRS Chapter 13A drafting requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.
(a) Necessity of proposed regulation if in conflict: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:260. Special health clinics.

RELATES TO: KRS 216B.010 through 216B.131, 216B.990
STATUTORY AUTHORITY: KRS 13A.100, 216B.040, 216B.105[, Executive Order 86-366]
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. This regulation provides minimum licensure requirements for the operation of special health clinics.

[Section 1. Scope of Operations and Services. Special health clinics are institutions which provided limited health services, on an outpatient basis. These services include: family planning clinics, pulmonary care clinics, disability determination clinics, weight loss clinics, speech and hearing clinics, wellness centers, counseling centers, and any clinic which only provides diagnostic services and requires a certificate of need.]

Section 1. [2.] Definitions. (1) "Governing authority" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the clinic is vested.
(2) "Commission" means the Commission for Health Economics Control in Kentucky.
[(3) "Health service" means clinically related services which require a certificate of need and are provided within the Commonwealth to two (2) or more persons, including but not limited to diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services.]
(3) [(4)] "License" means an authorization issued by the cabinet for the purpose of operating a special health clinic.
[(5) "Certificate of need" means an authorization by the commission to proceed to acquire, to establish, to offer, or to substantially change a health service as covered by KRS Chapter 216B.]
[(6) "Cabinet" means the Cabinet for Human Resources.]
(4) [(7)] "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.
(5) [(8)] "Diagnostic services" means those services which are performed to ascertain and assess an individual's physical health condition.
(6) [(9)] "Treatment services" means those services provided to an individual who, because of a physical health condition, is in need of medical assistance for the attainment of their maximum level of physical function.
(7) [(10)] "Qualified registered nurse" means a nurse who is licensed to engage in registered nursing practice pursuant to KRS 314.041.
(8) [(11)] "Licensure agency" means the Division for Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

Section 2. Scope of Operations and Services. Special health clinics are institutions which provide limited health services, on an

outpatient basis. These services include: family planning clinics, pulmonary care clinics, disability determination clinics, weight loss clinics, speech and hearing clinics, wellness centers, counseling centers, and any clinic which only provides diagnostic services.

Section 3. Administration. (1) Licensee.

(a) The licensee shall be legally responsible for the service and for compliance with federal, state and local laws and regulations pertaining to the operation of the service, limited to the scope of the service's certificate of need.

(b) The licensee shall establish lines of authority and designate an administrator who shall be principally responsible for the daily operation of the clinic

(2) Policies. The clinic shall establish and follow written administrative policies covering all aspects of operation, including:

(a) A description of organizational structure, staffing and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail the service(s) offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of the service(s);

(e) A description of the administrative and patient care records and reports; and

(f) Procedures to be followed in the event the clinic performs any functions related to the storage, handling and administration of drugs and biologicals.

(3) Personnel.

(a) Medical director. The clinic shall have a medical director who is a licensed physician responsible for all medical aspects of the clinic except those clinics which provide only audiological services.

(b) The clinic shall employ a sufficient number of qualified personnel (e.g., nurses, therapists and technicians) to provide effective patient care and all other related services. There shall be written personnel policies which are made available to all employees.

(c) There shall be a written job description for each position which shall be reviewed and revised as necessary.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address and social security number;
2. Evidence of current registration, certification or licensure of personnel;
3. Records of training and experience; and
4. Records of performance evaluation.

(4) In-service training. All personnel shall participate in ongoing in-service training programs relating to their respective job activities including thorough job orientation for new employees.

(5) Medical records.

(a) The clinic shall maintain medical records which contain at least the following:

1. Medical or social history relevant to the services provided, including data obtainable from other providers;
2. Names of referring physician, if any, and physicians orders for special diagnostic services;
3. Description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;
4. Reports of all physical examinations, laboratory and other test findings relevant to the services provided; and
5. Documentation of all referrals made, including reason for referral, to whom patient was referred, and any information obtained from referral source.

(b) Confidentiality of all patient records shall be maintained at all times.

(c) Transfer of records. The clinic shall establish systematic procedures to assist in continuity of care where the patient moves to another source of care, and the clinic shall, upon proper release, transfer medical records or an abstract thereof when requested.

(d) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longer.

(e) Provision shall be made for written designation of a specific location for the storage of medical records in the event the special health clinic ceases to operate because of disaster, or for any other reason. The licensee shall safeguard the record and its content against loss, defacement and tampering.

(f) A specific location shall be designated by the special health clinic for the storage and maintenance of the clinic's medical records.

Section 4. Provision of Services. A licensed special health clinic shall comply with the requirements listed in Sections 3 and 5 of this regulation, the clinic's program narrative, and the additional requirements of this section which relate to the particular service(s) offered by the licensee.

(1) Equipment used for direct patient care by a special health clinic shall comply with the following:

(a) The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;

(b) All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, registered or certified in accordance with applicable state statutes and regulations; and

(c) There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the equipment.

(2) Diagnostic services shall be performed in accordance with the special health clinics protocol.

(a) Diagnostic services includes family planning clinics, disability determination clinics, counseling centers, wellness centers and other clinics providing diagnostic services only.

(b) Diagnostic services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of the specific technique utilized for diagnostic purposes, except for a family planning clinic, or a wellness center.

(c) The clinic shall prepare a record for each patient to include the date of the procedure,

name of the patient, description of the procedures ordered and performed, the referring physician, the name of the person performing the procedure, and the date and name of the physician, if any, to whom the results were sent;

(d) Physical examination services shall be nonabusive and provided in a manner which ensures the greatest amount of safety and security for the patient.

1. Protocols for diagnostic examinations shall be developed by the medical director.

2. Personnel performing physical examination shall have adequate training and be currently licensed, registered or certified in accordance with applicable Kentucky statutes and regulations.

3. Personnel performing physical examinations shall be limited by the relevant scope of practice of state licensure.

4. A wellness center must have at least one (1) person on staff, employed full time, who has current advanced cardiac life support certification.

(3) Treatment services includes pulmonary care clinics, weight loss clinics, and speech and hearing clinics.

(a) Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes one (1) or more physicians and one (1) or more registered nurses. At least one (1) member shall not be a member of the clinic staff. The policies shall include:

1. A description of the services the clinic provides directly and those provided through agreement.

2. Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or patient referral, and the maintenance of health records; and

3. Procedures for review and evaluation of the services provided by the clinic at least annually.

(b) Personnel. The clinic shall have a staff that includes at least one (1) physician and at least one (1) licensed nurse. The clinic shall employ such other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

1. The physician shall:

a. Be responsible for all medical aspects of the clinic and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. In addition, the physician shall provide medical direction, supervision, and consultation to the staff;

b. In conjunction with the licensed nurse(s) participate in the development, execution and periodic review of the clinic's written policies and services;

c. Periodically review the clinic's patient records, provide medical orders, and provide medical care services to patient of the clinic; and

d. Be present for consultation weekly, and be available within one (1) hour through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

2. The licensed nurse shall:

a. Participate in the development, execution and periodic review of the written policies governing and the services the clinic provides;

b. Participate with the physician in periodic review of patient health records;

c. Provide services in accordance with clinic policies, established protocols, the Nurse Practice Act (KRS Chapter 314), and with regulations promulgated thereunder;

(i) Arrange for, or refer patients to needed services that cannot be provided at the clinic; and

(ii) Assure that adequate patient health records are maintained and transferred when patients are referred.

(c) The clinic shall carry out, or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

1. The utilization of clinic services including at least the number of patients served and the volume of services;

2. A representative sample of both active and closed clinical records; and

3. The clinic's health care policies.

(d) The clinic shall develop and maintain written protocols (i.e., standing orders, rules of practice, and medical directives) which apply to services provided by the center and which explicitly direct the step-by-step collection of subjective and objective data from the patient. The protocols shall further direct data analysis, direct explicit medical action depending upon the data collected, and include rational for each decision made. The protocols shall be signed by the staff physician.

(e) A pulmonary care clinic shall have linkage agreements or arrangements with each of the following:

1. Inpatient hospital care;

2. Physician services in a hospital, patient's home, or long term care facility;

3. Additional and specialized diagnostic and laboratory services that are not available at the clinic;

4. Home health agency;

5. Emergency medical services; and

6. Pharmacy services.

Section 5. Physical environment. (1) Accessibility. The clinic shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder. All clinics shall comply with this requirement by July 1, 1989.

(2) Fire safety. The clinic shall be approved by the Fire Marshal's office before licensure and relicensure is granted by the licensure agency.

(3) Housekeeping and maintenance services.

(a) Housekeeping. The clinic shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other sources.

(b) Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

1. The clinic shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors which can be opened for ventilation shall

be screened;
3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly;
4. A pest control program shall be in operation in the clinic. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock;
5. Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and aggregated in rigid disposable containers immediately after use. Needles and syringes shall not be cut, dismantled, or destroyed after use, but shall be placed intact directly into a rigid container. The rigid containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020; and
6. The clinic shall establish a written policy for the handling and disposal of all infectious, pathological, and contaminated waste if the clinic generates them. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.
a. Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness. A bag, when full, shall not exceed twenty five (25) pounds. All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the clinic from which the waste is being removed and shall be attached to the bag in a conspicuous manner.
b. All unpreserved tissue specimens procedures shall be incinerated on or off site.
c. The following wastes shall be sterilized before disposal or be disposed of by incineration if they are combustible:
(i) Dressings and materials from open or contaminated wounds;
(ii) Waste materials and disposable linens from isolation rooms;
(iii) Culture plates;
(iv) Test tubes;
(v) Sputum cups; and
(vi) Contaminated sponges and swabs.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 26, 1991
FILED WITH LRC: August 5, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Department for Employment Services, 2nd Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 18, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander/Ralph Von Derau, David Crane
(1) Type and number of entities affected: 33
(a) Direct and indirect costs or savings to those affected: There should be no additional cost to those affected.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: The costs should be minimal.
(a) Direct and indirect costs or savings: $500 for printing new regulation.
1. First year: $500 for printing costs.
2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to bring this regulation into compliance with KRS Chapter 13A drafting requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.
(a) Necessity of proposed regulation if in conflict: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Local Health
(Proposed Amendment)

902 KAR 45:080. Salvage.

RELATES TO: KRS 217.005 to 217.215, 217.992
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215 and 217.992 authorizes the Cabinet for Human Resources to regulate the misbranding and adulteration of foods and cosmetics. This regulation establishes uniform requirements relating to the disposition of salvaged foods, cosmetics and related merchandise.

Section 1. Citation of Regulation. This regulation may be cited as the "State Food and Cosmetic Salvage Regulation."

Section 2. Definitions. The following definitions shall apply in the interpretation and the enforcement of this regulation:
(1) "Employee" means any person employed by a salvage processing plant or salvage distributor who does, or may in any manner handle or come in contact with the handling, storing, transporting, or selling of distressed, salvageable or salvaged food, cosmetics, or other items listed under subsection (9) of this section.
[(2) "Cabinet" means the Cabinet for Human

Resources or its designee.]

(2) [(3)] "Distressed merchandise" means any food, cosmetic, or other item listed under subsection (9) of this section which has had the label lost or which has been subjected to possible damage due to accident, mishandling, fire, flood, adverse weather, or to any other similar cause; or which is suspected of having been rendered unsafe or unsuitable for human or animal consumption or use, or which is misbranded, short filled, over or inadequately processed, or below grade.

(3) [(4)] "Nonsalvageable merchandise" means "distressed merchandise," as defined in subsection (3) of this section, which cannot be safely or practically reconditioned.

(4) [(5)] "Perishable food" means that there exists a significant risk of spoilage or deterioration when a food has not been properly stored, or handled.

(5) [(6)] "Potentially hazardous food" means any food or ingredient, natural or synthetic:

(a) In a form capable of supporting the:

1. Rapid and progressive growth of infectious or toxigenic microorganisms; or

2. Slower growth of Clostridium botulinum.

(b) Of animal origin, either raw or heat treated; and

(c) Of plant origin which:

1. Has been treated; or

2. Is raw seed sprouts.

(d) The following are excluded:

1. Air dried hard boiled eggs with shells intact;

2. Food with water activity (aw) value of 0.85 or less;

3. Food with a hydrogen ion concentration (pH) level of four and six-tenths (4.6) or below;

4. Foods in unopened hermetically sealed containers that have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and

5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur. [that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, and which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odor-free shell eggs, or foods which have a pH level of 4.6 or below or a water activity (aw) value of 0.85 or less.]

(6) [(7)] "Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with all cabinet requirements making it suitable for consumption or use as human or animal feed.

[(8) "Salvage distributor" means a person who engages in the business of distributing, peddling, storing, or otherwise trafficking in any distressed, salvageable, or salvaged merchandise.]

[(9) "Salvage processing plant" means an establishment operated by a person who is engaged in the business of reconditioning, labeling, relabeling, repackaging, recoopering, sorting, cleaning, culling or by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifrices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has become distressed merchandise. The term "salvage processing plant" shall not be construed to include retailers, wholesalers, or distributors whose merchandise may suffer occasional damage during routine handling, while in the possession of such retailer, wholesaler, or distributor.]

(7) [(10)] "Salvageable merchandise" means any distressed food, cosmetic, or other item listed under subsection (9) of this section which can be reconditioned, labeled, relabeled, repackaged, recoopered, sorted, cleaned, culled or by any other means be salvaged to the satisfaction of the cabinet.

(8) [(11)] "Salvaged merchandise" means previously distressed merchandise which has been reconditioned or salvaged pursuant to the provisions of this regulation and is acceptable for such human or animal consumption or use as may be designated by the cabinet.

(9) [(12)] "Sanitize" means adequate treatment of food-contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance and in substantially reducing numbers of other microorganisms. Such treatments shall not adversely affect the product and shall be safe to the consumer.

(10) [(13)] "Vehicle" means any truck, car, bus, railcar, aircraft, boat, ship, or other means by which distressed, salvageable or salvaged merchandise is transported from one (1) location to another.

(11) [(14)] "Salvage dealer" means any person who is engaged in selling or distributing salvaged merchandise.

(12) [(15)] "Salvage processor" means any person who engages in the business of reconditioning salvageable or salvaged merchandise for sale or further distribution.

(13) [(16)] "Supplier" means any person who transfers distressed merchandise to a salvage processor.

Section 3. Permit Requirements. (1) No person shall operate a salvage processing plant or act as a salvage dealer or distributor within the Commonwealth of Kentucky, who does not possess a permit issued by the cabinet. Only a person who complies with the requirements of this regulation shall be entitled to receive and retain such a permit which will be of two (2) types:

(a) Salvage processing permit; and

(b) Salvage distributing permit. Permits shall not be transferable from one (1) person to another person or place. A permit shall be posted in every processing plant, and each distributor shall have a copy of a valid permit in each vehicle which he operates. The name and address of the salvage processing plant or distributor and the permit number must be conspicuously displayed on the outside of all vehicles being used for salvage operations. Each permit shall expire on December 31 next following its date of issuance.

(2) Issuance of permits. Any person desiring

to operate a salvage processing plant or act as a salvage distributor shall make written application for a permit on Form DFS-200. 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 provided by the cabinet.] Upon receipt of such an application, the cabinet shall make an inspection of the salvage processing plant or distributor's operations to determine compliance with the provisions of this regulation. When inspection reveals that the applicable requirements of this regulation have been met, a permit shall be issued to the applicant by the cabinet.

Section 4. Notice to Cabinet of Distressed Merchandise. It shall be the duty of any person owning or having possession of any merchandise listed in Section 2(9) of this regulation which becomes distressed merchandise to notify the cabinet if possible prior to such merchandise being removed from the premises at which it was located at the time it became distressed merchandise. If emergency removal of distressed merchandise is required, notice to the cabinet shall be made as soon thereafter as possible. It shall also be the duty of the owner or manager of the salvage processing plant to notify the cabinet within forty-eight (48) hours or, as soon as possible thereafter, whenever distressed merchandise subject to the provisions of this regulation is obtained.

Section 5. Movement of Distressed Merchandise. Distressed merchandise shall be moved from the site of a fire, flood, sewer back-up, wreck or other cause as expeditiously as possible after compliance with Section 4 of this regulation so as not to become putrid, unwholesome, rodent or insect harborages, or otherwise, a menace to public health. All distressed and salvageable merchandise of a perishable nature shall, prior to reconditioning, be transported only in vehicles provided with adequate refrigeration or freezing capabilities necessary for product maintenance. No interstate movement of known distressed or salvageable merchandise shall be made without the prior approval of the cabinet, the appropriate control agency in the state receiving the merchandise, and the Federal Food and Drug Administration.

Section 6. Handling of Distressed Merchandise. (1) If distressed articles unrelated to foods, cosmetics, etc. are also salvaged, they shall be handled in rooms separate from those in which foods are reconditioned.

(2) Sufficient precautions shall be taken to prevent cross-contamination (e.g., animal feed to human food) among the various types of merchandise which are salvageable or salvaged.

Section 7. Reconditioning and Labeling of Distressed Merchandise. (1) All salvageable distressed merchandise shall be reconditioned prior to sale or distribution except for such sale or distribution to a person holding a valid salvage processing permit issued by the cabinet.

(2) All metal cans of food offered for sale or distribution shall be free of any evidence of rust pitting, and essentially free of dents (especially at rim, end double seams and/or side seams). Any metal container for which buffing is required to remove pitted rust and leakers, springers, flippers, and swells shall be deemed unfit for sale or distribution. Containers, including metal and glass containers with press caps, screw caps, pull rings or other types of openings which have been in contact with water, liquid foam, or other deleterious substances, as a result of firefighting efforts, flood, sewer back-up, or similar mishaps, shall be deemed unfit for sale or distribution, i.e., nonsalvageable merchandise as defined in Section 2(4) of this regulation, except that consideration may be given to reconditioning spirits by distillation where feasible.

(3) All metal containers of food, other than those mentioned in subsection (2) of this section, whose integrity has not been compromised and whose integrity would not be compromised by the reconditioning, and which have been partially or totally submerged in water, liquid foam, or other deleterious substance as the result of flood, sewer back-up, or other reasons shall, after thorough cleaning, be subjected to a sanitizing rinse of a concentration of 100 ppm available chlorine for a minimum period of one (1) minute, or shall be sanitized by another method approved by the cabinet, and subsequently be treated to inhibit rust formation. All other types of packages (including cans or tins which are opened by pull tabs) so damaged shall be deemed unsafe for use or sale.

(4) Label removal. Any cans showing surface rust shall, after having their labels removed, be inspected and destroyed if they contain pin holes. If salvageable, they shall then be cleaned by a method approved by the cabinet before relabeling. Any container of food with the label or mandatory information missing, that cannot be identified and relabeled correctly, shall not be sold. When original labels are missing or illegible , relabeling or overlabeling shall be required.

(5) Relabeling. All salvaged merchandise shall be labeled to indicate that the merchandise has been salvaged. All salvaged merchandise in containers is to be provided with labeling meeting the appropriate requirements of KRS 217.035 and 217.037. Where original labels are removed from containers which are to be resold or redistributed, the replacement labels must show as the distributor, the name and address of the salvage processing plant.

Section 8. Records of Distressed Merchandise. A written record or receipt of distressed, salvageable and salvaged merchandise shall be kept by the salvage processing plant and shall be kept open for inspection by the cabinet during business hours. The records shall include the name of the product, the name and address of the manufacturer or distributor, the production code, container sizes, source of the distressed merchandise, the date received, the type of damage, and the salvage process conducted. These records shall be kept on the premises of the salvage processing plant for a period of one (1) year following the completion of transactions involving a lot of merchandise.

Section 9. Protection from Contamination. (1) All salvageable and salvaged merchandise, while being stored or reconditioned at a salvage processing plant, or during transportation,

shall be protected from contamination. All perishable foods as well as those susceptible to microbial contamination shall be stored at such temperatures as will protect against spoilage. All potentially hazardous foods shall be maintained at safe temperatures (forty-five (45) degrees Fahrenheit or below or 140 degrees Fahrenheit or above). Frozen foods shall be maintained at zero degrees Fahrenheit or below. Poisonous and toxic materials shall not be transported with distressed, salvageable or salvaged merchandise or stored in a salvage processing plant; unless effective separation is provided. However, such poisonous and toxic materials as are required to maintain sanitary conditions and for sanitation purposes may be used or stored in salvage processing plants. Such poisonous and toxic materials shall be identified, and shall be used only in such manner and under such conditions as will not contaminate distressed, salvageable or salvaged merchandise, shall not constitute a hazard to employees and, when not in use, shall be stored in cabinets which are used for no other purpose.

(2) Segregation of merchandise. All salvageable merchandise shall be promptly sorted and segregated from nonsalvageable merchandise to prevent further contamination of the merchandise to be reconditioned for sale or distribution.

Section 10. Personnel Health and Disease Control. (1) No employee while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in an area of a salvage processing plant or for a salvage distributor in any capacity in which there is a likelihood of such person contaminating salvageable or salvaged merchandise with pathogenic organisms, or transmitting disease to other individuals; and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the establishment has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he or she shall notify the cabinet immediately.

(2) All employees shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to good hygienic practices while on duty. Employees shall wash their hands thoroughly in an approved hand-washing facility before starting work, and as often as may be necessary to remove soil and contamination. No employee shall resume work after visiting the toilet room without first washing his or her hands. The consumption of food or beverages and the use of tobacco in any form shall be allowed only in designated areas and not in areas where food is exposed or in areas used for washing equipment and utensils.

Section 11. Salvage Processing Plant Equipment and Utensils. (1) All equipment and utensils used in a salvage processing plant shall be so designed and of such material and workmanship as to be smooth, easily cleanable and durable, and shall be in good repair; and the surfaces of such equipment and utensils coming in contact with food and other food contact surfaces shall, in addition, be easily accessible for cleaning, nontoxic, corrosion-resistant and nonabsorbent; provided, that, when approved by the cabinet, exceptions may be made to the above materials requirements.

(2) All equipment shall be so installed and maintained as to facilitate the cleaning thereof, and of all adjacent areas. Equipment which was installed prior to March 12, 1975 which does not meet fully the above requirements, may be continued in use if it is in good repair, capable of being maintained in a sanitary condition and surfaces coming in contact with salvageable or salvaged merchandise are nontoxic.

Section 12. Equipment and Utensil Cleaning and Sanitization. (1) Effective means of cleaning and sanitizing equipment, utensils, and soiled food containers, shall be provided. In new or extensively altered salvaged processing plants a three (3) compartment sink and/or a suitable automatic pressurized spray-type ware washing machine capable of washing and sanitizing with hot water or chemical sanitizers shall be provided and conveniently located within the processing area.

(2) Cleaning frequency. All utensils and food-contact surfaces in a salvage processing plant shall be thoroughly cleaned and sanitized prior to use. All other surfaces of equipment shall be cleaned at such intervals as necessary. After cleaning and until use, all equipment and utensils shall be stored and handled as to be protected from contamination.

Section 13. Salvage Processing Plant Sanitary Facilities and Controls. (1) Water supply. The water supply shall be adequate, of a safe, sanitary quality and from a source approved by the Natural Resources and Environmental Protection Cabinet. Hot and cold running water under pressure shall be provided in all areas where foods, or cosmetics are processed, or equipment, utensils, or containers are washed.

(2) Sewage. All sewage and other liquid waste shall be disposed of in a public sewerage system or, in the absence thereof, in a manner approved by the Natural Resources and Environmental Protection Cabinet or the cabinet.

(3) Plumbing. All plumbing shall comply with the State Plumbing Code.

(4) Toilet facilities. Each salvage processing plant shall be provided with adequate, conveniently located toilet facilities for its employees. In new establishments or establishments that are extensively altered, toilet facilities shall be provided in accordance with the requirements of the State Plumbing Code. Toilet fixtures shall be of sanitary design and readily cleanable. Toilet facilities, including rooms and fixtures, shall be kept in a clean condition and in good repair. The doors of all toilet rooms shall be self-closing. Toilet tissue shall be provided. Easily cleanable receptacles shall be provided for waste materials and such receptables in toilet rooms shall be covered.

(5) Lavatories. Each salvage processing plant shall be provided with adequate, conveniently located hand-washing facilities for its employees, including a lavatory or lavatories equipped with hot and cold or tempered running water, hand-cleansing soap or detergent, and approved sanitary towels or other approved hand-drying devices. Such facilities shall be

kept clean and in good repair.

(6) Garbage and refuse. All refuse containing foods or cosmetics shall be kept in leak-proof, nonabsorbent containers be kept in leak-proof, nonabsorbent containers which shall be kept covered with tight-fitting lids when filled or stored, or not in continuous use; provided, that such containers need not be covered when stored in a special vermin-proofed room or enclosure, or in a waste refrigerator. All other refuse shall be stored in containers, rooms, or areas in an approved manner. Adequate cleaning facilities shall be provided, and each container, room or area shall be thoroughly cleaned after the emptying or removal of refuse. All refuse shall be disposed of with sufficient frequency and in such a manner as to prevent contamination of salvaged product and surrounding processing areas.

(7) Insect and rodent control. Effective measures shall be taken to protect against the entrance, breeding, and presence of rodents, insects, and other vermin in the salvage processing plant.

Section 14. Salvage Plant Construction and Maintenance. (1) Floors. The floor surfaces in all rooms and areas in which salvageable or salvaged merchandise is stored or processed and in which utensils are washed, and in walk-in refrigerators, dressing or locker rooms, and toilet rooms, should be constructed as to be easily cleanable. All floors shall be kept clean and in good repair. Floor drains shall be provided in all rooms where floors are subjected to flooding-type cleaning or where normal operations release or discharge water or other liquid waste onto the floor.

(2) Walls and ceilings. The walls and ceilings of all rooms shall be clean and in good repair.

(3) Lighting.

(a) At least thirty (30) foot-candles of light at a distance of thirty (30) inches from the floor shall be provided in all areas in which salvageable or salvaged merchandise is processed or stored, where utensils are washed, and in hand-washing areas. Dressing or locker rooms, toilet rooms, and refuse storage areas should be adequately lighted. During all cleanup activities, adequate light shall be provided in all other areas to facilitate cleaning and good sanitation.

(b) Protective shielding.

1. Shielding to protect against broken glass falling onto unpackaged food shall be provided for all artificial lighting fixtures located over or within food-storage, food-preparation, and food-display areas.

2. Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

(4) Ventilation. All rooms and processing areas in the salvage processing plant should be well ventilated. Ventilation hoods and devices when used shall be designed to prevent condensate from dripping into foods or cosmetics, or onto preparation surfaces. Filters, when used, shall be readily removable for cleaning or replacement. Ventilation systems shall comply with applicable state and local fire-prevention requirements and shall, when vented to the outside air, discharge in such manner as not to create a nuisance.

(5) Locker area. Adequate facilities should be provided for the orderly storage of employee's clothing and personal belongings.

(6) Housekeeping. All parts of the salvage processing plant and its premises shall be kept clean and free of litter and refuse. Cleaning operations shall be conducted in such a manner as to prevent contamination of salvageable and salvaged merchandise. None of the operations connected with a salvage processing plant shall be conducted in any room used as an employee lounge or living or sleeping quarters. Soiled coats and aprons should be kept in suitable containers until removed for laundering. No live birds or animals shall be allowed in any area used for the conduct of a salvage processing plant's operations or for the storage of salvageable and salvaged merchandise except that patrol dogs accompanying security or police officers are permitted. Guide dogs accompanying blind persons shall be permitted in sales areas.

(7) Vehicles. Vehicles used to transport distressed, salvageable, or salvaged merchandise should be maintained in a clean condition to protect the product from contamination.

Section 15. Plan Review of Future Construction. When a salvage processing plant is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a salvage processing plant, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangements, and construction materials of work areas and the location, size and type of fixed equipment facilities, and a plumbing riser diagram shall be submitted to the cabinet for approval before such work is begun.

Section 16. Inspections; Notices. (1) Inspection. At least once every twelve (12) months, the cabinet shall inspect each salvage processing plant and distributor and shall make as many additional inspections and reinspections as are necessary for the enforcement of this regulation.

(2) Inspection records. Whenever the cabinet makes an inspection of a salvage processing plant or distributor, its representative shall record the findings on an inspection report form provided for this purpose, and shall furnish a copy of such inspection report form to the permit holder or his representative in charge.

(3) Issuance of notices. Whenever the cabinet makes an inspection of a salvage processing plant or distributor and determines that any of the requirements of this regulation have been violated, the cabinet shall notify the permit holder or person in charge of such violations by means of an inspection report form or other written notice. In such notification, the cabinet shall:

(a) Set forth the specific violations found.

(b) Establish a specific and reasonable period of time for the correction of the violations found.

(c) State that failure to comply with any notice issued in accordance with the provisions of this regulation may result in suspension of the permit.

(d) State that an opportunity for appeal from any notice of inspection findings will be provided if a written request for a hearing is filed with the cabinet within the period of time established in the notice for correction.

(4) Service of notices. Notices provided for

under this section shall be deemed to have been properly served when a copy of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the cabinet.

Section 17. Salvage Processing Plants and Distributors Outside Jurisdiction of the Cabinet. Salvaged merchandise from salvage processing plants and distributors located outside the jurisdiction of the Commonwealth of Kentucky may be sold within the state, if such plants and distributors conform to the provisions of this regulation or to substantially equivalent provisions and have a valid permit from the cabinet. To determine the extent of compliance with such provisions, the cabinet may accept reports from responsible authorities in other jurisdictions where such plants and distributors are located.

Section 18. Suspension and Revocation of Permits. (1) Whenever the cabinet has reason to believe that an imminent public health hazard exists, or whenever the permit holder has interfered with the cabinet in the performance of its duties, the permit may be suspended immediately upon notice to the permit holder without a hearing. In such event, the permit holder may request a hearing which shall be granted as soon as practicable.

(2) In all other instances of violation of the provisions of this regulation, the cabinet shall serve upon the holder of the permit a written notice specifying the violations in question and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet by the permit holder within such ten (10) day period.

(3) Reinstatement of suspended permits. Any person whose permit has been suspended may at any time make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing the suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is complying with the requirements of this regulation, the permit shall be reinstated.

(4) Revocation of permits. For serious or repeated violations of any of the requirements of this regulation, or for interference with the cabinet in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of such notice, unless a request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(5) Hearings. The hearings provided for in this section shall be conducted by the cabinet at a time and place designated by it. Based upon the record of such hearing, the cabinet shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A transcript of the hearing shall not be made unless the interested party assumes the costs thereof and a request is made therefor at the time a hearing is requested.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 29, 1991
FILED WITH LRC: August 12, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 18, 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: Dudley Conner
(1) Type and number of entities affected: Approximately 35 establishments.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: 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. N/A

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Local Health
(Proposed Amendment)

902 KAR 45:100. Vending machines; food and beverages.

RELATES TO: KRS 217.808 to 217.812, 217.990(8)
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 217.808 et. seq. to regulate food vending machines. This regulation relates to the sanitation and inspection of food vending machines, food vending commissaries and the issuance and suspension of permits. The purpose of this regulation is to establish uniform requirements for the regulation of food vending machines and food vending commissaries in Kentucky.

Section 1. Citation of Regulation. This regulation may be cited as the "State Food and Beverage Vending Machine Code."

Section 2. Sale of Adulterated or Misbranded Food Prohibited. (1) No person shall sell, offer or expose for sale, through vending machines, or have in his possession with intent to sell therefrom, any food which is adulterated or misbranded as set forth in KRS 217.025 and 217.035 of the Kentucky Food, Drug and Cosmetic Act.

(2) Samples of food may be taken and examined by the cabinet as often as may be necessary to determine freedom from adulteration or misbranding.

Section 3. Sanitation Requirements for Vending Machine Operations. (1) Food supplies. At all times, including while being prepared, stored, loaded, displayed, or transported, food intended for sale through vending machines and condiments or other foods available at vending machine locations shall be wholesome, correctly labeled and processed under sanitary conditions acceptable to the cabinet and shall be protected from contamination by all agents, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs, sneezes, flooding, draining, and overhead leakage or condensation. All meat and meat products and poultry and poultry products shall have been inspected and passed for wholesomeness by an official governmental agency. All hermetically sealed foods offered for sale shall have been processed in approved food processing establishments. Home prepared food shall not be used or offered for sale through vending machines.

Special requirements.

(a) Milk and fluid milk products offered for sale through vending machines shall be pasteurized, shall meet the Grade A quality standards as established by law, and shall be dispensed only in individual original containers.

(b) Milk and fluid milk products and fluid nondairy products (creaming agents) shall not be dispensed in vending machines as additional ingredients in hot liquid beverages or other foods.

(c) Fresh fruits which may be eaten without peeling shall be thoroughly washed in potable water at the packing plant by the processor, or at the commissary before being placed in the vending machines for dispensing. The washed fruit shall be protected from contamination after the washing process.

(d) All food, other than fresh fruit, shall be stored or packaged in clean protective containers, and all food shall be handled and vended in a sanitary manner.

(e) Potentially hazardous food offered for sale through vending machines shall be dispensed to the consumer in the individual, original container or package into which it was placed at the commissary or at the manufacturer's or processor's plant. Potentially hazardous food shall not be dispensed from bulk food machines.

(f) Potentially hazardous food shall be maintained at safe temperatures except as follows:

1. During necessary periods of preparation and packaging; and

2. During the actual time required to load or otherwise service the machine and for a maximum machine ambient temperature recovery period of thirty (30) minutes following completion of loading or servicing operation.

(2) Consumer containers. All food-contact surfaces of containers shall be protected from contamination. If condiments or other foods are provided for service in conjunction with food dispensed by a vending machine, they shall be packaged in individual portions in single-service containers or shall be dispensed from approved sanitary dispensers which are washed, sanitized and filled at the commissary, or be commercially prepared in nonreusable containers. Relish bowls and similar condiment containers shall not be used at unattended locations. Drinking straws, stirrers, toothpicks, spoons, knives, forks, and similar articles which are provided in conjunction with food dispensed by a vending machine shall be individually wrapped or dispensed from bulk containers in a sanitary manner.

(3) Equipment maintenance and operations.

(a) Vending machines dispensing potentially hazardous food shall be provided with adequate refrigerating or heating units, or both, and thermostatic controls which insure the maintenance of applicable temperatures at all times. Such vending machines shall also have controls which prevent the machine from vending potentially hazardous food until serviced by the company, in the event of power failure or other conditions, resulting in noncompliance with temperature requirements in the food storage compartment. Hot food vending machines designed to heat foods through the potentially hazardous range of forty-five (45) degrees Fahrenheit to 140 degrees Fahrenheit, shall also be equipped with automatic controls which prevent the machine from vending such food if heating through this temperature range is not accomplished in 120 minutes or less. Provided, however, equipment which was installed prior to March 12, 1975 that does not meet fully the above requirements, may be continued in use if it is in good repair, capable of being maintained in a sanitary condition, and the food contact surfaces are nontoxic.

(b) Potentially hazardous food that has failed to conform to the time-temperature requirements of this regulation, shall be removed from the vending machine, and be denatured or otherwise rendered unusable for human consumption.

(c) Vending machines dispensing potentially hazardous food shall be provided with one (1) or

more thermometers which, to an accuracy of plus or minus three (3) degrees Fahrenheit, indicate the air temperature of the warmest part of the refrigerated food storage compartment, or the coldest part of the heated food storage compartment, whichever is applicable.

(4) Inspection of vending machine commissaries. All commissaries providing food for vending machines covered by this regulation shall comply with the applicable provisions of the current "State Food Service Code."

(5) Machine location.

(a) Vending machines, ovens and other equipment shall be located in a room, area or space which can be maintained in a clean condition and which is protected from overhead leakage or condensation from water, waste, or sewer piping. The immediate area in which the equipment is located shall be well lighted and ventilated. Each vending machine shall be located so that the space around and under the machine can be easily cleaned and maintained, and so that insect and rodent harborage is not created.

(b) The floor area where vending machines are located shall be reasonably smooth, of cleanable construction, and be capable of withstanding repeated washing and scrubbing. This space and the immediate surroundings of each vending machine shall be maintained in a clean condition.

(c) Adequate hand-washing facilities, including hot and cold or tempered running water, soap and individual towels, shall be convenient to the machine location and shall be available for use by employees servicing or loading bulk food machines.

(6) Single-service articles. Single-service articles shall be purchased in sanitary packages which protect the articles from contamination, shall be stored in a clean, dry place until used, and shall be handled in a sanitary manner. Such articles shall be furnished to the customer in the original individual wrapper or from a sanitary single-service dispenser. All single-service articles shall be protected from manual contact, dust, insects, rodents, and other contamination.

(7) Other equipment.

(a) All other equipment at the vending location must be kept clean. Food-contact surfaces, if any, must be cleaned, rinsed and sanitized at a frequency established by the cabinet based upon the type of product being dispensed.

(b) The cavities and door edges of microwave ovens shall be kept free of encrusted grease deposits and other accumulated soils and shall be cleaned daily, or as often as is necessary to achieve the safe, sanitary operation thereof. All doors, seals, hinges, and latch fasteners (screws and related hardware) shall be kept tight and adjusted in accordance with manufacturer's procedures. Microwave ovens shall be in compliance with applicable safety standards of the United States Food and Drug Administration's Center for Devices and Radiological Health.

(c) Food-contact surfaces of all equipment and utensils must be protected from contamination at all times including while being transported from the commissary to the vending location.

(8) Exterior construction and maintenance.

(a) The vending machine shall be of sturdy construction and the exterior shall be designed, fabricated, finished, and maintained to facilitate its being kept clean and to minimize the entrance of insects and rodents. The exterior of the machine shall be kept clean.

(b) Door and panel access openings to the food and container storage spaces of the machine shall be tight fitting, and if necessary, gasketed to prevent the entrance of dust, moisture, insects, and rodents.

(c) All ventilation louvers or openings into vending machines shall be effectively screened. Screening material for openings into food and container storage spaces of the machine shall be not less than sixteen (16) mesh to the inch or equivalent. Screening material for openings into condenser units which are separated from food and container storage spaces shall be not less than eight (8) mesh to the inch or equivalent.

(d) In all vending machines in which the condenser unit is an integral part of the machine, such unit when located below the food and container storage space, shall be separated from such space by a dust proof barrier, and when located above, shall be sealed from such space.

(e) In order to prevent seepage underneath the machine and to promote cleaning, free standing vending machines shall have one (1) or more of these elevation or movability features:

1. Be light enough to be manually moved with ease by one (1) person; or

2. Be elevated on legs or extended side walls to afford, with or without kick plates, and unobstructed vertical space of at least six (6) inches under the machine; or

3. Mounted on rollers or casters which permit easy movement; or

4. Be sealed to the floor.

Where used, kick plates shall be easily removable or be capable of being rotated. These kick plates shall be designed and installed to make the area under the machine easily accessible for routine cleaning without unlocking the cabinet door.

(f) Counter type machines shall be:

1. Sealed to the counter; or

2. Mounted on four (4) inch legs or the equivalent; or

3. Easily moved for cleaning with service connections in place.

(g) All service connections through an exterior wall of the machine including water, gas, electrical, and refrigeration connections, shall be grommeted, or closed with no opening over 1/32 inch to prevent the entrance of insects and rodents. All service connections to machines vending potentially hazardous food shall be such as to discourage unauthorized or unintentional disconnection.

(9) Interior construction and maintenance.

(a) The nonfood-contact surfaces of the interior of vending machines shall be designed and constructed to permit easy cleaning and to facilitate maintenance operations and shall be kept clean and in good repair. Inaccessible surfaces and areas shall be minimized.

(b) All food-contact surfaces of vending machines shall be smooth, in good repair, and free of breaks, corrosion, open seams, cracks, and chipped places. The design of such surfaces shall preclude routine contact between food and "V" type threaded surfaces except that in equipment where such contact is unavoidable, such as ice makers, such threads shall be minimized. All joints and welds in food-contact surfaces shall be smooth, and all internal

angles and corners of such surfaces shall be rounded to facilitate cleaning.

(c) If solder or other sealer is used on food-contact surfaces, it shall be composed of safe materials and be corrosion resistant.

(d) All food-contact surfaces of vending machines, including containers, pipes, valves, and fittings, shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion-resistant, nonabsorbent, easily cleanable and durable under conditions of normal use and shall be cleaned, rinsed, and sanitized at a frequency established by the cabinet based upon the type of product being dispensed.

(e) All food-contact surfaces, unless designed for in-place cleaning, shall be accessible for manual cleaning, rinsing, sanitizing, and inspection:

1. Without being disassembled; or

2. By disassembly without the use of tools; or

3. By easy disassembling with the use of only simple tools such as a screwdriver or an open-end wrench.

(f) All food-contact parts or surfaces not designed for in-place cleaning (paragraph (g) of this subsection) shall be cleaned, rinsed and sanitized in clean portable containers or in utensil washing sinks at the location or at the commissary. Cleaning shall consist of washing in warm water containing a suitable detergent and brushing or wiping, as appropriate. Rinsing shall consist of immersion or wiping with clean clear rinse water. Sanitizing shall be accomplished by:

1. Immersion or rinsing in water of at least 170 degress Fahrenheit for thirty (30) seconds; or

2. Immersion for one (1) minute in a chemical sanitizing solution containing at least fifty (50) parts per million (p.p.m.) of available chlorine, or twelve and five-tenths (12.5) p.p.m. of available iodine, or 200 p.p.m. of quaternary ammonium sanitizer.

3. When chemicals are used for sanitization, a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

(g) In machines designed so that food-contact surfaces are not readily removable, all such surfaces intended for in-place cleaning shall be designed and fabricated that:

1. Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and

2. Cleaning and sanitizing solutions will contact all food-contact surfaces; and

3. The system is self-draining or capable of being completely evacuated; and

4. The procedures utilized result in thorough cleaning of the equipment.

(h) The openings into all nonpressurized containers used for the storage of vendible food, including water, shall be provided with covers which prevent contamination from reaching the interior of the containers. Such covers shall be designed to provide a flange which overlaps the opening, and shall be sloped to provide drainage from the cover wherever the collection of condensation, moisture, or splash is possible. Concave covers are prohibited. Any port opening through the cover shall be flanged upward at least three-sixteenths (3/16) of an inch, and shall be provided with an overlapping cover flanged downward. Condensation, drip, or dust deflecting aprons shall be provided on all piping, thermometers, equipment, rotary shafts, and other functional parts extending into the food container unless a watertight joint is provided. Such aprons shall be considered as satisfactory covers for those openings which are in continuous use. Gaskets, if used, shall be of safe materials, relatively stable, and relatively nonabsorbent, and shall have a smooth surface. All gasket retaining grooves shall be easily cleanable.

(i) The delivery tube or chute and orifice of all bulk food vending machines shall be protected from normal manual contact, dust, insects, rodents, and other contamination. The design shall divert condensation or moisture from the normal filling position of the container receiving the food. The vending stage of such machines shall be provided with a tight-fitting, self-closing door or cover which is kept closed except when food is being removed. The cup filling area or platform of controlled location vending machines shall not require a door or cover if there is no opening in the cabinet interior at the point other than for dispensing tube(s) or trapped waste tubing.

(j) The food storage compartment and other compartments in refrigerated vending machines which are subject to condensation or cooling water retention shall be self-draining or equipped with a drain outlet which permits complete draining. In vending machines designed to store cartoned beverages, diversion devices, and retention pans or drains for leakage shall be provided. All such drains, devices, and retention pans shall be easily cleanable.

(k) Can and bottle openers which come into contact with the food or the food-contact surfaces of the containers shall be constructed of corrosion-resistant, nonabsorbent, and safe materials and shall be kept clean. Cutting or piercing parts of multiuse openers which come into contact with the food or food-contact surface of containers shall be reasonably protected from manual contact, dust, insects, rodents, and other contamination; and such parts shall be readily removable for cleaning.

(l) Lighting fixtures located in vending machines shall be shielded, coated or otherwise shatter resistant, except that this requirement shall not apply to vending machines which dispense only prepackaged foods.

(10) Water supply.

(a) All water used in vending machines shall be of a safe and sanitary quality and from a source constructed and operated in accordance with applicable standards of the Natural Resources and Environmental Protection Cabinet. Water used as a food ingredient shall be piped to the vending machine under pressure.

(b) All plumbing connections and fittings shall be installed and maintained in accordance with the State Plumbing Code.

(c) If used, water filters or other water conditioning devices shall be of a type which may be disassembled for periodic cleaning or replacement of the active element. Replacement elements shall be handled in a sanitary manner.

(d) To prevent leaching of toxic materials caused by possible interaction of carbonated water, piping and contact surfaces, postmix soft drink vending machines manufactured after January 1, 1975, which are designed with an incoming water supply air gap shall have no copper tubing or other potentially toxic water

system tubing between the air gap and the downstream, carbonated water dispensing nozzle.

(e) To prevent leaching of toxic materials caused by possible interaction of carbonated water, piping and contact surfaces, postmix soft drink vending machines which are directly connected to the external water supply system shall be equipped with a double (or two (2) single) spring-loaded check valves or other devices which will provide positive protection against the entrance of carbon dioxide or carbonated water into the water supply system. Backflow preventive devices shall be located to facilitate servicing and maintenance. No copper tubing or other potentially toxic tubing or contact surfaces shall be permitted in or downstream from the check valves or backflow devices. These check valves or devices should be inspected and cleaned or replaced annually.

(f) Where spring-loaded check valves are used to prevent the backflow of carbon dioxide into accessible upstream copper or other potentially toxic piping or tubing, a screen of not less than 100 mesh to the inch shall be installed in the water line immediately upstream from the check valves in a location which permits servicing or replacement.

(g) In all vending machines in which carbon dioxide is used as a propellant, all food-contact surfaces from the check valves or other protective devices, including the valves or devices, shall be of such material as to preclude the production of toxic substances which might result from interaction with carbon dioxide or carbonated water.

(11) Waste disposal.

(a) All trash and other solid or liquid waste shall be removed from the machine location as frequently as may be necessary to prevent nuisance and unsightliness, and shall be disposed of in accordance with applicable regulations of the Natural Resources and Environmental Protection Cabinet.

(b) Self-closing, leak-proof, easily cleanable, insect-proof, and rodent-proof waste receptacles shall be provided in the vicinity of each machine or machines to receive used cups, cartons, wrappers, straws, closures, and other items.

(c) Plastic bags and wet-strength paper bags may be used to line the receptacles. Soiled waste receptacles shall be cleaned at a frequency to prevent insect and rodent attraction.

(d) Waste receptacles shall not be located within the vending machines with the exception of those machines dispensing only packaged food with crown closures; in which case, the closure receptacles may be located within the machine. Waste receptacles shall not be located under counters or otherwise enclosed in a manner that will create a nuisance or prevent space around and under the counter or enclosure from being easily cleaned and maintained. Suitable racks and cases shall be provided for multiuse containers or bottles.

(e) Containers shall be provided within all machines dispensing liquid food in bulk for the collection of drip, spillage, overflow, or other internal wastes. Such machines shall be equipped with an automatic shutoff device at the waste pail or other devices or valves which will place the machine out of operation before the waste pail overflows. Such devices shall prevent water or liquid product from continuously running in the event of the failure of any single control, high level control, or other flow control device in the liquid product or water system.

(f) Containers or surfaces on which such wastes may accumulate shall be readily removable for cleaning, shall be easily cleanable, and shall be corrosion-resistant. If liquid wastes from drip, spillage, or overflow, which originate within the machine are discharged into a sewerage system, the connection to the sewer shall be through an air gap.

(12) Delivery of food, equipment, and supplies to machine locations. Food, food-contact surfaces of containers, equipment and supplies, shall be protected from contamination while in transit to machine location. Potentially hazardous food, while in transit and in storage on location, shall be maintained at safe temperatures.

(13) Personnel - cleanliness.

(a) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices while engaged in direct handling of foods, or food-contact surfaces of utensils or equipment.

(b) Employees shall thoroughly wash their hands with soap and warm water immediately prior to engaging in any vending machine servicing operation which may bring them into contact with food, or with food-contact surfaces of utensils, containers, or equipment. While engaged in such service operations, employees shall wear clean outer garments, shall not use tobacco in any form and shall keep their fingernails clean and trimmed.

Section 4. Health and Disease Controls. No person while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, a cold, diarrhea, gastrointestinal upsets, or a respiratory infection, shall work in any area of a commissary or vending operation in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other individuals; and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the vending machine or commissary operation has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the cabinet immediately.

Section 5. Procedure when Infection is Suspected. When the cabinet has reasonable cause to suspect the possibility of disease transmission from any employee, the cabinet shall secure a morbidity history of the suspected employee or make such other investigation as may be indicated, and take appropriate action. The cabinet may require any or all of the following:

(1) The immediate exclusion of the employee from all commissaries and vending machine operations.

(2) The immediate closure of the commissaries and operations concerned until, in the opinion of the cabinet, no further danger of disease outbreak exists.

(3) Restriction of the employee's services to

some area of work where there would be no danger of transmitting disease.

(4) Adequate medical examination of the employee and of his associates, with such laboratory examinations as may be indicated.

Section 6. Issuance of Permits. (1) No person shall operate a vending machine company within the Commonwealth of Kentucky who does not possess a valid permit issued to him by the cabinet as provided by KRS 217.809. Only a person who complies with the requirements of this regulation shall be entitled to receive and retain such a permit. Permits shall not be transferable from one company to another company or place. A valid permit shall be conspicuously posted in the headquarters office of every food vending company.

(2) Any person desiring to operate one (1) or more vending machines in the Commonwealth of Kentucky shall make application in writing on Form DFS-208. 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 provided by the cabinet.] Such applicant shall provide the following information:

(a) The applicant's full name, post office address, and whether such applicant is an individual, firm or corporation. If any partnership exists, the names of the partners, together with their addresses, shall be included.

(b) The location of the commissary or commissaries and of other establishments where vending machines are repaired or renovated.

(c) The identity and form of the products to be dispensed through vending machines and the number of each such type vending machine in the applicant's possession.

(d) The company shall maintain and make available to the cabinet upon request, a list of the number of all vending machines operated by the company and their specific locations within each county served and of all commissaries or other establishments from which the machines are serviced.

(e) Accompany each application for a permit to operate a vending machine company with the correct fee as provided by KRS 217.811.

(f) The application shall contain the signature of the applicant or applicants.

(3) Upon receipt of such application, the cabinet shall make an inspection of the vending machine company to determine compliance with the provisions of this regulation. A numbered operator's permit shall be issued to the applicant by the cabinet after compliance by the operator with the applicable provisions of this regulation.

(4) The company shall provide on each machine or on a wall placard placed at the location of the machine(s) the company's name, address and telephone number. This identification shall also contain the words "Cabinet for Human Resources Permit_____" or "CHR Permit_____." Such information shall be readily visible after placement on the machine or at the machine location.

(5) Whenever a machine is no longer in service, is sold or transferred to another vending machine company, the company holding the permit for that machine shall remove the identification for such machine.

Section 7. Suspension of Permits. (1) Whenever the cabinet has reason to believe that an imminent public health hazard exists, or whenever the permit holder has interfered with the cabinet's personnel in the performance of their duties, the permit may be suspended immediately upon notice to the permit holder without a hearing. In such event, the permit holder may request a hearing which shall be granted as soon as practicable.

(2) In all other instances of violation of the provisions of this regulation, the cabinet shall serve upon the holder of the permit a written notice specifying the violation(s) in question and afford the holder a reasonable opportunity to correct same. Whenever a permit holder has failed to comply with any written notice issued under the provisions of this regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet by the permit holder within such ten (10) day period.

Section 8. Reinstatement of Suspended Permits. Any company whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is complying with the requirements of this regulation, the permit shall be reinstated.

Section 9. Revocation of Permits. For serious or repeated violations of any of the requirements of this regulation, or for interference with the cabinet's personnel in the performance of their duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising the permit shall be permanently revoked at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

Section 10. Hearings. All hearings shall be conducted by the cabinet at a time and place designated by it. Based upon the record of such hearing, the cabinet shall make a finding of fact and conclusion of law. A transcript of the hearing shall not be made unless the interested party assumes the costs thereof and a request in writing is made therefor at the time a hearing is requested.

Section 11. Inspection Frequency. The cabinet shall inspect each new vending machine company prior to its operation and as often as deemed necessary thereafter by the cabinet. The cabinet shall inspect commissaries preparing food for vending purposes at least once every six (6) months and shall make as many additional inspections or reinspections as are necessary to obtain compliance with established requirements.

Section 12. Access for Inspection. Representatives of the cabinet, after proper identification shall be permitted to enter at any reasonable time, upon any private or public property within the Commonwealth of Kentucky where vending machines or commissaries are operated, or from which such machines are otherwise serviced, for the purpose of determining compliance with the vending machine law. The company shall make provisions for the cabinet's representatives to have access, either in company with an employee, or otherwise to the interior of all vending machines operated by the company.

Section 13. Inspection Records. Whenever the cabinet makes an inspection of a commissary or a vending machine location, they shall record their findings on inspection report forms provided for this purpose, and shall furnish a copy of such inspection report forms to the permit holder or his representative.

Section 14. Issuance of Notices. Whenever the cabinet makes an inspection of a commissary or a vending machine location and discovers that any requirements of this regulation have been violated, it shall notify the company of such violations by means of an inspection report form or other written notices. In such notification, the cabinet shall:

(1) Set forth the specific violations found;

(2) Establish a specific and reasonable period of time for the correction of the violations found;

(3) State that failure to comply with any notice issued in accordance with the provisions of this regulation may result in suspension of permit;

(4) State that an opportunity for appeal from any notice or inspectional findings will be provided if a written request for a hearing is filed with the cabinet within the period of time established in the notice for correction.

Section 15. Service of Notices. Notices provided for under this regulation shall be deemed to have been properly served when a copy of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the cabinet.

Section 16. Commissaries Located Outside of the Commonwealth of Kentucky. Food from commissaries located outside the jurisdiction of the Commonwealth of Kentucky may be sold within this state if such commissaries conform to the provisions of the state food service code or to substantially equivalent provisions of such state. To determine the extent of compliance for the issuance of a permit to a company located outside the state, the initial application for a permit and the application yearly thereafter shall be accomplished by a copy of the most recent sanitation inspection report from the responsible health authority having jurisdiction where such a commissary or commissaries are located. Out-of-state companies shall, upon request of the cabinet, submit copies of the most recent sanitation inspection report at other times during the permit year.

Section 17. Plan Review of Future Construction. Whenever a vending machine commissary is hereafter constructed or extensively remodeled, or whenever an existing structure is converted for use as a commissary, properly prepared plans and specifications for such construction, remodeling or alteration, showing layout, arrangements and construction materials of work areas, and the location, size and type of fixed equipment and facilities, and a plumbing riser diagram shall be submitted to and approved by the cabinet before work is begun.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 29, 1991
FILED WITH LRC: August 12, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 18, 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: Dudley Conner
(1) Type and number of entities affected: 90 vending companies.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. N/A

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) (Local health departments.)

2. State what unit, part or division of local government this administrative regulation will affect. Local health departments have been providing vending machine inspections since 1976.
3. State the aspect or service of local government to which this administrative regulation relates. Sanitation inspections conducted by local health departments.
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: Service delivery will not change.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Local Health
(Proposed Amendment)

902 KAR 45:130. Inspector's manual for state food and drug officials.

RELATES TO: KRS 217.005 to 217.215, 217.992
STATUTORY AUTHORITY: KRS 194.050, 211.090, 217.125
NECESSITY AND FUNCTION: The Kentucky Food, Drug, and Cosmetic Act, KRS 217.005 to 217.215 and 217.992, authorizes the Cabinet for Human Resources to regulate the misbranding and adulteration of foods, drugs, and cosmetics in Kentucky. The purpose of this regulation is to establish uniform requirements and procedures to assist inspectors in determining compliance with KRS 217.005 to 217.215 and 217.992.

Section 1. Inspector's Manual for State Food and Drug Officials. The requirements and procedures as set forth in the "Inspector's Manual for State Food and Drug Officials" as of July 6, 1990 [May 1, 1984], are hereby adopted by reference for the Commonwealth of Kentucky. This manual is published by the Food and Drug Administration in cooperation with the Association of Food and Drug Officials. A copy of this manual shall be on file in the Office of the Commissioner for Heath Services, 275 East Main Street, Frankfort, Kentucky 40621, and is open for public inspection.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 29, 1991
FILED WITH LRC: August 12, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 23, 1991 at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 18, 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: Dudley Conner
(1) Type and number of entities affected: Approximately 1200 food manufacturing and storage establishments.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. N/A

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) (Local health departments.)
2. State what unit, part or division of local government this administrative regulation will affect. Local health department food program.
3. State the aspect or service of local government to which this administrative regulation relates. Food manufacturing storage establishment inspections.
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 health department service delivery will not be impacted.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:015. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245, 20 CFR 416.2095, 20 CFR 416.2096
STATUTORY AUTHORITY: KRS 194.050, Cabinet for

Human Resources, v. Additional Budget Items, 1990-92 Final Enacted Budget Memorandum, Vol. II, p. 261

NECESSITY AND FUNCTION: The Cabinet for Human Resources is responsible under Title XVI of the Social Security Act as amended by Public Law 92-603 to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program, referred to as SSI. KRS 205.245 provides not only for the mandatory supplementation program but also for supplementation to other needy aged, blind and disabled persons. The cabinet shall operate a supplement program for certified personal care homes (PCH) which accept state supplementation recipients and have a thirty-five (35) percent mentally ill or mentally retarded (MI or MR) population in all of the PCH's occupied licensed personal care beds. Personal care services are described in 902 KAR 20:036. This regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. Mandatory state supplementation payments shall be equal to the difference between the AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month and the total of the SSI payment and other income. Also included are those former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973. Mandatory payments shall continue until the needs of the recipient as recognized in December, 1973, have decreased or income has increased to the December level.

(1) The mandatory payment is increased only when income as recognized in December, 1973, decreases, the SSI payment is reduced but the recipient's circumstances are unchanged, or the standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(2) In cases of man and wife, living together, income changes after September, 1974, will result in increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. Optional state supplementation is available to those persons meeting technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 907 KAR 1:011 and 907 KAR 1:004 (except when specified in 904 KAR 2:015) who require special living arrangements and who have insufficient income to meet their need for care. Special living arrangements include residence in a personal care home as defined in 902 KAR 20:036 or family care home as defined in 902 KAR 20:041 or situations in which a caretaker must be hired to provide care other than room and board. A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the spouse, parent (of an adult disabled child or a minor child), or adult child (of an aged or disabled parent) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the supplemental payment may be made. Application for SSI, if potential eligibility exists, is mandatory.

Section 3. Resources Considerations. In determining countable resources and the effect of resources on eligibility, the following policies are applied.

(1) Consider resources according to policies for the medically needy as contained in 907 KAR 1:004, except as noted in subsection (2) of this section.

(2) The upper limit for resources for an individual and for a couple is set at $1,700 and $2,550, respectively, effective January 1, 1986; at $1,800 and $2,700, respectively, effective January 1, 1987; at $1,900 and $2,850, respectively, effective January 1, 1988; and at $2,000 and $3,000, respectively, effective January 1, 1989.

(3) Resources determined in accordance with subsection (1) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or couple exceeds the upper limits specified in subsection (2) of this section. If resources exceed the upper limits, the individual or couple is ineligible.

Section 4. Income Considerations. Establish the amount of income according to policies for the medically needy in 907 KAR 1:004. In determining the amount of optional supplementation payment, total net income of the applicant or recipient, or applicant or recipient and spouse, including any payments made to a third party in behalf of an applicant or recipient, is deducted from the standard of need with the following exceptions:

(1) Income of the ineligible spouse is conserved for the needs of the ineligible, non-SSI spouse or minor dependent children in the amount of one-half (1/2) of the SSI standard for an individual for each person adjusted by deduction of sixty-five (65) dollars and one-half (1/2) of the remainder from monthly earnings of spouse. Income of the eligible individual is not conserved for the needs of the ineligible spouse or minor dependent children. When conserving for the needs of the minor dependent children, income of the children shall be appropriately considered so that the amount conserved does not exceed the allowable amount. When the eligible individual and spouse each have earnings, the earnings shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(2) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) is conserved for the spouse.

Section 5. Standard of Need. (1) The standard, based on living arrangement, from which income as computed in Section 4 of this regulation is deducted to determine the amount of optional payment is as follows:

(a) For eligibility determinations for personal care homes made on or after July 1, 1991: not less than $705 [690, effective January 1, 1991];

(b) Family care home: not less than $510, effective January 1, 1991;

(c) Caretaker.

1. Single individual, or eligible individual with ineligible spouse (one who is not aged, blind, or disabled): not less than $440, effective January 1, 1991;

2. Married couple, both eligible (aged, blind, or disabled), with one (1) requiring care: not less than $638, effective January 1, 1991;

3. Married couple, both eligible and both requiring care: not less than $682, effective January 1, 1991.

(2) In couple cases, both eligible, the couple's income is combined prior to comparison with the standard of need, and one-half (1/2) of the deficit is payable to each.

(3) The standard includes forty (40) dollars personal needs allowance which shall be retained by the client.

Section 6. Temporary Stay in a Medical Institution. A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits during a temporary stay in a hospital, psychiatric hospital, skilled nursing facility or intermediate care facility.

Section 7. Residency. (1) To be eligible, an applicant or recipient shall be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien shall have been admitted for permanent residence. The applicant or recipient shall also be a resident of Kentucky. Generally, this means the individual shall be residing in the state for other than a temporary purpose; however, there are exceptions with regard to applicants for or recipients of a state supplementary payment and institutionalized individuals. The residency criteria specified in federal regulations at 42 CFR 435.403 shall be applicable except as specified in Section 6 of this regulation.

(2) Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. In these situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable, except that with regard to the requirement shown in Section 6 of this regulation, the licensure shall be in accordance with a similar licensure act of the other state. If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131. To be eligible for a supplemental payment while placed out-of-state the individual shall require the level of care provided in the out-of-state placement, there shall be no suitable placement available in Kentucky, and the placement shall be preauthorized by staff of the Department for Social Insurance.

(3) When determining residency, ability of the individual to indicate intent (to become a Kentucky resident) shall be considered if the individual is institutionalized. The individual is considered incapable of indicating intent if:

(a) His I.Q. is forty-nine (49) or less or he has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) He is judged legally incompetent; or

(c) Medical documentation, or other documentation acceptable to the state, supports a finding that he is incapable of indicating intent.

(4) An individual is institutionalized if he is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.

(5) For any noninstitutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his state of residence is Kentucky if he is actually residing in the state.

(6) For any noninstitutionalized individual age twenty-one (21) or over, his state of residence is Kentucky if he is residing in the state and has the intention to remain permanently or for an indefinite period (or, if incapable of indicating intent, is simply residing in the state).

(7) For any institutionalized individual living in Kentucky who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence is Kentucky if:

(a) The state of residence of the individual's parents, or his legal guardian if one has been appointed, is Kentucky; or

(b) The state of residence of the parent applying for the supplemental payment on behalf of the individual is Kentucky, when the other parent lives in another state and there is no appointed legal guardian.

(8) For any institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence is Kentucky if he was living in Kentucky when he became incapable of indicating intent. If this cannot be determined, the state of residence is Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency pursuant to subsections (7) and (8) of this section, the state of residency is Kentucky when the individual is residing in Kentucky, and a determination of residency applying those criteria does not show the individual to be a resident of another state.

(10) For an individual subject to a determination of residency pursuant to subsections (7) and (8) of this section, the state of residence is Kentucky when Kentucky and the state which would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status; i.e., when a similarly situated individual in either state would by written agreement between the states be considered a resident of the state in which he is actually residing.

(11) For other institutionalized individuals (i.e., those individuals who are both age twenty-one (21) or over and capable of indicating intent), the state of residence is Kentucky if the individual is residing in Kentucky with the intention to remain permanently or for an indefinite period.

(12) Except in subsections (3) through (11) of this section, any individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky, and any individual

placed in an institution in Kentucky by another state may not be considered a resident of Kentucky.

(13) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky so long as he continues to reside in Kentucky. An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(14) An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through July 4, 1984, even if he does not meet the residency requirements specified in this section, so long as the individual continues to reside in Kentucky and his receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

(15) Except in the preceding provisions of this section, a former Kentucky resident who becomes incapable of indicating intent while residing out of this state may be considered a Kentucky resident if he returns to this state and he has a guardian, parent or spouse residing in this state. This individual may not be considered a Kentucky resident on the basis of this subsection whenever, subsequent to that time, he leaves this state to reside in another state except when the provisions of subsection (11) of this section are met. An individual leaving the state may, however, reestablish Kentucky residency by returning to the state if he has a guardian, parent or spouse residing in this state.

(16) No aged, blind, or disabled person shall be eligible for state supplementation while residing in a personal care home or family care home unless such home is licensed under KRS 216B.010 to 216B.131.

Section 8. Mentally Ill or Mentally Retarded Supplement. Certified PCH may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. In order to qualify, PCH shall meet the following criteria:

(1) The PCH shall be licensed in accordance with KRS 216B.010 to 216B.131.

(2) The PCH shall care for residents who have a primary or secondary diagnosis of mental retardation (such as mild or moderate, or other ranges of retardation whose needs can be met in a personal care home) or mental illness (excluding such diagnoses as organic brain syndrome, senility, chronic brain syndrome, Alzheimer's). An individual whose medical history includes a previous hospitalization in a psychiatric facility shall meet the criteria of mental illness, regardless of the present diagnosis.

(3) The PCH shall care for a thirty-five (35) MI or MR percent population in all of its occupied licensed PCH beds.

(4) The PCH shall not be eligible for payments during the time it is rated by the Office of Inspector General as "conditional". Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.

(5) The PCH shall have a licensed nurse or certified medication technician (CMT) on duty for at least four (4) hours during the first or second shift. The PCH may not decrease licensed nurse or CMT staffing hours in effect prior to July 1990, as a result of this minimum requirement.

(6) The PCH shall file an application with the Department for Social Insurance (DSI) by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter. Quarters shall begin in January, April, July and October. Once certified, eligibility continues as long as criteria continues to be met.

(7) For state fiscal year (SFY) 1991 implementation only, PCH interested in being certified for the MI or MR supplement shall file a letter of intent with DSI by July 31, 1990. To assure adequate time for the MI or MR training and certification process for both the cabinet and the PCH, the letter of intent shall secure money for the first and second quarters of SFY 1991.

(8) The PCH shall provide DSI with its tax identification number and address annually and with a monthly report of all residents of the PCH (including resident's social security number) who were residents of the PCH on the first day of the month. In order to maintain confidentiality, the PCH shall annotate the monthly listing with a star which indicates a resident has a MI or MR diagnosis and note with a check mark those residents who receive state supplementation but are not mentally ill or mentally retarded. A star and a check mark shall indicate the resident is both MI or MR and a recipient of state supplementation. The monthly report shall be used for certification, payment, and audit purposes. The monthly report shall be postmarked to DSI by the fifth working day of the month. For implementation in SFY 1991, facilities which file a timely letter of intent with DSI shall file the monthly reports for July and August, 1990, on or before August 15, 1990.

(9) The PCH shall notify DSI when its MI or MR percentage goes below thirty-five (35) percent for all personal care residents. Facilities may be randomly audited to verify percentages and payment accuracy.

Section 9. Training. The PCH licensed nurse or CMT shall attend MI or MR training provided through the Department for Mental Health and Mental Retardation Services. Other staff may be trained in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(1) MI or MR training shall be provided through a one (1) day workshop. Training will cover at least the following:

(a) Importance of proper medication administration.

(b) Side affects and adverse medication reactions especially with regard to psychotropics.

(c) Signs and symptoms of an acute onset of a psychiatric episode.

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, mental retardation, etc.

(e) Guidance in the area of supervision versus patient rights for the MI or MR population.

(f) How to provide necessary activities to meet the needs of mentally ill or mentally retarded residents.

(2) Initial training shall include the licensed nurse or CMT and may include the owner or operator. These individuals shall be trained in the quarter during which the application is

filed. For implementation in SFY 1991 only, the initial training shall take place in the quarter during which the letter of intent is filed or the following quarter. To assure that a certified staff member is always employed at the facility, a maximum of five (5) may be trained during a year (one (1) additional staff member in each of the quarters following the initial training). If staff turnover results in the loss of the licensed nurse or CMT and five (5) staff have been trained, the PCH shall request in writing to DSI an exemption of the five (5) staff rule. The PCH shall have on staff a licensed nurse or CMT who has received the MI or MR training or is enrolled in the next scheduled MI or MR training workshop at the closest location.

(3) The Department for Mental Health and Mental Retardation Services will provide a certificate to direct care staff who complete the workshop.

(4) DSI shall pay twenty-five (25) dollars for each staff member receiving training up to the maximum of five (5) staff per year, in accordance with 904 KAR 2:050.

Section 10. MI or MR Certification. The Office of the Inspector General, Division of Licensing and Regulation, shall visit PCH to certify their eligibility to participate in the MI or MR supplement. The PCH's initial MI or MR certification may be separate from the annual survey. However, after the initial MI or MR certification, the certification shall be in effect until the subsequent licensure survey, which can be greater than or less than twelve (12) months.

(1) Written notification to DSI from the PCH shall be postmarked within five (5) working days after staff have completed the training workshop. DSI shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the PCH to verify staff training by the Department for Mental Health and Mental Retardation Services.

(b) The PCH's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the MI or MR training workshop. The PCH shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) Activities are being regularly provided and meet the needs of the residents. When residents do not attend group activities, activities shall also be designed to meet the needs of individual residents, for example, reading or other activity which may be provided on an individual basis. Individualized care plans are not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or CMT demonstrates a knowledge of psychotropic drug side affects.

(3) The Division of Licensing and Regulation shall be provided the MI or MR training package to assure survey staff are aware of what has been taught for MI or MR certification purposes.

(4) The Division of Licensing and Regulation shall also review the PCH copy of the listing submitted to DSI prior to performing their record review during the MI or MR certification process.

(5) If thirty-five (35) percent MI or MR population is met on the day of the visit, the PCH shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. This certification shall be in effect until next annual survey which can be greater than or less than twelve (12) months. The PCH is responsible for notifying DSI, within ten (10) working days, when the MI or MR population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(6) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a form to DSI monthly identifying certified PCH eligible for MI or MR supplement. This information shall be provided by the fifth working day of each month for the prior month.

(7) The Office of Inspector General, Division of Licensing and Regulation, shall inform DSI monthly of PCH which receive a conditional rating. This information shall be provided by the fifth working day of each month for the prior month.

Section 11. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 11, 1991
FILED WITH LRC: July 24, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 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 September 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: 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: 4,198 recipients of state supplementation in personal care homes.

(a) Direct and indirect costs or savings to

those affected: State supplementation recipients in personal care homes receive a $15 increase per month. Payments for eligibility determinations, made on or after July 1, 1991, will be at the increased rate.

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: Increase in the personal care standard for SFY 1991-92.

1. First year: $770,000 cost already anticipated in the state budget.

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: No alternative method assessed; set forth through department policy.

(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. The $.50 per diem increase in the personal care standard is applied uniformly to all recipients of state supplementation who are in personal care homes. Departmental policy mandates that the administrative process for state supplementation 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. None

2. State compliance standards. This proposed amendment implements the SFY 1991-92 rate increase of the Personal Care Standard for State Supplementation recipients as required by CHR, v. Additional Budget Items, 1990-92 Final Enacted Budget Memorandum, Volume II, Page 261. Payments for eligibility determinations, made on or after July 1, 1991, will be at the increased rate.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 3:010. Definitions.

RELATES TO: KRS 194.050, 7 CFR 217.2, 273.1, 273.4, 273.5, 273.6, 273.7, 273.11, 273.16

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required [has responsibility] to administer a Food Stamp Program [as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 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 definitions of [for] terms used by the cabinet in regulations pertaining to the Food Stamp Program. This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.

Section 1. Definition of terms utilized in regulations relating to the Food Stamp Program are as follows:

(1) "Application for participation" means the form designed or approved by Food and Nutrition Service (FNS) that [, hereinafter referred to as FNS, which] is completed by:

(a) A household member; or

(b) An authorized representative[; or for household consisting solely of public assistance recipients, it may also mean the application form used to apply for public assistance, including attachments approved by FNS, which is completed by a household member or authorized representative].

(2) "Authorization to participate card" (ATP) means the document that [which] is issued by the state agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

(3) "Authorized representative":

(a) Means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities:

1. Making application for the program;

2. Obtaining the coupons; and

3. Using the coupons. [Authorized representatives will be disqualified for program abuse in accordance with 7 CFR 273.1(f).]

(b) An adult who is a nonhousehold member may be designated as the authorized representative for certification purposes if the authorized representative:

1. Has been designated in writing by:

a. The head of the household;

b. The spouse; or

c. Another responsible member of the household; and

2. Is an adult who is aware of relevant household circumstances.

(c) The following individuals shall not act as an authorized representative unless:

1. The specific written approval of the designated state agency officials is obtained; and

2. That official determines that no one else is able to serve as the authorized representative:

a. A state agency employee who is involved in the certification or issuance processes;

b. A retailer that is authorized to accept food coupons; and

c. An individual disqualified for an intentional program violation.

(d) The cabinet shall disqualify an individual from participating as an authorized representative up to one (1) year if the cabinet obtains evidence that the individual has:

1. Misrepresented a household's circumstances;

2. Knowingly provided false information pertaining to the household; or

3. Made improper use of coupons.

(4) "Boarder":

(a) Means an individual[(s)] to whom a household furnishes lodging and meals for reasonable compensation; [in accordance with 7 CFR 273.1(c). Boarders may participate, in accordance with 7 CFR 273.1(c), as part of the household with whom they reside but only at the household's request and provided said household meets Food Stamp Program eligibility requirements, but not as a separate household.]

(b) "Reasonable compensation" is determined:

1. By considering only the amount paid for meals; and

2. Provided that the amount paid for meals is distinguishable from the amount paid for lodging.

(c) A reasonable monthly payment for meals shall be:

1. An amount which equals or exceeds the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for more than two (2) meals a day; or

2. An amount which equals or exceeds two-thirds (2/3) of the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for two (2) meals or less per day.

(d) A boarder is ineligible to participate in the program independent of the household providing the board.

(5) "Certification" means the action necessary to determine eligibility of a household including:

(a) Interview[s. Such action includes];

(b) Verification; and

(c) Decision[s].

(6) "Communal dining facility" means:

(a) A public or nonprofit private establishment, approved by FNS, that [which] prepares and serves meals for elderly persons; [, for supplemental security income (SSI) recipients and their spouses,]

(b) A public or private nonprofit establishment (eating or otherwise) that feeds:

1. Elderly persons; and [or]

2. SSI recipients and their spouses; [, and]

(c) Federally subsidized housing for the elderly that prepares and serves [at which] meals [are prepared for and served] to the residents; and [. It also includes]

(d) A private establishment[s] that contracts with an appropriate state or local agency to offer meals at concessional prices to:

1. Elderly persons; and [or]

2. SSI recipients and their spouses.

(7) "Coupon[s]" means:

(a) Any stamp;

(b) Coupon; or

(c) Type of certificate; that is

(d) Issued in accordance with the Food and Nutrition Service regulations for the purchase of eligible food.

(8) "Date of entry" or "date of admission" means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

(9) "Disabled" means:

(a) An individual who receives:

1. Supplemental Security Income (SSI) or presumptive SSI under 42 USC 1381 to 1385;

2. Disability or blindness payments under:

a. 42 USC 301 to 306;

b. 42 USC 402 to 433;

c. 42 USC 1201 to 1206;

d. 42 USC 1351 to 1355; or

e. 42 USC 1381 to 1385;

3. Optional or mandatory state supplementation;

4. Disability retirement benefits from a:

a. Federal;

b. State; or

c. Local governmental agency; and

d. Resulting from a disability considered payment under 42 USC 221(i);

5. Annuity payments under:

A. 45 USC 231(a); and

b. Is determined to qualify for Medicare by the Railroad Retirement Board; or

c. Is disabled based upon the criteria used under 42 USC 1381 to 1385; or

(b) A veteran with a service connected or nonservice connected disability rated by the Veteran's Administration (VA) or paid as total (100%) by the VA under Title 38 of the United States Code;

(c) A veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;

(d) A surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound;

(e) A surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38;

(f) A surviving spouse or surviving child of a veteran and considered by the VA to be entitled to:

1. Compensation for a service-connected death;

2. Pension benefits for a nonservice-connected death under Title 38; and

3. Has a disability considered permanent under 42 USC 221(i);

(g) An individual in receipt of disability related medical assistance under 42 USC 1396;

(h) An individual who is certified to receive, but not yet receiving SSI or Social Security disability payments; or

(i) An individual who is currently having their entire SSI or Social Security disability benefit check recouped to recover a prior overpayment.

(10) [(9)] "Drug addiction or alcoholic treatment and rehabilitation program" means any:

(a) Drug addiction; or

(b) Alcoholic treatment and rehabilitation program;

(c) Conducted by:

1. A private nonprofit organization; or

2. Institution that [which] is certified as responsible for the administration of the state's program for:

a. Alcoholics; or

b. Drug addicts; by
(i) The cabinet; or
(ii) Agencies designated by the Governor. [by the cabinet or agencies designated by the Governor as responsible for the administration of the state's programs for alcoholics and drug addicts.]

(11) [(10)] "Elderly [or disabled member]" means an individual who is:
(a) Age sixty (60) or older; or
(b) Fifty-nine (59) years of age at the time of application but shall turn age sixty (60) before the end of month of application. [a member of a household who meets the criteria set forth in 7 CFR Part 271.2.]

(12) [(11)] "Eligible foods" means any of the following:
(a) Any food or food product intended for human consumption except:
1. Alcoholic beverages;
2. Tobacco; [, and]
3. Hot foods; and
4. Hot food products prepared for immediate consumption;
(b) Seeds and plants to grow foods for the personal consumption by [of] eligible households;
(c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals; [: or]
(d) Meals served by a communal dining facility for:
1. The elderly;
2. [for] SSI households; or
3. To both; and
4. To households eligible to use coupons for communal dining;
(e) [(d)] Meals prepared and served by an authorized drug addict or alcoholic treatment and rehabilitation center to eligible households;
(f) [(e)] Meals prepared and served by an authorized group living arrangement facility to residents who are blind or disabled recipients of benefits under: [Title II or Title XVI of the Social Security Act; or]
1. 42 USC 401 to 433; or
2. 42 USC 1381 to 1385;
(g) [(f)] Meals prepared and served by an authorized shelter for battered women and children to its eligible residents; [.]
(h) [(g) In the case of homeless food stamp households,] Meals prepared for and served by an approved authorized public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) that feeds homeless persons, provided that the [. The state shall approve these facilities based on the following criteria. The] facility shall [must]:
1. Be a nonprofit establishment;
2. Be a licensed food service establishment; and
3. Provide meals to the homeless.

(13) [(12)] "Excluded household member" means an individual residing with a household but excluded when determining the household's size in accordance with the provisions of 904 KAR 3:035, Section 5(3) and (4). [for purposes of assigning a benefit level to the household or of comparing the household's monthly income with income eligibility standards.]
(a) The income and resources of the excluded household member['s income and resources] shall be treated the same as that of an ineligible [considered available to the remaining] household member in accordance with 904 KAR 3:035, Section 5(3) and (4) [7 CFR 273.11(c)].
(b) The following are excluded household members and shall [may] not participate as a separate household:
1. An [(a)] Ineligible alien; [. Individuals not meeting citizenship or alien status requirements as set forth in 7 CFR 273.4(a).]
2. An individual [(b) SSN disqualified. Individuals] disqualified for failure to provide a social security number; [as set forth in 7 CFR 273.6.]
3. An individual [(c) Intentional program violation disqualified. Individuals] disqualified for intentional program violation; [set forth in 7 CFR 273.16.]
4. An individual disqualified for failure to comply with work or workforce requirements; or
5. An individual determined ineligible due to failure to attest to citizenship or alien status.

(14) [(13)] "Employment and training program" means [.] a program consisting of one (1) or more of the following components:
(a) Work;
(b) Training;
(c) Education; or
(d) Job search [components].

(15) [(14)] "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

(16) [(15)] "FNS" means the Food and Nutrition Service of the United States Department of Agriculture.

[(16) "Food Stamp Act" means the Food Stamp Act of 1977 (Pub. L. 95-113) including any subsequent amendments thereto.]

(17) "Group living arrangement":
(a) Means a public or private nonprofit residential setting that:
1. Serves no more than sixteen (16) residents; and
2. Is appropriately certified.
(b) To be eligible, a resident shall [must] be:
1. Blind or disabled; and
2. Receiving benefits under:
a. 42 USC 401 to 433; or
b. 42 USC 1381 to 1385. [Title II or Title XVI of the Social Security Act to be eligible for food stamps.]

(18) "Head of household" means [is] the person with primary financial responsibility and in whose name the application for participation is made. [For the purpose of failure to comply with work registration, employment and training, and voluntary quit requirements, head of household shall be the primary wage earner as defined in 7 CFR 273.1(d)(2).]

(19) "Household" means an individual[(s)] living alone or with others, or a group of individuals living together where living quarters are shared.
(a) A household may be composed of any of the following individuals or groups of individuals specified in subsection (19)(b) of this section, provided that such individuals or groups of individuals are not:
1. Residents of an institution;
2. Residents of a commercial boarding house; or
3. Living with others and paying compensation to others for meals and lodging except as otherwise specified in subsection (4) of this section.
(b) A household may be composed of:
1. An individual living alone;
2. An individual living with others, but

customarily purchasing food and preparing meals for home consumption separate and apart from the others;

3. A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption;

4. An individual who is:

a. Sixty (60) years of age or older (and the spouse of such individual);

b. Living with others; and [(and the spouse of such individual) who is]

c. Unable to purchase and prepare meals because he; [/she]

(i) Suffers from a disability considered permanent under 42 USC; [the Social Security Act] or

(ii) Suffers from a nondisease-related, severe, permanent disability; and [,]

d. Provided that the income of the others, excluding the income of the [said] individual's spouse, with whom the [said] individual resides does not exceed 165 percent of the federal income poverty guidelines.

(c) [(b)] In no event shall separate household status or nonhousehold member status be granted to:

1. Parents and natural, adopted or stepchildren, unless:

a. At least one (1) parent is elderly or disabled as defined in subsection (10) of this section; or

b. Unless three (3) generations live together and one (1) of the children has minor children and meals are prepared separately;

2. A child [Children] under eighteen (18) years of age, under the parental control of an adult member of the household;

3. A spouse of a member of the household;

4. Siblings (natural, adopted, half or stepbrothers and sisters), unless:

a. At least one (1) sibling is elderly or disabled as defined in subsection (10) of this section; or

b. One (1) sibling has a minor child[ren] and meals are prepared separately.

(20) "Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.

(21) "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.

(22) "Institution of higher education" means any institution providing post high school education, which normally requires a high school diploma or equivalency certificate for a student to enroll, including but not limited to:

(a) College;

(b) University; and

(c) Vocational or technical school.

(23) "Meal delivery service" means an entity with which the cabinet has contracted for the preparation of meals at concessional prices to an individual who is unable to adequately prepare his meals.

(a) A "meal delivery service participant" shall include:

1. An elderly person and his spouse;

2. The physically or mentally handicapped; and

3. A person otherwise disabled and his spouse.

(b) The cabinet shall contract with any of the following "meal delivery service" providers:

1. A political subdivision;

2. A private nonprofit organization; or

3. A private establishment. [with which the cabinet has contracted for the preparation of meals at concessional prices to elderly persons and their spouses, and to the physically or mentally handicapped and persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.]

(24) "Medicaid" means medical assistance under 42 USC 1396 [Title XIX of the Social Security Act, as amended].

(25) "Nonassistance household" [hereinafter referred to as] (NA) means a household containing at least one (1) member who is [are] not included in a public assistance (PA) household[, hereinafter referred to as PA,] grant.

(26) "Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

(27) "Nonhousehold member" means an individual residing with a household but not considered a household member in determining the household's eligibility or allotment.

(a) The following shall be [are] considered a nonhousehold member and if otherwise eligible, may participate in the program as a separate household:

1. [(a)] Roomer. An individual to whom a household furnishes lodging, but not meals, for compensation.

2. [(b)] Live-in-attendant. An individual who resides with a household to provide medical, housekeeping, child care or other similar personal services.

3. [(c)] Other. Another individual who shares living quarters with the household but who does [do] not customarily purchase food and prepare meals with the household.

(b) [(d)] The following shall be [are] considered as a nonhousehold member, [and are] ineligible to participate in the program as a separate household, and treated as described in 904 KAR 3:035:

1. An ineligible student; [. Students not meeting eligibility requirements as set forth in 7 CFR 273.5.]

2. A person disqualified for noncompliance with the work requirements; [of 7 CFR 273.7.]

3. A border;

4. A resident of an institution, except as provided in subsection (17) of this section;

5. A striker, unless:

a. The household was eligible the day prior to the strike; and

b. The household is eligible at the time of application;

6. A household disqualified due to voluntary quit provisions.

(28) "Overissuance" means the amount by which coupons issued to a household exceeds the amount the [such] household was eligible to receive.

(29) "Public assistance" [hereinafter referred to as] (PA) means any of the programs authorized under 42 USC 601 to 686 including: [by the Social Security Act of 1935, as amended;]

a. Old age assistance;

b. Aid to families with dependent children (AFDC); [including AFDC for children of unemployed parents,]

c. Aid to the blind;

d. Aid to the permanently and totally disabled; and

e. Aid to aged, blind or disabled.

(30) "Retrospective budgeting" means the computation of a household's food stamp

allotment for an issuance month based on actual income and circumstances which existed in a previous month.

(31) "Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and children. If [such] a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(32) "Sponsor" means a person who executed an affidavit[(s)] of support or similar agreement on behalf of an alien as a condition of the alien's entry or [/] admission into the United States as a permanent resident.

(33) "Sponsored alien" means an alien lawfully admitted for permanent residence as an immigrant as defined under 8 USC 1101. [in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act.]

(34) "Spouse" means [refers to] either of two (2) individuals who:

(a) [Who] Would be defined as married to each other under applicable state law; or

(b) [Who] Are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

(35) "Striker" means anyone involved in a strike or other concerted stoppage of work by employees. This shall include: [(including]

(a) A stoppage by reason of expiration of a collective-bargaining agreement; [)] and

(b) Any concerted slowdown or other concerted interruption of operations by employees, unless:

1. The individual is [otherwise] exempt from work registration for reasons other than employment; and

2. The [. Said] exemption [must have] existed on the day prior to the strike [in order for an individual to not be considered a striker].

(36) "Supplemental security income (SSI)" means monthly cash payments made under the authority of:

(a) 42 USC 1381 to 1385 [Title XVI of the Social Security Act, as amended,] to the aged, blind and disabled;

(b) 42 USC 1382e [Section 1616(a) of the Social Security Act]; or

(c) 42 USC 1382 [Section 212(a) of Public Law 93-66].

(37) "Thrifty food plan" means:

(a) The diet required to feed a family of four (4) persons, determined in accordance with the Secretary of the United States Department of Agriculture calculations, consisting of:

1. A man and a woman twenty (20) through fifty (50);

2. A child six (6) through eight (8); and

3. A child nine (9) through eleven (11) years of age; and [, determined in accordance with the Secretary of United States Department of Agriculture's calculations.]

(b) The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary of the United States Department of Agriculture shall make household-size adjustment in the thrifty food plan taking into account economies of scale.

(38) "Underissuance" means the amount that [by which] the allotment to that [which] the household was entitled exceeds the allotment which the household received.

[Section 2. Provisions contained in this regulation shall become effective October 1, 1987.]

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 5, 1991
FILED WITH LRC: August 12, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1991 at 9 a.m. at the Department for Employment Services Conference Room, Second Floor West, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by September 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: The provisions of this proposed regulation reflect the definitions used in regulations pertaining to the Food Stamp Program. The regulation is being revised to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes without change to current policy. 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. None
2. State compliance standards. This regulation is being revised to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes.
3. Minimum or uniform standards contained in the federal mandate. The terms which are defined in this administrative regulation are applied in a like manner on a statewide basis and are consistent with definitions 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.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 3:030. Application process.

RELATES TO: KRS 194.050, 7 CFR 273.2, 273.10
STATUTORY AUTHORITY: KRS 13A.120, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required [has responsibility] to administer a Food Stamp Program as prescribed under 7 USC 2011-2029 [by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280]. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of citizens of the Commonwealth. This regulation sets forth the application process used by the cabinet in the administration of the Food Stamp Program. This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.

Section 1. Right to apply or Reapply. An individual shall have the right to apply or reapply for food stamp benefits. The cabinet shall make the application process readily accessible to households.

Section 2. [1.] Application Process. An application shall be considered to have been filed when:
(1) An application form is completed and signed;
(2) The applicant or representative is interviewed;
(3) Required information on the application is verified; and
(4) The application is received by the appropriate office. [The application process consists of filing and completing an application, an interview and required verification and documentation. The cabinet shall make the application process readily accessible to households. Groups and organizations involved in program informational activities shall be provided with information regarding the process.]

Section 3. Who May Sign an Application. An application for food stamps shall be signed by:
(1) A responsible member of the household; or
(2) The household's authorized representative.

Section 4. Where Applications are Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in the office of the Department for Social Insurance in the county in which an applicant resides.
(2) A concurrent application for Supplemental Security Income and Food Stamps shall be filed in the service area office of the Social Security Administration.

Section 5. [2.] Prompt Action on Applications. The cabinet shall provide an eligible household, [s] that completes the initial application process, an opportunity to participate as soon as possible but not later than:
(1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or
(2) The fifth calendar day following the date an application is filed for a household eligible for expedited services. [thirty (30) days after the application is filed. The department shall notify the household of any action it must take to complete the application process. If verification is lacking, the household will have up to thirty (30) days from the date the missing verification was requested to provide such verification.]

Section 6. [3.] Expedited Service. A household eligible for expedited services shall be:
(1) A household in which:
(a) Monthly gross income is less than $150; and
(b) Liquid resources do not exceed $100; or
(2) A destitute migrant or seasonal farm work household whose liquid resources do not exceed $100; or
(3) A household containing homeless individuals; or
(4) A household for whom monthly rent or mortgage and actual utilities exceed the household's combined monthly gross income and liquid resources. [The cabinet shall identify households eligible for expedited service at the time the household requests assistance and shall comply with 7 CFR 273.2(i) when expediting certification and issuance procedures.]

Section 7. [4.] Public Assistance Application Process.
(1) A household[s] in which all members are applying for Aid to Families with Dependent Children (AFDC) [public assistance (PA) and state administered general assistance] shall be

allowed to simultaneously apply for food stamp benefits. A single interview shall be conducted for both programs.

(2) Time standards specified in Section 5 of this administrative regulation shall apply to public assistance applications.

(3) A household in which all members receive, or are authorized to receive, AFDC or Supplemental Security Income (SSI) shall be considered categorically eligible unless the entire household is:

(a) Institutionalized; or

(b) Disqualified from receiving food stamps.

(4) Categorically eligible households shall not be required to verify the following eligibility factors:

(a) Resources;

(b) Gross and net income limits;

(c) Social Security number information;

(d) Sponsored alien information; and

(e) Residency. [The cabinet shall comply with procedures specified in 7 CFR 273.2(j) in handling PA households.]

Section 8. [5.] Joint SSI and [/]FS Application Process. (1) A household[s] in which all members are applicants or [/]recipients of Supplemental Security Income (SSI) shall be allowed to simultaneously apply for both SSI and food stamps at the appropriate Social Security Administration office. [The cabinet will comply with procedures specified in 7 CFR 273.2(k) in processing these households.]

Section 9. Material Incorporated by Reference. (1) Forms necessary for the application process in the Food Stamp Program are incorporated by reference. These forms include the KFS-77, revised 6/91, the KFS-100, revised 6/91, the KFS-100 Supplement A, revised 6/91, the KFS-100 Supplement B, revised 6/91, the KFS-100 Supplement C, revised 6/91, the KFS-100 Supplement D, revised 6/91, the KFS-100 Supplement E, revised 6/91, the KFS-100 Supplement F, revised 6/91, the KFS-100 Supplement G, revised 6/91, and the KFS-100 Supplement H, revised 4/91.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: August 5, 1991

FILED WITH LRC: August 12, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1991 at 9 a.m. at the Department for Employment Services Conference Room, Second Floor West, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by September 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: The provisions of this proposed regulation reflect the application process used in the Food Stamp Program. The regulation is being revised to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes without change to current policy. 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. None

2. State compliance standards. This regulation is being revised to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes.

3. Minimum or uniform standards contained in the federal mandate. The application process in this administrative regulation is approved in a like manner on a statewide basis and is consistent with processes 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. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 3:035. Certification process.

RELATES TO: KRS 194.050, 7 CFR 273.1, 273.2, 273.5, 273.10, 273.11, 273.12, 273.14, 273.21, 274.6
STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4[; 272.1]
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required [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 certification process used by the cabinet in the administration of the Food Stamp Program. This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.

[Section 1. Definitions. (1) "Striker" means a person who:]
[(a) Is involved in a strike, concerted stoppage of work, concerted slow down of work, or other concerted interruption of operations by employees; and]
[(b) Is not exempt from food stamp work registration.]
[(2) "Sponsored alien" means those aliens lawfully admitted for permanent residence into the United States by the Immigration and Naturalization Service.]
[(3) "Sponsor" means a person who executed an agreement of support on behalf of an alien as a condition of the alien's entry or admission into the United States.]

Section 1. [2.] Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering the household's circumstances for the entire period for which each household is certified.
(2) The criteria shall be applicable to all households.
(3) Certain households require special or additional certification procedures as specified in Section 4 [5] of this administrative regulation.

Section 2. [3.] Certification Periods. (1) The cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.
(2) Except as provided below, households shall be certified for at least three (3) months. [, except as follows:]
(a) If the certification process is completed after the 15th day of the month of application, a household eligible for a certification period of three (3) months or less shall, at the time of certification, have their certification period increased by one (1) month[, if the certification process is completed after the 15th day of the month of application];
(b) A household shall be certified for one (1) or two (2) months, as appropriate if [when]:
1. The household cannot reasonably predict what its circumstances will be in the near future; or
2. [When] There is substantial likelihood of frequent and significant changes in income or household status.
(3) A household composed entirely of recipients of Aid to Families with Dependent Children (AFDC), [public assistance (PA)] or a combination of AFDC [PA] and Supplemental Security Income (SSI), shall be assigned a certification period to coincide with their AFDC [PA] reinvestigation date.
(4) The following households shall be certified for up to twelve (12) months:
(a) A household which is required to submit monthly reports.
(b) If other household circumstances are expected to remain stable, a household composed entirely of unemployable or elderly persons with very stable income; or [, provided that other household circumstances are expected to remain stable; and]
(c) A household whose primary source of income is from:
1. Self-employment; or
2. [from] Regular farm employment with the same employer if: [, provided that]
a. The income can be readily predicted; and
b. Household circumstances are not likely to change.
(5) The following households shall be assigned a certification period not to exceed six (6) months, including those household types specified in subsection (4) of this section.
(a) A household which is granted separate household status because:
1. The household consists of[:
1.] an individual and the individual's minor child;
2. The individual and child are living with the individual's parent or sibling; and
3. The individual purchases and prepares meals separately from the parent or sibling; or
(b) A household that consists of recipients of AFDC [PA] or a combination of AFDC [PA] and SSI, receiving up to fifty (50) dollars child support payments forwarded from the Division of Child Support Enforcement. These households shall be exempt from the monthly reporting requirements.

Section 3. [4.] Certification Notices to Households. The cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:
(1) Notice of eligibility;
(2) Notice of denial; or
(3) Notice of pending status.

Section 4. [5.] Application for Recertification. The cabinet shall process applications for recertification as specified in 904 KAR 3:030, Section 1, as follows:
(1) If the household files the application by the 15th day of the last month of the certification, the cabinet shall provide uninterrupted benefits if the household is

otherwise eligible; or
(2) If the household files the application after the 15th day but prior to the last day of the last month of the certification, the cabinet shall provide benefits within thirty (30) days of date of the application if the household is otherwise eligible.

Section 5. [6.] Certification Process for Specific Households. Certain households have circumstances that are substantially different from other households and therefore require special or additional certification procedures.
(1) A household with self-employed members shall have its case processed as follows:
(a) Income is annualized over a twelve (12) month period if:
1. Self-employment income represents a household's annual income; or
2. Self-employment income is received on a monthly basis which represents a household's annual support;
(b) Self-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover;
(c) The income from a household's self-employment enterprise that [which] has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year; or
(d) The cabinet shall calculate the self-employment income on anticipated earnings if the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business.
(2) A household with boarders shall have its case processed as follows:
(a) Income from the boarder shall:
1. Be treated as self-employment income; and
2. [Shall] Include all direct payments to the household for:
a. Room;
b. Meals; and
c. Shelter expenses;
(b) Deductible expenses include:
1. Cost of doing business;
2. Twenty (20) percent of the earned income; and
3. Shelter costs.
(3) A household with ineligible members shall be processed, as follows:
(a) Ineligible due to:
1. Intentional program violation;
2. Failure to comply with the work requirements; or
3. Failure to comply with workforce requirements:
a. Income and resources in their entirety shall be counted as income available to the remaining household members;
b. Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions; and
c. The ineligible member shall not be included when:
(i) Assigning benefit level;
(ii) Comparing monthly income with income eligibility standard; and
(iii) Comparing household resources with resource eligibility standard;
(b) Ineligible due to:
1. Failure to provide a Social Security number;
2. Ineligible alien status; or
3. Failure to attest to citizenship or alien status:
a. All resources of ineligible members shall be considered available to the remaining household members;
b. A pro rata share of the ineligible member's income shall be attributed to remaining household members;
c. Earned income deduction shall be applied to pro rata share of earnings; and
d. The ineligible member's share of dependent care and shelter expenses shall not be counted;
4. [5.] The ineligible member shall not be included when:
a. Assigning benefit level;
b. Comparing monthly income with income eligibility standard; and
c. Comparing household resources with resource eligibility standard.
(4) A household with nonhousehold members shall be processed as follows:
(a) The income and resources of nonhousehold member (other than those described in subsection (3) of this section) shall not be considered available to the household with whom they reside;
(b) If earned income of household members and nonmembers are combined into one (1) wage, the agency shall:
1. Count that portion due to the household as earned income, if identifiable; or
2. Count pro rata share of earned income if nonmember's share cannot be identified;
(c) The nonmember shall not be included when:
1. Assigning a benefit level to the household;
2. Comparing monthly income with income eligibility standards; and
3. Comparing household resources with resource eligibility standard.
(5) A resident of a drug or alcoholic treatment and rehabilitation program in a private, nonprofit organization or a publicly operated community mental health center shall have his case processed as follows:
(a) Eligibility shall be determined as a one (1) person household;
(b) Certification shall be accomplished through an authorized representative;
(c) Food stamp processing standards and notice provisions shall [also] apply to a resident recipient;
(d) Treatment center shall notify the agency of any changes in a resident's circumstances;
(e) Upon departure of the center, the resident shall be eligible to receive any remaining benefits, if otherwise eligible; and
(f) The organization or institution shall be responsible for knowingly misrepresenting household circumstances.
(6) A resident of a group living arrangement who is blind or disabled and receives retirees, survivors, and disabled individuals or SSI benefits shall have his case processed as follows:
(a) A resident shall apply on his own behalf or through use of the facility's authorized representative;
(b) Certification provisions applicable to all other households shall be applied;
(c) Responsibility for reporting changes depends upon who files the application:
1. If resident applies on his own behalf, the household shall report changes to the agency; or
2. If the center acts as authorized

representative, the group living arrangement shall report changes;

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible; and

(e) The group living arrangement shall be responsible for knowingly misrepresenting household circumstances unless the household applied on its own behalf.

(7) A resident of a shelter for battered women and children shall have her case processed as follows:

(a) The shelter shall:

1. Have food and nutrition service authorization to redeem at wholesalers; or

2. Meet the federal definition of such a shelter;

(b) A shelter resident shall be certified for benefits, if otherwise eligible, if she is currently included in a former household which contains the person who abused her; and

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(8) An SSI recipient shall have his case processed as follows:

(a) Application may be filed at:

1. The Social Security Administration (SSA) Office; or

2. The local food stamp office;

(b) The cabinet shall not require an additional interview for applications filed at the SSA;

(c) The cabinet shall obtain all necessary verification prior to approving benefits;

(d) Certification periods shall conform to Section 2 [3] of this administrative regulation; and

(e) Household changes in circumstances shall conform to Section 6 [7] of this administrative regulation.

(9) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

[(10) Replacement issuances.]

[(a) The cabinet shall provide replacement issuances when:]

[1. The coupons or authorization document were:]

[a. Not received;]

[b. Stolen from the mail;]

[c. Destroyed in a household misfortune;]

[d. Improperly manufactured; or]

[e. Mutilated.]

[2. Food purchased with food coupons was destroyed in a household misfortune; or]

[3. The household received a partial allotment.]

[(b) Replacement issuances shall not be authorized if after receipt:]

[1. Coupons are:]

[a. Lost;]

[b. Stolen; or]

[c. Misplaced.]

[2. Authorization documents are:]

[a. Lost; or]

[b. Misplaced.]

[3. Authorization documents or coupons are destroyed after receipt in other than a household misfortune or disaster;]

[4. Coupons sent registered mail or certified mail are signed for by anyone residing with or visiting the household; or]

[5. The household or authorized representative has not signed the household statement of nonreceipt.]

[(c) Replacement issuances shall be provided when:]

[1. The loss is reported within ten (10) days of the date on which:]

[a. An authorization document is stolen; or]

[b. An authorization document, coupons or food purchased with food coupons are destroyed in a household misfortune; or]

[2. In mail issuance counties, the loss is reported within the month of intended use.]

[(d) The cabinet shall limit replacement issuances to two (2) countable replacements in six (6) months for authorization documents or coupons reported as destroyed in a household misfortune.]

(10) [(11)] Student households.

(a) Any person who meets all of the following criteria shall be ineligible to participate in the Food Stamp Program:

1. [Is] Between age eighteen (18) and sixty (60);

2. Physically and mentally fit; and

3. Enrolled at least half-time in an institution of higher education.

(b) The criteria in subsection (11) [paragraph] (a) of this subsection shall not deem a household member ineligible if the member:

1. Is employed or self-employed at least twenty (20) hours per week and is paid for such employment;

2. Participates in a federally financed work study program;

3. Is responsible for the care of a dependent household member under age six (6);

4. Is receiving benefits from the Aid to Families with Dependent Children Program (AFDC); or

5. Is assigned to or placed in an institution of higher learning through a program under 29 USC 1501 [the Job Training Partnership Act].

(11) [(12)] Sponsored aliens.

(a) Income of the sponsored alien shall:

1. Include that portion of the sponsor's and his spouse's income deemed to be that of the alien;

2. Be subject to appropriate income exclusions; and

3. Be reduced by:

a. Twenty (20) percent earned income disregard, if appropriate; and

b. An amount equal to the Food Stamp Program monthly gross income limit for a household size equal to the household size of the sponsor.

(b) Resources of the sponsored alien shall include the total resources of the sponsor and the sponsor's spouse, reduced by $1500.

(c) The appropriate portions of income and resources of the sponsor and of the sponsor's spouse shall be deemed unearned income for a period of three (3) years following the alien's admission for permanent residence into the United States.

(12) [(13)] A household which is required, as specified in 904 KAR 3:020, Section 6(6), to comply with mandatory monthly reporting criteria shall have its case processed as follows:

(a) The cabinet shall adopt a two (2) month

system in which the issuance month is the second month following its corresponding budget month;

(b) There shall be up to three (3) beginning months of participation in this system, the first month and the two (2) months following:

(c) Eligibility and benefit calculation shall be determined prospectively for beginning months;

(d) Ongoing eligibility shall be determined by considering all factors of eligibility prospectively and determining benefits retrospectively;

(e) Eligibility factors causing a period of ineligibility which exceeds one (1) month shall be acted upon immediately;

(f) A monthly reporting household which is ineligible for a period not to exceed one (1) month shall be treated as follows:

1. The ineligible household's issuance shall be suspended for one (1) month.

2. If the suspended household remains ineligible after one (1) month, the cabinet shall terminate the household's participation; and

(g) The recertification form shall serve as the report required for that month in which a household must be recertified.

Section 6. [7.] Reporting Changes. (1) A certified household is required to report changes in household circumstances within ten (10) days of the date the change becomes known to the household.

(2) An applying household shall report all changes related to its food stamp eligibility and benefits:

(a) At the certification interview; or

(b) If [for] changes occur[ring] after the interview but prior to receipt of the notice of eligibility, within ten (10) days of the date of the notice.

(3) A household which is required to report monthly, shall not be required to submit any reports of changes other than the reports required under Section 5(12) [6(13)] of this regulation.

Section 7. Replacement Issuance. (1) The cabinet shall provide a replacement issuance to an eligible household if:

(a) Its authorization document was:

1. Not received in the mail;

2. Stolen from the mail;

3. Destroyed in a household misfortune;

4. Improperly manufactured;

5. Stolen after receipt; or

6. Mutilated;

(b) Its coupons were:

1. Not received in the mail;

2. Destroyed in a household misfortune;

3. Improperly manufactured; or

4. Mutilated;

(c) Food purchased with food stamps was destroyed in a household misfortune; or

(d) It received a partial coupon allotment.

(2) The cabinet shall not provide a replacement issuance to a household if after receipt:

(a) Coupons are:

1. Lost;

2. Stolen; or

3. Misplaced;

(b) Authorization documents are:

1. Lost; or

2. Misplaced;

(c) Coupons or authorization documents are totally destroyed in other than a disaster or misfortune; or

(d) Coupons sent by registered or certified mail are signed for by anyone residing with or visiting with the household.

(3) The cabinet shall not provide a replacement issuance if the household or authorized representative has not provided the written household statement of nonreceipt.

(4) The cabinet shall not provide a replacement allotment for a misfortune for the same month that the household is eligible for disaster food stamp benefits pursuant to a disaster declaration by the FNS.

(5) A replacement issuance shall be provided to a household if:

(a) The household reports a loss timely:

1. Orally; or

2. In writing;

(b) The household provides a statement of nonreceipt; and

(c) The original authorization document or allotment has not been returned to the cabinet at the time of the request for replacement.

(6) The report specified in subsection (5)(a) of this section shall be considered timely if it is made to the cabinet within ten (10) days of the date that:

(a) An authorization document is stolen from the household; or

(b) The following items are destroyed in a household misfortune:

1. Authorization document;

2. Coupons; or

3. Food purchased with food stamps.

(7) In a mail issuance county, the report must be made:

(a) Within the period of intended use; unless

(b) The original issuance was made after the 20th of the month. The period of intended use shall be extended to the last day of the month following the month of application.

(8) The number of replacement issuances which a household may receive shall be limited to:

(a) A total of two (2) countable replacements in six (6) months for:

1. Authorization documents; or

2. Coupons:

a. Not received in the mail;

b. Stolen from the mail; or

c. Destroyed in a household misfortune.

3. Authorization documents stolen after receipt; and

4. Partial coupon allotments; and

(b) No limit shall be placed on the number of replacements for:

1. Partial allotments if the partial allotments were due to an error by the cabinet;

2. Authorization documents or coupons which were:

a. Improperly manufactured; or

b. Mutilated; or

c. Food purchased with food stamp benefits which was destroyed in a household misfortune.

(9) The replacement shall not be considered a countable replacement if:

(a) The original or replacement issuance is returned or otherwise recouped by the cabinet;

(b) The original authorization document is not transacted;

(c) The replacement authorization document is not transacted; or

(d) The replacement issued due to an error by the cabinet.

(10) A replacement issuance shall be provided:

(a) In the amount of the loss of the household; and
(b) Up to a maximum of one (1) on the allotment; unless
(c) The issuance includes restored benefits which shall be replaced up to their full value.
(11) The cabinet shall provide a replacement issuance to an eligible household in accordance with 904 KAR 3:045, Section 4.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 5, 1991
FILED WITH LRC: August 12, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1991 at 9 a.m. at the Department for Employment Services Conference Room, Second Floor West, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by September 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall
(1) Type and number of entities affected: The provisions of this proposed regulation reflects the certification process used in the Food Stamp Program. The regulation is being revised to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes without change to current policy. However, technical eligibility requirements for replacement issuances are being deleted from 904 KAR 3:045, Section 4, and incorporated into Section 8 of this regulation, without change. Furthermore, replacement issuance provisions currently contained in Section 6(10) of this regulation are being transferred to Section 8 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. None
2. State compliance standards. This regulation is being revised to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes.
3. Minimum or uniform standards contained in the federal mandate. The certification process requirements which are described in this administrative regulation are applied in a like manner on a statewide basis and are consistent with standards 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.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 3:045. Coupon issuance procedures.

RELATES TO: KRS 194.050, 7 CFR 274.2, 274.3, 274.4, 274.5, 274.6, 274.7
STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required [has responsibility] to administer a Food Stamp Program [as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 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 coupon issuance procedures used by the cabinet in the administration of the Food Stamp Program. This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of

the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.

Section 1. Basic Issuance Requirements. (1) The cabinet shall be [is] responsible for the timely and accurate issuance of coupons to eligible households.

(2) In issuing coupons the cabinet shall [must] insure that:

(a) [(1)] Only certified households receive benefits;

(b) [(2)] Coupons are accepted, stored, and protected after delivery to receiving points within the state;

(c) [(3)] Program benefits are distributed in the correct amounts; and

(d) [(4)] Coupon issuance and reconciliation activities are properly conducted [in accordance with 7 CFR Part 274] and accurately reported to the Food and Nutrition Service.

Section 2. Issuance System. The cabinet shall choose one (1) of the following systems to issue coupons to eligible households:

(1) For Campbell, Fayette, Kenton and Jefferson Counties:

(a) Direct delivery: [is a system wherein] eligible households pick up and redeem their ATP card at a specified issuance center.

(b) Regular mail issuance shall be available to those households that [which] are unable to get to their assigned issuance centers, as determined by the cabinet.

(2) For all other counties: direct mail; [is a system wherein] coupons are mailed, using at least first class mail, directly to the eligible household.

(3) In any county, alternate issuance shall be [is a system] used if [, in accordance with 7 CFR 274.3(c)(3), when] circumstances exist that [which] indicate a household may not receive its [their] benefits through the normal issuance system. The following systems shall be used:

(a) Local office pickup: [is a system whereby] a household's benefits are mailed to the local office for the household to pick up.

(b) Certified mail: [is a system whereby] benefits are sent via the postal system and shall [must] be signed for before they are obtained.

(c) As determined by the cabinet, other issuance systems may be utilized to ensure receipt of benefits by the eligible household.

Section 3. Issuance Cycles. (1) For ongoing cases the monthly coupon packet or [/] ATP card shall be [is] mailed to:

(a) The household; or [/]

(b) Issuance center:

1. Over the first ten (10) to twenty (20) days of the issuance month; and

2. Based on the last digit of the recipient's Social Security number.

(2) The following households [New approvals, reapprovals and current month recertifications] shall have their coupon packet or [/] ATP card mailed to their homes or [home/] issuance centers within thirty (30) days after the date of application; [in accordance with 7 CFR 273.2(g)(2).]

(a) New approvals;

(b) Reapprovals; and

(c) Current month recertifications.

(3) A household eligible for expedited service shall have its [their] coupon packet or [/] ATP card made available for participation within five (5) calendar days after the date of application.

Section 4. Replacement Issuances. (1) The cabinet shall provide a replacement issuance to an eligible household in accordance with 904 KAR 3:035, Section 8.

(2) If a household reports nondelivery or loss of coupons, a replacement issuance shall be provided within:

(a) Ten (10) working days after report;

(b) Fifteen (15) days if the issuance was by certified or registered mail;

(c) Two (2) working days of receiving a signed household statement attesting to the household's loss; or

(d) Whichever date is later.

(3) Replacement of mutilated coupons shall be delayed until the value of the coupons is determined.

(4) For a household that has already been issued the maximum allowable number of countable replacements as specified in 904 KAR 3:035, Section 8(8), subsequent replacements shall be delayed until the cabinet has:

(a) Verified that the original issuance was returned;

(b) Determined that the original authorization document was not transacted; or

(c) Determined that the limit on countable replacements has not been reached in accordance with 904 KAR 3:035.

(5) If available documentation indicates that a household's request for replacement appears fraudulent, the cabinet shall:

(a) Deny the replacement issuance;

(b) Delay the replacement issuance; or

(c) Inform the household:

1. Of its right to a fair hearing to contest the denial or delay of a replacement issuance; and

2. That a replacement shall not be made while the denial or delay is being appealed. [A total of only two (2) replacements of any kind shall be made during a six (6) month period, except as specified in subsection 4 of this section. Replacements will be issued in accordance with 7 CFR Parts 273.11(i), 274.2(h) and 274.3(c) as follows:]

[(1) Nonreceipt of coupons/ATP cards must be reported in the period of intended use. Replacements shall be issued no more than ten (10) days after report of nondelivery is received and shall be limited to two (2) times during a six (6) month period. If coupons/ATP cards were returned to central office, their replacement is not considered in the limit stated above.]

[(2) Destruction, in an individual household disaster, of coupons/ATP cards after receipt must be reported within ten (10) days of the incident or within the period of intended use, whichever is earlier. Replacements shall be issued within ten (10) days of receipt of request and shall be limited to one (1) time during a six (6) month period. Where FNS has issued a disaster declaration and the household is eligible for emergency food stamp benefits the household shall not receive both the disaster allotment and a replacement allotment under this provision.]

[(3) Theft of ATP cards after receipt must be

reported within ten (10) days of the incident or within the period of intended use, whichever is earlier. Replacements shall be issued within ten (10) days of receipt of request and shall be limited to one (1) time during a six (6) month period.]

[(4) Improperly manufactured or mutilated coupons shall be replaced with an amount equal to the affected coupons in accordance with 7 CFR Part 273.11(i)(5). There is no limit on the number of times this type of replacement may be made.]

[(5) Effective April 1, 1985, mutilated ATP cards which are identifiable as being for the current month, belonging to the household which requested the replacement, and which have not expired, shall be replaced provided the request for replacement was made during the period of intended use. Mutilated ATP cards which are not identifiable shall be considered as lost and not replaceable.]

[(6) Food purchased with food stamps which is subsequently destroyed in an individual disaster, as well as in a natural disaster affecting more than one (1) household, which affects the participating household, may be eligible for replacement of the actual value of loss, not to exceed one (1) month's food stamp allotment. The disaster must be reported within ten (10) days and verified. A replacement shall be issued or the opportunity to obtain a replacement given within ten (10) days of the reported loss and shall be limited to two (2) times during a six (6) month period. Where FNS has issued a disaster declaration and the household is eligible for emergency food stamp benefits the household shall not receive both the disaster allotment and a replacement allotment under this provision.]

Section 5. Authorization-to-participate Card. The ATP card shall be [is] used in areas participating in a direct delivery system.

(1) [Effective July 1, 1985] The ATP card shall be valid for the entire month of issuance unless it is issued after the 20th day of the month.

(2) An ATP card [Those] issued after the 20th day is [that date are] valid through the last day of the following month.

(3) [(2)] The household shall be provided with a means of designating an emergency authorized representative who can transact the ATP card on its behalf [in their stead].

Section 6. Coupon Controls. Regardless of which issuance system is used, the cabinet shall:

(1) Establish a coupon inventory management system which insures that:

(a) Coupons are requisitioned; and

(b) Inventories are maintained [in accordance with 7 CFR Parts 274.4(a)];

(2) Establish control and security procedures to safeguard coupons similar to those used to protect currency [outlined in 7 CFR Part 274.4(b)];

(3) Arrange for the ordering of coupons and the prompt verification and written acceptance of each coupon shipment [in accordance with 7 CFR Part 274.4(c)];

(4) Ensure that coupon issuers and bulk storage points:

(a) Promptly verify and acknowledge, in writing, the contents of each coupon shipment or coupon transfer delivered to them; and

(b) Shall be responsible for the custody, care, control and storage of coupons [pursuant to 7 CFR Part 274.5];

(5) Maintain issuance records for a period of three (3) years from the month of origin [as outlined in 7 CFR Part 274.7];

(6) Control all issuance documents which establish household eligibility while the documents are transferred and processed within the state agency [in accordance with 7 CFR Part 274.7(b)]; and

(7) Provide security and control for all issuance accountability documents [pursuant to 7 CFR Part 274.7(c)].

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 5, 1991
FILED WITH LRC: August 12, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1991 at 9 a.m. at the Department for Employment Services Conference Room, Second Floor West, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by September 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: The provisions of this proposed regulation reflect the coupon issuance procedures used in the Food Stamp Program. The regulation is being revised to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes without change to current policy. Therefore, no food stamp recipients will be affected by the promulgation of this administrative regulation. Furthermore, technical eligibility requirements for replacement issuances are being deleted from Section 6(10) of this regulation and incorporated into 904 KAR 3:035, without change.

(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. None
2. State compliance standards. This regulation is being revised to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes. Furthermore, technical eligibility requirements for replacement issuances are being deleted from this regulation and incorporated into 904 KAR 3:035, Section 8 without change.
3. Minimum or uniform standards contained in the federal mandate. The terms which are defined in this administrative regulation are applied in a like manner on a statewide basis and are consistent with coupon issuance standards 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.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 3:050. Additional provisions.

RELATES TO: KRS 194.050, 7 CFR 272.1, 272.5, 273.16, 273.17, 273.18
STATUTORY AUTHORITY: KRS 13A.120, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required [has responsibility] to administer a Food Stamp Program as prescribed under 7 USC 2011 to 2029 [by the Food Stamp Act of 1977, as amended, and 7 CFR Part 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 additional provisions used by the cabinet in the administration of the Food Stamp Program. This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.

Section 1. Civil Rights Compliance. The cabinet shall not discriminate against any [insures that no] applicant or participant [shall be discriminated against] in any aspect of program administration for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs.

Section 2. Restoration of Lost Benefits. (1) Benefits shall be restored to a household if a [households as specified in 7 CFR Part 273.17, when such] household has lost benefits:
(a) Due to an administrative error;
(b) By an administrative disqualification for intentional program violation that is subsequently reversed.
(2) Benefits shall be restored for a period of not more than twelve (12) months from:
(a) The date the agency receives a request for restoration; or
(b) If no request is received, the date a fair hearing action is initiated.
(3) Benefits to be restored shall be calculated by determining the difference between the household was entitled to receive and what the household actually received.
(4) Benefits to be restored shall be used to offset any unpaid or suspended claims the household may have.

Section 3. Program Informational Activities. (1) Low-income or disadvantaged households shall be informed of the availability of the program, [and] program rights and responsibilities through program informational activities including posters and pamphlets from the food and nutrition service.
(2) Other programs that households shall be encouraged to use are the:
(a) Special Supplemental Food Program for Women, Infants and Children (WIC); and
(b) Expanded Food and Nutrition Education Program (EFNEP). [as required by 7 CFR Part 272.5.]

Section 4. Identification of Claims Against Households. The cabinet shall establish a claim[, in accordance with policies in effect at the time the overissuance occurred,] against a household that receives more food stamp benefits than it is [they are] entitled to receive.

Section 5. Classification of Claims. Claims [shall be determined and processed in accordance with 7 CFR Part 272.1(g)(58)(ii), 273.11(h)(8), 273.16, and 273.18 and] shall be classified as:
(1) Inadvertent household error claims. Overissuance was due to:
(a) A misunderstanding or unintended error on the part of the household;
(b) An action, or failure to take action, by the Social Security Administration, that results in the household improperly receiving SSI; or
(c) A misunderstanding or unintended error on the part of a categorically eligible household, as defined in 904 KAR 3:030, Section 5, that

receives food stamps solely because of categorical eligibility, and is subsequently determined ineligible for either PA or SSI or both.

(2) Administrative error claims. Overissuance was due to the agency:

(a) Failing to take action on a change reported by the household;

(b) Incorrectly computing household income or deductions or otherwise issuing an incorrect allotment;

(c) Issuing duplicate benefits; or

(d) Continuing to issue benefits after the certification period expired without a reapplication determination. [Action or failure to take action.]

(3) Intentional program violation claims.

(a) Overissuance was due to an act of intentional program violation on the part of the household by: [as defined in 7 CFR 273.16(c) and set forth in 904 KAR 3:060, Section 1.]

1. Making a false or misleading statement, or misrepresenting, concealing or withholding facts; or

2. Committing a violation of 7 USC 2011-2029, 904 KAR Chapter 3, or any state statute relating to the Food Stamp Program.

(b) The act of intentional program violation is determined by:

1. An administrative disqualification hearing official;

2. A court of appropriate jurisdiction;

3. An individual signing either a waiver of his disqualification hearing; or

4. An individual signing a disqualification consent agreement in cases referred for prosecution.

Section 6. Collecting Claims Against Households. The cabinet shall initiate collection action against households with an established claim in accordance with the following criteria:

(1) All claims identified in Section 5 of this regulation, as inadvertent household and administrative error claims, shall have collection action initiated unless the:

(a) Claim is collected through offset;

(b) Claim is less than thirty-five (35) dollars and cannot be recovered by coupon reduction; or

(c) Department has documentation that the household cannot be located.

(2) A claim identified in Section 5 of this regulation, as an intentional program violation claim, shall have collection action initiated unless:

(a) The household has repaid the overissuance;

(b) The department has documentation that the household cannot be located; or

(c) Collection action would prejudice the case against a household member referred for prosecution.

(3) Payments for claims against the household shall be collected as follows:

(a) If the household is financially able to pay the entire amount of the claim, either as cash payment or food stamp coupons, by lump sum payment;

(b) Installments as negotiated with the household either as cash payment or food stamp coupons; or

(c) Reduction in the food stamp allotment in accordance with the following criteria:

1. For inadvertent household error claims, the amount of reduction shall be the greater of ten (10) percent of the household's monthly allotment or ten (10) dollars per month;

2. For administrative error claims, the amount of reduction shall be negotiated with the household;

3. For intentional program violation error claims, the amount of reduction shall be the greater of twenty (20) percent of the household's monthly entitlement or ten (10) dollars per month.

(4) Disqualification from the Food Stamp Program shall be imposed on an individual with intentional program violation error claims. The individual shall be ineligible to participate in the program:

(a) For the first violation, six (6) months;

(b) For the second violation, twelve (12) months; and

(c) For the third violation, permanently.

Section 7. [5.] Disclosure of Information. Use or disclosure of information obtained from applicant households, exclusively for the program, shall be restricted to the following individuals:

(1) Persons directly connected with the administration or enforcement of the provisions of:

(a) 7 USC 2011-2029; [the Food Stamp Act or regulations, or with]

(b) Other federal assistance programs; or

(c) Federally aided state programs which provide assistance, on a means-tested basis, to low income households;

(2) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(3) Local, state or federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of 7 USC 2011-2029 [the Food Stamp Act] or regulations. The written request shall include:

(a) The identity of the person requesting the information and his[/her] authority to do so;

(b) The nature of the violation being investigated; and

(c) The identity of the person about [on] whom the information is requested.

Section 8. [6.] General Program Information. 904 KAR Chapter 3 [Regulations, plans of operation, state manuals, and federal procedures which affect the public] shall be maintained in the central and local office [as well as in FNS national and regional offices] for examination by members of the public on regular workdays during regular office hours. Copies of administrative regulations, [plans of operation, state manuals and federal procedures] may be obtained from [FNS or] the cabinet. Federal laws and regulations shall be maintained by the central office and the FNS and shall be available for inspection and copying.

Section 9. [7.] Retention of Records. (1) The cabinet shall retain all program records in an orderly fashion, for audit and review purposes, for a period of three (3) years from the month of origin of each record.

(2) The cabinet shall retain fiscal records and accountable documents for three (3) years from the date of fiscal or administrative closure.

Section 10. [8.] Disaster Certification. The cabinet shall distribute emergency coupon allotments to a household within a food stamp county determined to be a disaster area: [only when so authorized by the Food and Nutrition Service.]

(1) In accordance with 42 USC 5122, [the Disaster Relief Act, emergency food stamp assistance may be] authorized by the Food and Nutrition Service of the United States Department of Agriculture as a result of a major disaster that [which] is determined [as such] by the President of the United States; or [.]

(2) In accordance with 7 USC 2011-2029, [the Food Stamp Act, emergency food stamp assistance may be] authorized by the Food and Nutrition Service as a result of a lesser disaster, [even if the affected area has not been declared a major disaster,] if:

(a) The emergency has resulted either from a natural or human occurrence which disrupted the commercial channels of food distribution; and

(b) The Food Stamp Program is operational.

[Section 9. Provisions contained in this regulation shall become effective February 1, 1985.]

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 5, 1991
FILED WITH LRC: August 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1991 at 9 a.m. at the Department for Employment Services Conference Room, Second Floor West, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by September 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: The provisions of this proposed regulation reflect the additional provisions used in the Food Stamp Program. The regulation is being revised to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes without change to current policy. 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. None

2. State compliance standards. This regulation is being revised to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes.

3. Minimum or uniform standards contained in the federal mandate. The additional provisions in this administrative regulation are applied in a like manner on a statewide basis and is consistent with processes 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.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: KRS 194.050, 7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82), 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82)

STATUTORY AUTHORITY: KRS [Chapter 13A,] 194.050, 7 CFR 271.4 [7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14)

(7-28-82); 7 CFR 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82)]

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required [has responsibility] to administer a Food Stamp Program [as prescribed by the Food Stamp Act of 1977, as amended and applicable federal regulations and interpretations thereof]. 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 procedures used by the cabinet to determine when an act of intentional program violation has occurred and appropriate penalties which shall be applied. This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.

Section 1. Administrative Disqualification Hearings. (1) An administrative disqualification hearing shall be initiated by the cabinet whenever it has documented evidence to prove that a household member has committed an act of intentional program violation.

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of the individual. [For purposes of determining if]

(3) An act of intentional program violation[, as defined in 7 CFR 273.16(c), has been committed, the act] shall consist of having intentionally:

(a) [(1)] Made a false or misleading statement; [, or]

(b) Misrepresented facts;

(c) Concealed facts; [, or]

(d) Withheld facts; or

(e) [(2)] Committed any act that constitutes a violation of:

1. 7 USC 2011 to 2029;

2. 904 KAR Chapter 3; [the Food Stamp Act, the food stamp regulations,] or

3. Any state statute relating to:

a. The use;

b. Presentation;

c. Transfer;

d. Acquisition;

e. Receipt; or

f. Possession of:

(i) Food stamp coupons; or

(ii) An authorization to participate card (ATP) ['s].

Section 2. Disqualification Hearing Procedures. (1) The cabinet shall provide state level administrative disqualification hearings [in accordance with 7 CFR 273.16(e)] which shall be heard by a [the] fair hearing official.

(2) A hearing shall be conducted by an impartial official[(s)] who:

(a) Did not have any personal stake or involvement in the case; [who]

(b) Was not directly involved in the initial determination that the household member had committed intentional program violation; and

(c) Was not the immediate supervisor of the case worker who took the action.

(3) [(1)] The powers and duties of the hearing official shall be the same as those specified in 904 KAR 3:070, Section 13 [12].

(4) [(2)] The household's rights during the hearing shall be the same as those specified in 904 KAR 3:070, Section 14 [13].

(5) [(3)] The hearing decision shall comply with provisions specified in 904 KAR 3:070, Section 15 [14(1)].

(6) [(4)] At the hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(7) [(5)] Within ninety (90) days of the date the household member is notified in writing that a hearing has been scheduled, the cabinet shall:

(a) Conduct the hearing;

(b) Arrive at a decision; and

(c) Notify the household member of the decision.

(8) Provided that the request is made at least ten (10) days in advance of the date of the scheduled hearing, the household member or representative is entitled to one (1) postponement not to exceed thirty (30) days[, provided that the request is made at least ten (10) days in advance of the date of the scheduled hearing].

(9) If a hearing is postponed, the [above] time limits specified in subsection (7) of this section shall be extended for as many days as the hearing is postponed.

Section 3. Advance Notice of Disqualification Hearing. (1) The cabinet shall provide written notice to the household member suspected of intentional program violation at least thirty (30) days in advance of the date a hearing initiated by the cabinet has been scheduled.

(2) The notice shall be sent certified mail - addressee only - return receipt requested and shall contain:

(a) [(1)] The date, time, and place of the hearing;

(b) [(2)] The charge[(s)] against the household member;

(c) [(3)] A summary of the evidence; [, and]

(d) How and where the evidence may be examined;

(e) [(4)] A warning that the decision shall be based solely on information provided by the Food Stamp Office if the household member fails to appear at the hearing;

(f) [(5)] A statement that the household member or representative shall have ten (10) days from the date of the scheduled hearing to present good cause for failure to appear;

(g) [(6)] A warning that a determination of intentional program violation shall result in:

1. A six (6) month disqualification for the first violation;

2. A twelve (12) month disqualification for a second violation; and

3. Permanent disqualification for the third violation; and

4. A statement of which penalty is applicable to the case scheduled for a hearing;

(h) [(7)] A listing of the household member's rights as contained in 904 KAR 3:070, Section 14 [13];

(i) [(8)] A statement that the hearing shall not preclude the state or federal government from:

1. Prosecuting the household member for intentional program violation in a civil or criminal court action; or

2. [From] Collecting the overissuance; and

(j) If there is an individual or organization available that provides free legal

representation, [(9)] a statement [advising a household member, if there are individuals or organizations which provide free legal representation,] of the availability of this service.

Section 4. Scheduling the Disqualification Hearing. (1) The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation.

(2) If the applicant, recipient and any party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted[, when the applicant or recipient consents, including all of the parties and their witnesses who shall testify under oath or affirmation].

(3) A party [parties to a telephonic hearing] who wishes to introduce a document or written material into the record at the hearing shall [immediately] mail a copy [copies] of the [such] document to the hearing officer and to the opposing party prior to the date of the hearing.

(4) Failure to provide both the hearing officer and the opposing party with a copy [copies] of such evidence may result in the exclusion of this evidence from the record.

(5) If the household member or its representative does not appear for a face-to-face or telephonic hearing, the state agency shall determine whether proper advance notice was received by the household member.

(a) If there is no proof that the household member received or refused a timely notice of the hearing, the hearing shall not be conducted. [The claim is annotated in the following manner: Order to Remove from Docket.]

(b) The hearing process is again initiated when the household member is located and another notice can be provided to that member.

(c) If [However, when] the agency has sufficient evidence to verify that the household member either received or refused the [such] notice, the hearing shall be conducted.

(6) Even if [though] the household member is not represented, the hearing official is required to:

1. Carefully consider the evidence; and

2. Determine if intentional program violation was committed based on clear and convincing evidence.

(7) If the household member is found to have committed an intentional program violation but, a hearing official later determined that the household member or representative had good cause, as defined in 904 KAR 3:070, Section 10 [9], for not appearing:

(a) The previous decision shall not [no longer] remain valid; [and]

(b) The cabinet shall conduct a new hearing; and [.]

(c) The hearing official who originally ruled on the case may conduct the new hearing.

(8) The household member shall have ten (10) days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear.

(9) A hearing official shall [must] enter the good cause decision into the record.

Section 5. Participation While Awaiting a Disqualification Hearing. (1) A pending hearing shall not affect the individual's or the household's right to be certified and participate in the program.

(2) The cabinet shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household until:

(a) [Since the cabinet cannot disqualify a household member for intentional program violation until] The hearing official or a court of appropriate jurisdiction finds that the individual has committed intentional program violation; [or]

(b) The individual has signed a waiver of right to an administrative disqualification hearing; or

(c) The individual has signed a disqualification consent agreement; and

(d) The cabinet disqualifies the household member for intentional program violation. [, the cabinet shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household.]

Section 6. Disqualification Hearing Decision. (1) The hearing official shall base the determination of intentional program violation on clear and convincing evidence that [which] demonstrates that the household member[(s)] committed and intended to commit intentional program violation as specified [defined] in Section 1 of this regulation.

(2) The decision of the hearing official shall:

(a) Specify the reasons for the decision;

(b) Identify:

1. The supporting evidence;

2. The state administrative regulations; [identify the pertinent handbook section] and

3. Corresponding federal [FNS] regulation; and

(c) Respond to reasoned arguments made by the household member or representative.

(3) An official report shall be retained by the cabinet.

(a) The report shall contain: [containing]

1. The substance of what transpired at the hearing; [, together with]

2. All papers and requests filed in the hearing proceeding[, shall be retained by the cabinet].

(b) This record shall [also] be available to the household or its representative during work hours for copying and inspection.

Section 7. Notification of a Disqualification Hearing Decision. (1) The cabinet shall notify the household member in writing of:

(a) The hearing decision; and [as specified below:]

(b) His rights.

[(1) If the hearing finds that the household member did not commit intentional program violation, the cabinet shall provide a written notice which informs the household member of the decision.]

(2) If the hearing finds that the household member committed intentional program violation, the [cabinet shall provide written] notice shall: [to the household member. This notice shall]

(a) Be provided prior to disqualification; [. The notice shall]

(b) Inform the household member of the disqualification; and

(c) Advise the household member when the disqualification will take effect.

(3) If the individual is no longer

participating, the notice shall inform the individual that the period of disqualification shall [will] be deferred until [such time as] the individual:

(a) [again] Applies for food stamps; and

(b) Is determined eligible for program benefits. [A list of the household member's rights shall also be printed on the notice of the hearing decision.]

(4) A notice shall [also] be provided to the remaining household members, if any, informing them of:

(a) The allotment they will receive during the disqualification period; or

(b) That they may reapply because their certification period has expired.

(5) A written demand letter shall [also] be sent to the remaining household members explaining the repayment requirements.

Section 8. Waiver Disqualification Hearings. (1) An individual accused of intentional program violation shall be allowed to waive his [their] rights to an administrative disqualification hearing [and shall be handled in accordance with 7 CFR 273.16(f)].

(2) The cabinet shall:

(a) Ensure that:

1. The appropriate field services supervisor reviews the evidence against the household member suspected of the IPV; and

2. A decision is obtained that the evidence warrants scheduling a disqualification hearing.

(b) Provide written notification to the household member suspected of IPV that the member can waive his right to an administrative disqualification hearing.

Section 9. Deferred Adjudication. (1) An individual accused of intentional program violation shall be allowed to sign a disqualification consent agreement in a case of deferred adjudication [and shall be handled in accordance with 7 CFR 273.16(h)].

(2) The cabinet shall use a disqualification consent agreement for a case in which a determination of guilt is not obtained from a court because the accessed individual:

(a) Met the terms of a court order; or

(b) Is not prosecuted because he met the terms of an agreement with the prosecutor.

Section 10. Intentional Program Violation Disqualification Penalties. (1) A penalty is assessed for an individual:

(a) Found by [through] an administrative disqualification hearing to have committed an intentional program violation; or

(b) [Individuals] Who has [have] signed a waiver of the right to an administrative disqualification hearing; or

(c) [individuals] Who has [have] signed a disqualification consent agreement; or

(d) [individuals] Found guilty by a court of appropriate jurisdiction.

(2) An individual listed in subsection (1) of this section shall be ineligible to participate for:

(a) Six (6) months for the first violation;

(b) Twelve (12) months for the second violation; or

(c) Permanently for the third violation.

(3) The disqualification period for a nonparticipant shall be deferred until [such time as] he applies for and is determined eligible for program benefits.

(4) Once a disqualification period is imposed, it shall continue uninterrupted, regardless of any subsequent determinations of eligibility/ineligibility of the disqualified member's household.

(5) A court ordered disqualification may be imposed separate and apart from any action taken by the cabinet.

(a) An individual found guilty of intentional program violation by a court of appropriate jurisdiction shall be disqualified for the period of time specified by that court.

(b) If the court fails to specify or address a disqualification period for the intentional program violation, the cabinet shall impose a disqualification period consistent with the time periods set forth in this section.

(6) If [In cases where] the cabinet's determination of intentional program violation is reversed by a court, the cabinet shall:

(a) Reinstate the individual, if eligible; and

(b) Restore any benefits that were lost as a result of the disqualification. [Individuals found guilty of intentional program violation by a court of appropriate jurisdiction shall be disqualified for the period of time specified by that court. If the court fails to specify or address a disqualification period for the intentional program violation, the cabinet shall impose a disqualification period consistent with the time periods set forth in this section and in accordance with 7 CFR 273.16(g)(2).]

(7) The cabinet shall disqualify only the individual convicted of intentional program violation and not the entire household.

(a) The remaining household members shall agree to make restitution [within thirty (30) days of the date the cabinet's demand letter is mailed,] in accordance with the procedures set forth in 904 KAR 3:050, Section 4 [established procedures for cash or coupon repayment].

(b) Allotment reduction shall be imposed on the household's monthly allotment if:

1. The household does not agree to make restitution; or

2. After having agreed to make restitution fails to do so[, allotment reduction shall be imposed on the household's monthly allotment].

(8) The cabinet shall inform the household in writing of the disqualification penalties for committing intentional program violation at each time it applies for benefits.

Section 11. Appeal Rights of the Household. (1) No further administrative appeal procedure shall exist after an administrative disqualification hearing finds that:

(a) An intentional program violation was committed; or

(b) An individual has waived his right to an administrative disqualification hearing.

(2) The determination of intentional program violation made by a disqualification hearing official shall not be reversed by a subsequent fair hearing decision.

(3) The household member who is subject to subsection (2) of this section [, however,] is entitled to seek relief in a court having appropriate jurisdiction.

(4) The period of disqualification may be subject to stay by:

(a) A court of appropriate jurisdiction; or

(b) Other injunctive remedy.

Section 12. Material Incorporated by Reference. (1) Form FS-80, revised 6-91, is necessary for waiver of administrative disqualification hearing.

(2) Form FS-111, revised 6-91, is necessary to defer adjudication of an individual suspected of intentional program violation.

(3) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices. Office hours are 8 a.m. to 4:30 p.m. [The provisions contained in this regulation shall become effective, in accordance with 272.1(g), July 1, 1989.]

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 5, 1991
FILED WITH LRC: August 12, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1991 at 9 a.m. at the Department for Employment Services Conference Room, Second Floor West, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by September 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: The provisions of this proposed regulation reflect the procedures to determine when an intentional program violation has occurred and appropriate penalties which shall be applied in the Food Stamp Program. The regulation is being revised to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes without change to current policy. 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. None
2. State compliance standards. This regulation is being revised to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes.
3. Minimum or uniform standards contained in the federal mandate. The provisions which are described in this administrative regulation are applied in a like manner on a statewide basis and are consistent with administrative disqualification hearings and penalty provisions 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.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 3:070. Fair hearings.

RELATES TO: KRS 194.050, 7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82), 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82)

STATUTORY AUTHORITY: KRS [Chapter 13A,] 194.050, 7 CFR 271.4 [273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82); 7 CFR 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82)]

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required [has responsibility] to administer a Food Stamp Program [as prescribed by the Food Stamp Act of 1977, as amended and applicable federal regulations and interpretations thereof]. 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 fair hearing procedures used by the cabinet to administer the Food Stamp Program. This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.

Section 1. Availability of Hearings. (1) The cabinet shall provide a fair hearing to any household aggrieved by any action of the cabinet that [which] affects the participation of the household in the Food Stamp Program. [, unless the household has already had a fair hearing on the amount of an overissuance/claim as a result of consolidation of the administrative disqualification hearing and a fair hearing. In accordance with 7 CFR 273.16(e)(1), the household shall not be entitled to another hearing on that issue.]

(2) The cabinet shall provide a state level fair hearing conducted by a state level hearing officer. The fair hearing [which] shall be conducted [carried out] at:

(a) The local office administering the household's allotment; or

(b) An alternate site if the applicant or recipient:

1. Is unable to travel to the local office; and

2. Requests an alternate site.

(3) If the applicant, recipient, and any party or witness required to testify under oath or affirmation consents, [level.] a telephonic hearing may be conducted[, when the applicant or recipient consents, including all of the parties and their witnesses who shall testify under oath or affirmation].

(4) A party [Parties to a telephonic hearing] who wishes to introduce a document or written material into the record at the hearing shall [immediately] mail a copy [copies] of the [such] document to the hearing officer and to the opposing party prior to the date of the hearing.

(5) Failure to provide both the hearing officer and the opposing party with a copy [copies] of such evidence may result in the exclusion of this evidence from the record.

Section 2. Consolidation of Administrative Disqualification Hearing with Fair Hearing. (1) The cabinet may combine a fair hearing and an administrative disqualification hearing into a single hearing if:

(a) The factual issue arises out of the same, or related, circumstance; and

(b) The household receives prior notice that the hearings shall be combined.

(2) If the disqualification hearing and fair hearing are combined, the cabinet shall follow the time frames for conducting a disqualification hearing in accordance with 904 KAR 3:060, Section 2.

(3) The household shall lose its right to a subsequent fair hearing on the amount of the claim if a combined hearing convenes for the purpose of:

(a) Setting the amount of the claim; and

(b) Determining whether or not an intentional program violation has occurred.

(4) Upon household request, the cabinet shall allow the household to waive the thirty (30) day advance notice period required by 904 KAR 3:060, Section 3, if a disqualification hearing and a fair hearing are combined.

(5) A household that has already had a fair hearing on the amount of an overissuance or claim shall not be entitled to another hearing on that issue.

Section 3. [2.] Timely Action on Hearing Requests. (1) Within sixty (60) days of a request for a fair hearing, the cabinet shall:

(a) Acknowledge the [all] hearing request;

(b) Conduct a hearing; and

(c) Issue a decision [within sixty (60) days of a request for a fair hearing].

(2) A decision that [which] results in an increase in household benefits shall be reflected in the coupon allotment within ten (10) days of the receipt of the hearing decision.

(a) The cabinet shall provide a household:

1. Supplementary coupons; or

2. [otherwise provide the household] With an opportunity to obtain the allotment outside the normal issuance cycle.

(b) [However,] The cabinet may take longer than ten (10) days if:

1. It elects to make the decision effective in the household's normal issuance cycle; and

2. [if] The issuance shall occur within sixty (60) days from the household's request for the hearing.

(3) A decision that results [Decisions which result] in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the hearing decision.

Section 4. [3.] Agency Conference. (1) The cabinet shall offer an agency conference to a household adversely affected by the cabinet's action.

(2) The household shall be advised that an agency conference is:

(a) Optional; and

(b) Shall not [in no way] delay or replace the fair hearing process.

(3) An agency conference may lead to an informal resolution of the dispute.

(4) [However,] A fair hearing shall still be held unless the household makes a written withdrawal of its request for a hearing.

(5) The agency conference shall [is to] be attended by:

(a) The case worker;

(b) His supervisor; and

(c) The household member; or

(d) Representative.

(6) An agency conference for a household contesting a denial of expedited service shall be scheduled within two (2) working days, unless the household:

(a) Requests that it be scheduled later; or

(b) States that an [no] agency conference is not wanted.

Section 5. [4.] Group Hearings. (1) The cabinet may respond to a series of individual requests for a fair hearing by conducting a single group hearing.

(2) A hearing case may be consolidated only if: [where]

(a) Individual issues of fact are not disputed; and

(b) [if] The sole issue is one of:

1. Federal law;

2. Regulation; or
3. Policy.
(3) In a [all] group hearing, the same procedures specified in this administrative regulation [policies] governing an individual hearing shall be followed.
(4) Each [individual] client shall be permitted to:
(a) Present his own case; [or]
(b) Be represented by legal counsel; or
(c) Be represented by other spokesperson.

Section 6. [5.] Postponement of a Hearing. (1) Upon request, a household shall be [s may request and are] entitled to receive a postponement of the scheduled hearing.
(2) The postponement shall not exceed thirty (30) days from the date of the postponement request. [and]
(3) The time limit for action on the decision may be extended for as many days as the hearing is postponed.

Section 7. [6.] Notification of Rights to Request a Hearing. (1) At the time of application the cabinet shall notify each household in writing of:
(a) Its right to a hearing;
(b) [of] The method by which a hearing may be requested; and
(c) That its case may be presented by a household member or a representative, such as:
1. [a] Legal counsel;
2. A relative;
3. A friend; or
4. Other spokesperson.
(2) If a [In addition, at any time the] household expresses to the cabinet that it disagrees with the cabinet's action, it shall be reminded in writing of its [the] right to request a fair hearing.
(3) If there is an individual or organization available that provides free legal representation, the household shall be informed in writing of the availability of that service.

Section 8. [7.] Request for Hearings. (1) Any household member shall have the right to request a hearing on any action by the cabinet that: [which]
(a) Affects the participation of the household in the program; and
(b) [which] Occurred in the prior ninety (90) days; or [. Action by the cabinet shall include a denial of]
(c) Denied a request for restoration of any benefits lost more than ninety (90) days but less than a year prior to the request.
(2) [In addition, at any time] Within a certification period, a household may request a fair hearing to dispute its current level of benefits.

Section 9. [8.] The Cabinet's Responsibilities on Hearing Request. (1) A request for a hearing shall be: [is defined as]
(a) A clear expression, oral or written, by the household or its representative; [to the effect]
(b) That it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired.
(2) If it is unclear from the household's request what action it wishes to appeal, the cabinet may request the household to clarify its grievance.
(3) The freedom to make a request for a hearing shall not be limited or interfered with in any way.
(4) [(1)] Upon request, the cabinet shall make available, without charge, the specific materials necessary for:
(a) A household or its representative to determine whether a hearing should be requested; or
(b) To prepare for a hearing.
(5) Upon request, the cabinet shall [also] help a household with its hearing request.
(6) If a household makes an oral request for a hearing, the cabinet shall complete the procedures necessary to start the hearing process.
(7) Households shall be advised of any legal services available that can provide representation at the hearing.
(8) [(2)] The cabinet shall expedite a hearing request from a [households, such as] migrant farmworker household, that plans to move from the jurisdiction of the hearing official before the hearing decision shall normally be reached.
(9) A hearing request from a migrant farmworker [these] household shall be processed faster than other requests if necessary to enable the household [them] to receive a decision and restoration of benefits, if the decision so indicates, before it leaves [they leave] the area.

Section 10. [9.] Denial or Dismissal of a Fair Hearing Request. The cabinet shall not deny or dismiss a request for a hearing unless:
(1) The request is not received within the time period specified in Section 8 [7] of this regulation; [.]
(2) Prior to the release of the hearing officer's decision, the client or his representative withdraws in writing his [a] request for a hearing at any time; or [prior to the release of the hearing officer's decision.]
(3) The household or its representative fails to appear to the scheduled hearing without good cause, as defined below:
(a) The household member was away from home during the entire filing period; [or]
(b) The household member is unable to read or to comprehend the notice; [or]
(c) The household member moved and a delay resulted in receiving inadequate notice; [or]
(d) Serious illness of a household member; [or]
(e) The delay was no fault of a household member; or
(f) The household member did not receive the notice.

Section 11. [10.] Continuation of Benefits. (1) If a household [which] requests a fair hearing within the period provided on the notice of adverse action, it shall be allowed to continue participation in the program on the basis authorized immediately prior to notice of adverse action:
(a) If its certification period has not expired; or
(b) [unless] The household has not specifically waived [waives] continuation of benefits.
(2) The state agency shall consider the request timely received if:
(a) The adverse notice period ends on a weekend or holiday; and

(b) A request for a fair hearing and continuation of benefits is received the day after the weekend or holiday [the state agency shall consider the request timely received].

(3) If the household fails to request a hearing within the notice period for good cause, benefits shall be reinstated on the prior basis.

(4) If [When] benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated [only] if:

(a) The issue is that food stamp eligibility or benefits were improperly computed; or

(b) That federal law or regulation is being misapplied or misinterpreted by the cabinet.

(5) Once continued or reinstated, benefits shall not be reduced or terminated prior to the receipt of the official hearing decision unless:

(a) [(1)] The certification expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the cabinet; [or]

(b) [(2)] The hearing officer makes a preliminary determination in writing and at the hearing, that:

1. The sole issue is one of federal law or regulation; and

2. No questions of fact are involved; [or]

(c) [(3)] A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending, and the household fails to request a hearing after the subsequent notice of adverse action; [or]

(d) [(4)] A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending; or

(e) [(5)] The household or representative fails to appear at the hearing without good cause. Attendance shall not be [is not] required at a group hearing.

Section 12. [11.] Notification of Time and Place of Hearing. (1) The time, date and place of the hearing shall be arranged so that the hearing is accessible to the household.

(2) At least ten (10) days prior to the hearing, advance written notice shall be provided to any party [all parties] involved to permit adequate preparation of the case.

(3) [However,] The household may request less advance notice to expedite the scheduling of the hearing.

(4) The notice shall:

(a) [(1)] Advise the household or representative of the name, address, and phone number of the person to notify if it is not possible for the household to attend the scheduled hearing;

(b) [(2)] Specify that the cabinet shall dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause;

(c) [(3)] Include the cabinet's procedure and any other information that provides the household with an understanding of the proceedings and that contributes to the effective presentation of the household's case; and

(d) [(4)] Explain that the household or representative may examine the case file prior to the hearing.

Section 13. [12.] Hearing Official. (1) The cabinet shall designate a hearing official who:

(a) Does not have any personal stake or involvement in the case;

(b) Was not directly involved in the initial determination of the action which is being contested;

(c) Was not the immediate supervisor of the case worker who took the action; and

(d) Is an employee of the cabinet.

(2) The power and duties of the hearing official shall be as follows:

(a) [(1)] Administer oaths or affirmations;

(b) [(2)] Insure that all relevant issues are considered;

(c) [(3)] Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(d) [(4)] Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing;

(e) [(5)] Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the cabinet;

(f) [(6)] Subpoena relevant and useful information or individuals; and

(g) [(7)] Provide a hearing record and recommendation for final decision by the hearing authority. [; or, if] The hearing official shall [is the hearing authority,] render a hearing decision in the name of the cabinet in accordance with Section 15 [14] of this regulation.

Section 14. [13.] Rights During Hearing. (1) During the hearing process the household or its representative shall be given adequate opportunity to:

(a) [(1)] Examine all documents and records to be used at the hearing at anytime during working hours before the date of the hearing as well as during the hearing;

(b) Examine the contents of the case file including the application form and documents of verification used by the cabinet to establish the household's ineligibility or eligibility and allotment; [shall be made available, provided that confidential information such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the cabinet shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.]

(c) [(2)] Present the case or have it presented by a legal counsel or other person;

(d) [(3)] Bring witnesses, friends or relatives;

(e) [(4)] Advance arguments without undue interference;

(f) [(5)] Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and [.]

(g) [(6)] Submit evidence to establish all pertinent facts and circumstances in the case.

(2) Confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, shall be protected from

release.

(3) If requested by the household or its representative, the cabinet shall provide a free copy of the portions of the case file that are relevant to the hearing.

(4) Confidential information that is protected from release and other documents or records, not relevant to the hearing, which the household shall not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

Section 15. [14.] Hearing Decisions. (1) Decisions of the hearing officer shall comply with federal law and regulation and shall [will] be based on the hearing record.

(2) The official record for a final decision by the hearing authority shall contain:

(a) The recording of testimony and exhibits; [, and]

(b) An official report containing the substance of what transpired at the hearing; [, together with]

(c) All papers and requests filed in the proceeding[, shall constitute the exclusive record for a final decision by the hearing authority].

(3) This record shall be retained in accordance with 904 KAR 3:050, Section 6.

(4) This record shall [also] be available to the household or its representative during working hours for copying and inspection.

(5) [(2)] A decision by the hearing authority shall:

(a) Be binding on the cabinet; [and shall]

(b) Summarize the facts of the case;

(c) Specify the reasons for the decision; and

(d) Identify:

1. The supporting evidence; [and]

2. The pertinent state administrative regulation; [manual section] and

3. Corresponding federal regulation.

(6) The decision shall become a part of the record.

(7) [(3)] The household and the local office shall each be notified in writing of:

(a) The decision;

(b) The reasons for the decision;

(c) The available appeal rights; [and that]

(d) The issuance or termination of the household's benefits [shall be issued or terminated] as decided by the hearing authority; and [. The notice shall also state]

(e) The fact that an appeal may result in a reversal of the decision.

(8) [(4)] After notification of a hearing decision which upholds the cabinet's action, the household shall be notified of the right to pursue judicial review of the decision.

(9) [In addition,] The household shall be notified of the right to appeal its [their] case to the appeal board in accordance with Section 17 [16] of this regulation.

Section 16. [15.] Implementation of Hearing Decision. (1) The cabinet shall insure that all final hearing decisions are reflected in the household's coupon allotment within the time limits specified in Section 3 [2] of this regulation.

(2) If [(1) When] the hearing authority determines that a household has been improperly denied program benefits, or has been issued a lesser allotment than was due, lost benefits shall be provided to the household.

(3) The cabinet shall restore benefits to a household that leaves [households which are leaving] the county before the departure if possible.

(4) If benefits are not restored prior to the household's departure, the county office shall forward an authorization for benefits to the household or to the new county office if known.

(5) The county office shall accept an authorization and issue the appropriate benefits whether the authorization is:

(a) Presented by the household; or

(b) Received directly from another county office.

(6) [(2)] When the hearing authority upholds the cabinet's action, a claim against the household for any overissuances shall be prepared.

Section 17. [16.] Appeal Board. (1) A household dissatisfied with the hearing officer's decision may appeal to the appeal board within twenty (20) days from the date of the hearing decision.

(2) Within forty-five (45) days of receipt of the request for an appeal of a fair hearing decision, the cabinet shall ensure that:

(a) The review is conducted; and

(b) [that] A decision is reached.

(3) The decision shall be reflected in the coupon allotment within ten (10) days of the decision.

Section 18. [17.] Judicial Review. A household aggrieved by the appeal board's decision shall have the right to appeal this decision to the court of appropriate jurisdiction.

Section 19. Material Incorporated by Reference. (1) Form PAFS-78, revised 6-91, is required for a fair hearing.

(2) This form may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices. Office hours are 8 a.m. to 4:30 p.m.

[Section 18. Provisions contained in this regulation shall become effective July 1, 1989.]

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 5, 1991
FILED WITH LRC: August 12, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1991 at 9 a.m. at the Department for Employment Services Conference Room, Second Floor West, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by September 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. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public

hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall
(1) Type and number of entities affected: The provisions of this proposed regulation reflects the fair hearing procedures used in the Food Stamp Program. The regulation is being revised to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes without change to current policy. 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. None
2. State compliance standards. This regulation is being revised to comply with the drafting requirements of Section 13A of the Kentucky Revised Statutes.
3. Minimum or uniform standards contained in the federal mandate. The fair hearing procedures which are described in this administrative regulation are applied in a like manner on a statewide basis and are consistent with fair hearing procedures 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.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:013. Payments for hospital inpatient services.

RELATES TO: KRS 205.520, 205.575
STATUTORY AUTHORITY: KRS 194.050, 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. 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. KRS 205.575 provides for hospital indigent care assurance program (HICAP) payments. This regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised July [April] 1, 1991, [and amended August 1, 1990,] which is incorporated by reference in this regulation. For any reimbursement issue or area not specified in the manual, the cabinet shall apply the Medicare standards and principles (excluding the Medicare inpatient routine nursing salary differential). The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

Section 3. General Description of the Payment System. (1) Use of prospective rates. Each hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate shall be all inclusive in that both routine and ancillary cost shall be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate shall not be subject to retroactive adjustment except to

the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate shall not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data shall have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments shall be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year shall be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for mental hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the mental hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, shall be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used shall be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor shall be applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) shall be peer grouped according to bed size. The peer groupings for the payment system shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up (except that the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless such facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in such a manner as to recognize the presence of the major pediatric teaching component existing outside the state university hospitals). No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up. Mental hospitals shall not be peer grouped but shall have a separate array of mental hospitals only. Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature shall not be peer grouped or arrayed.

(6) Use of a minimum occupancy factor. A minimum occupancy factor shall be applied to capital costs attributable to the Medicaid program. A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor shall apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

(7) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to mental hospitals.

(8) Use of upper limits with regard to services provided on or after July 1, 1991 [1990].

(a) The following upper limits and payment principles shall apply to all hospitals with other limitations for disproportionate share hospitals shown in paragraph (b) of this subsection.

1. [(a)] For acute care hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. A mental hospital designated by the cabinet as a primary referral and services resource for children in the custody of the cabinet shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; the projected cost may be adjusted for usual cost of living increases using the Data Resources, Incorporated Index. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data; however the arrays or upper limits may be changed as a result of changes of agency policy. Hospitals participating in the Hospital Indigent Care Assurance Program (HICAP) shall also receive, in addition to regular program payments, amounts which are payable under HICAP. The HICAP payments shall be the product of the ratio of each hospital's Medicaid patient days compared to total Medicaid patient days as applied to total available HICAP funds (which are the hospital assessments paid minus administrative expense, hold-harmless amounts, and the contingency reserve amount and taking into consideration available federal Medicaid matching funds and upper limits on HICAP payments). The formula for determination of HICAP payment amounts is shown in the Reimbursement Manual at Section 102D.(b)(2), (3), (4), and (5). For the quarters ending March 31, 1991 and June 30, 1991, no hospital participating in HICAP shall receive less than its assessment plus $100,000 annually ($25,000 quarterly). Effective with regard to services provided on and after July 1, 1991, no hospital participating in HICAP shall receive on an annual basis less than five and one-quarter

(5.25) percent of its operating costs, or five (5) percent of its annual operating costs plus $100,000, whichever amount is greater. Hold harmless amounts are computed separately for the first twenty (20) percent of the fund, for the 21st through 60th percent of the fund, and 61st through 100th percent of the fund. For hospitals which are disproportionate share hospitals the limitations shown in paragraph (b) of this subsection and subsection (9) of this section shall be applicable for HICAP payments. If a hospital which is a nondisproportionate share hospital is determined by the cabinet to be a nonparticipant in HICAP, the amounts otherwise payable under HICAP to the hospital shall not be made.

2. For medically necessary hospital inpatient services provided to infants under the age of one (1) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infants.

(b) The following upper limits and payment principles shall apply to disproportionate share hospitals as defined in subsection (9) of this section.

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or more nursing days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children [infants] under age six (6) [one (1)] (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

2. Designated state teaching hospitals and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville) shall have an upper limit set at 126 percent of the weighted median per diem cost for all other hospitals of comparable size (401 beds and up). The pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility. In addition to the per diem amount computed using the limits specified in this subparagraph, the hospitals shall be paid (as appropriate) additional amounts for services to children [infants] under age six (6) [one (1)] (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

3. Mental hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array. The per diem amount shall be computed using this upper limit or by using the disproportionate share minimum payment amount shown in subsection (9)(b)1 of this section if doing so results in a higher per diem amount.

4. All other disproportionate share acute care hospitals shall have their upper limit set at the weighed median per diem of the cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children [infants] under age six (6) [one (1)] (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

(9) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in 42 USC 1396r-4(b) and (d) and those hospitals which may not meet such criteria but meet the criteria specified in 42 USC 1396r-4(d) and meet this additional criteria:

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and mental hospitals with Medicaid utilization of thirty-five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

4. Hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days; and

5. Effective with regard to services provided on or after July 1, 1990, hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of one-half (1/2) of one (1) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky shall be set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r-4(c), the minimum payment adjustment and actual payment adjustment shall be computed in the following manner:

1. All hospitals determined to be disproportionate share hospitals shall be entitled to a minimum payment adjustment equal to one (1) dollar as an addition to the hospital payment rate computed using usual upper limits; and for hospitals with Medicaid utilization in excess of one (1) standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, a further payment adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid utilization in the hospital which is in excess of utilization at the one (1) standard deviation level.

2. Effective with regard to medically

necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1991 [1990] to children [infants] under the age of six (6) [one (1)] with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children [infants] are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the children [infants].

3. Effective with regard to services provided on or after July 1, 1990 any hospital which is participating in the Hospital Indigent Care Assurance Program (HICAP) shall receive disproportionate share payments under HICAP. HICAP assessments and payments are described in 907 KAR 1:017, Hospital indigent care assurance program. If a hospital is determined by the cabinet to be a nonparticipant in the HICAP program, the hospital shall be entitled to the minimum adjustment shown in subparagraph 1 of this paragraph.

(10) Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended separately.

(11) Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(12) Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 4. Payments to Participating Out-of-state Hospitals. (1) Effective with regard to services provided on or after July 1, 1990 participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size hospital, except as specified in subsection (2) of this section.

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1991 [1990] to infants under the age of one (1), and for children under the age of six (6) in disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children [infants] are after thirty (30) days from the date of admission, participating out-of-state [disproportionate share] hospitals [(determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays)] shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1) and children under age six (6), without regard to length of stay or number of admissions of the infants and children.

(3) Effective with regard to services provided on or after February 1, 1991, professional costs (i.e., physician fees) for all covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

Section 5. Implementation [Effective] Date. Except as provided in Section 3(8) [Sections 3(9)(a)5 and 4(3)] of this regulation, the amendments to this regulation shall be applicable [effective] with regard to services provided on or after July [January] 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 19, 1991
FILED WITH LRC: July 23, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 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 September 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: 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 hospitals participating in Medicaid.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $8.2 million (costs).

2. Continuing costs or savings: $10.1 million (costs).

3. Additional factors increasing or decreasing costs: Coverage of additional eligible children.

(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 1:044. Mental health center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.130, 42 USC 1396a-d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to services provided by Mental Health Centers for which payment shall be made by the Medical Assistance Program to both the categorically needy and the medically needy.

Section 1. Definition of Psychiatric Nurse. (1) For the purpose of providing Medical Assistance Program reimbursable services, registered nurses employed by participating mental health centers shall be considered psychiatric or mental health nurses when they meet any of the following criteria:
(a) Master of Science in Nursing (MSN) with specialty in psychiatric/mental health nursing; additional experience is not required; or
(b) Graduate of a four (4) year nursing educational program, with a Bachelor of Science in Nursing (BSN) and with a minimum of one (1) year of experience in a mental health setting; or
(c) Graduate of a three (3) year nursing educational program (diploma graduate), and with a minimum of two (2) years of experience in a mental health setting; or
(d) Graduate of a two (2) year nursing educational program, with an Associate Degree in Nursing (ADN) and with a minimum of three (3) years of experience in a mental health setting; or
(e) Effective July 1, 1989, any level of education with American Nursing Association (ANA) certification as a psychiatric and mental health nurse.
(2) Notwithstanding the preceding, any registered nurse employed by a participating mental health center in Kentucky on June 30, 1981 shall be considered a psychiatric nurse so long as their employment with the center continues, for the purpose of providing Medical Assistance Program reimbursable services.

Section 2. Covered Services. The following services provided by participating mental health centers shall be considered covered when rendered within Kentucky Medical Assistance Program guidelines:
(1) Inpatient services, as defined in 902 KAR 20:091, when a center based psychiatrist renders the service, or when the psychiatrist deems it appropriate for the psychologist (including psychological associates), psychiatric nurse, master degree social worker, or individuals with equivalent professional education (as determined by the cabinet) to provide therapy for the patient.
(2) Outpatient services, as defined in 902 KAR 20:091, but not including the noncovered services listed in this section and Section 3 of this regulation, if rendered by a mental health professional from one (1) of the four (4) principal disciplines (psychiatrist, psychologist (including psychological associate), psychiatric nurse, or master degree social worker), or individuals with equivalent professional education (as determined by the cabinet). Services rendered by a staff member other than one of the above shall be covered only if the service is delivered in accordance with a plan of treatment approved by the psychiatrist when delivered under the supervision of a mental health professional from one (1) of the four (4) principal disciplines or an individual with equivalent professional education (as determined by the cabinet). Outpatient services include both on-site and off-site services.
(3) Therapeutic rehabilitation (partial hospitalization), as defined in 902 KAR 20:091, if:
(a) The psychiatrist is present in the therapeutic rehabilitation [partial hospitalization] unit on a regularly scheduled basis (at least monthly) and assumes clinical responsibility for all patients; and
(b) The program has direct supervision by a psychiatrist, psychologist (psychological associate), psychiatric nurse, master degree social worker, or individuals with equivalent professional education (as determined by the cabinet).
[(4) Home visits, defined as visits by center staff to recipients in their homes, if:]
[(a) Certified as a medical necessity by the psychiatrist or if the patient is homebound; and]
[(b) Provided by a mental health professional from one (1) of the four (4) principal disciplines, or individuals with equivalent professional education (as determined by the cabinet), and in accordance with an approved treatment plan.]
(4) [(5)] Detoxification services, when rendered by a center based psychiatrist in a detoxification unit.
(5) [(6)] Psychological testing, if the tests are administered and evaluated by a licensed psychologist, certified [clinical] psychologist, or psychological associate.
(6) [(7)] Emergency services, as defined in 902 KAR 20:091, if the eligible recipient is seen in an emergency situation by any professional or paraprofessional member of the mental health staff.
(7) [(8)] Personal care home services, if rendered by a mental health professional from one (1) of the four (4) principal disciplines (psychiatrist, psychologist, psychiatric nurse,

or master degree social worker) or individuals with equivalent professional education (as determined by the cabinet) to eligible recipients in personal care homes, and including resocialization and remotivation services rendered to personal care home groups, if [such] group services are rendered.

(8) [(9)] Diagnosis deferred, diagnostic category, limited to the initial three (3) visits [only if provided by the psychiatrist or psychologist].

(9) [(10)] Speech disturbance, diagnostic category, only if provided by a psychiatrist or psychologist.

Section 3. Noncovered Services. The following mental health center services shall not be covered [are noncovered]:

(1) Services of an educational or supervisory nature;

(2) Speech therapy;

(3) Alcohol and drug services:

(4) Consultation (except consultation among direct staff of the center);

(5) Collateral therapy for age twenty-one (21) and over (except that immediate family members may participate in joint therapy sessions when the client is present and the client's plan of care as approved by the psychiatrist requires that treatment modality);

(6) Residential treatment for alcoholism;

(7) Services rendered to residents or patients of [intermediate care facilities and skilled] nursing facilities; and

(8) Field trips, recreational and social activities.

Section 4. The provisions of this regulation shall be applicable for services provided on or after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 1, 1991
FILED WITH LRC: July 22, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 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 September 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: 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 mental health centers participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: 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 1:045. Payments for mental health center services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447.325, 42 USC 1396a-d

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 contractural arrangements as the cabinet may require of this class of provider) set by the cabinet, on the following basis:]

(1)(a) Payment rates for the rate year beginning July 1, 1991 shall be based on the

following principles:

1. Interim (not final) rates for the nine (9) direct service cost centers shall be set based on the latest available cost and statistical data from the mental health centers.

2. Costs used in setting the interim rates shall be trended to the beginning of the rate year and indexed for inflation to the end of the rate year.

3. Direct service costs shall be arrayed (the "interim" array) and the interim rate upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable, reasonable cost for each service unit or the upper limit, whichever is less.

5. A retrospective final settlement shall be made after the end of the rate year based on the fiscal year ending June 30, 1992 annual cost report. All costs shall be rearrayed (the final array) for the final settlement. For purposes of determining costs in excess of the upper limit, the upper limit shall be the higher of the maximum derived from the interim array or the final array.

6. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit based on the final array.

7. A funding adjustment of fifty-two (52) cents shall be added to the interim outpatient per unit rates, and the same funding adjustment (i.e., the same fifty-two (52) cents) shall be allowed as a part of the final outpatient per unit rates (without regard to upper limits) to improve compensation of service providers and encourage provision of additional services.

(b) Payment rates for the rate year beginning July 1, 1992 shall be based on the following principles:

1. Interim (not final) rates for the nine (9) direct service cost centers shall be set based on mental health center cost reports submitted for the six (6) month period ending December 31, 1991.

2. Costs used in setting the rates shall be trended to the beginning of the rate year and indexed for inflation to the end of the rate year.

3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable reasonable cost for each service unit or the upper limit, whichever is less.

5. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit.

6. A funding adjustment amount (derived by dividing $1.3 million by the number of outpatient units of service) shall be added to the interim rate (without regard to upper limits) to improve compensation of service providers and encourage provision of additional services.

7. The interim rate shall be adjusted to final propsectively determined rates based on the audited or desk reviewed annual cost reports for the period ending June 30, 1992 with the cost reports indexed for inflation, the upper limits previously determined remaining in effect, and the same funding adjustment allowed.

(c) Payment rates for rate years beginning on or after July 1, 1993 shall be based on the following principles:

1. Final prospectively determined rates for the nine (9) direct service cost centers shall be set based on each mental health center's audited annual cost report for the prior year; if an audited cost report is not available, the most recent unaudited annual cost report shall be the basis for the rate with the rate adjusted as necessary at the time of audit or desk review of the cost center used in setting the rate. Costs shall be actual, reasonable, and allowable costs.

2. Costs used in setting the rates shall be trended to the beginning of the rate year and indexed for inflation.

3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable reasonable cost for each service unit or the upper limit, whichever is less.

5. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit.

6. A funding adjustment amount (derived by dividing $1.3 million by the total number of outpatient units of service) shall be added to the rate (without regard to upper limits) to improve compensation of providers and encourage provision of additional services.

[(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 July 1, 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 reimbursable departmental cost centers are on-site psychiatrist, on-site individual, off-site psychiatrist, off-site individual, group, personal care, therapeutic rehabilitation, inpatient hospital psychiatrist, and inpatient hospital other. [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: July 1, 1991
FILED WITH LRC: July 29, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 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 September 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: 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 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:

1. First year: (Cost) $3.4 million.

2. Continuing costs or savings: $3.4 million.

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: 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.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, AUGUST 15, 1991

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:120. Participation of agencies.

RELATES TO: KRS 78.530 through 78.532, 78.535
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statutes provide for participation of local government entities in the County Employees Retirement System (CERS). This administrative regulation sets out the procedures and requirements for participation.

Section 1. Definitions. (1) "Alternate plan" means the plan under which the employer purchases service credit for its employees by paying the actuarial cost of the service in a lump sum or by annual installments.
(2) "Standard plan" means the plan under which the employer does not purchase service credit for its employees.

Section 2. Before an agency may participate in CERS, the retirement system shall determine that it meets the definition of county in KRS 78.510 and governmental entity as defined in the Internal Revenue Code.

Section 3. For participation under the alternate plan, the agency shall request an actuarial study through the retirement system to determine the cost of purchasing past service for all eligible employees at least ninety (90) days prior to the agency's desired participation date. The agency shall provide the information required by the actuary in writing or in the form of compatible magnetic media and shall pay the cost of the study and any revisions to the study to the actuary.

Section 4. The agency shall adopt an appropriate order that shall establish a participation date and the method of participation. The participation date shall be the first day of any month on or following the date the order is adopted and the method of participation shall be the alternate plan or the standard plan.

Section 5. The agency shall designate an individual to be responsible for reporting wages and employer and employee contributions to the retirement system. The retirement system shall provide forms, instruction and information concerning retirement statutes and regulations to the individual.

Section 6. The board shall review the agency's participation request at the first quarterly board meeting after the agency has reported contributions for a trial period of three (3) or more months. The board may deny participation if the agency fails to comply with retirement statutes governing participation of employees and reporting of contributions during the trial period. The board may deny participation by the agency if fewer than fifty (50) percent of its employees elect to participate in CERS. If the agency is phasing out another retirement plan or if the agency can provide justification for a lower election rate by its employees, the board may allow participation by an agency with fewer than fifty (50) percent of its employees electing to participate in CERS. If the board denies the agency's participation request, the contributions paid to the retirement system during the trial period shall be refunded to the employer and its employees.

Section 7. The annual installment to amortize the cost of the employees' service under the alternate plan shall not be less than ten (10) percent of the total annual payroll for nonhazardous employees and fifteen (15) percent of the total annual payroll for hazardous employees included in the alternate plan. The payment shall be due each year on the first day of the month in which participation began.

JOHN D. ROBEY, CHAIRMAN
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson
(1) Type and number of entities affected: This administrative regulation affects local government agencies that elect or are required to participate in CERS.
(a) Direct and indirect costs or savings to those affected: This administrative regulation sets the minimum payment under the "alternate plan" but has no other affect on the cost 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: There is no increase in paperwork.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: The annual installment minimum establishes sufficient funding for past service purchase by the agency and results in no loss to the

retirement system.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Paperwork requirements are not increased.
(3) Assessment of anticipated effect on state and local revenues: The regulation impacts only those agencies that elect to participate and have budget for the cost.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The installment minimum meets the funding level recommended by the actuary.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes or administrative regulations in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. The regulation sets payments based on the total payroll of an agency so that smaller agencies may purchase past service of their employees at a lower annual installment than larger agencies.

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 relates to the governing body or administration.
3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to retirement benefits for employees of the agency.
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 cost is dependent on the type of participation elected by the governing body and the salaries and service of its current employees at the time of participation.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:130. Hazardous duty coverage.

RELATES TO: KRS 61.592, 78.545(31)
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statute allows agencies participating in the Kentucky Retirement Systems to request hazardous position coverage for employees. This administrative regulation sets out the procedures and forms for requesting hazardous position coverage.

Section 1. An agency participating in the County Employees Retirement System shall adopt an appropriate order to pay the required contributions and provide hazardous coverage to all eligible employees. The effective date of hazardous position coverage in the order shall be the first day of any month following the date of the quarterly meeting of the Board of Trustees which occurs after adoption of the appropriate order.

Section 2. An agency or department participating in the Kentucky Employees Retirement System may provide hazardous position coverage upon authorization by the cabinet secretary or governing board. The cabinet secretary or board chairman shall make the request for hazardous position coverage in writing. The effective date of hazardous position coverage shall be the first day of any month following the quarterly meeting of the Board of Trustees which occurs after the date of the request.

Section 3. The agency or department shall complete and submit the Form HP-1, dated July 1991, incorporated by reference. The form shall be signed by the head of the agency or department and by an individual who can attest that sufficient funds have been budgeted for the employer contributions.

Section 4. The agency or department shall submit a description of the duties of each position for which hazardous coverage is requested.

Section 5. The agency or department shall complete and submit a Form HP-2, dated July 1991 provided by the retirement system for each employee in a position for which the coverage has been requested.

Section 6. If the agency elects to pay the cost of providing hazardous coverage for current employees for past service in positions approved for hazardous coverage, the agency shall request and pay for an actuarial study to determine the cost.

Section 7. The forms required by this administrative regulation are incorporated by reference and are available from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be

cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson

(1) Type and number of entities affected: This administrative regulation affects only those agencies that request hazardous duty coverage for employees.

(a) Direct and indirect costs or savings to those affected: This administrative regulation does not affect the revenue or expenses of affected agencies.

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: This regulation incorporates current paperwork requirements and does not increase those requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There is no fiscal impact to this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: This regulation incorporates existing paperwork requirements and creates no increase.

(3) Assessment of anticipated effect on state and local revenues: There is no impact.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This method required the least reporting/paperwork.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or administrative regulation in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Agencies are allowed to request hazardous coverage for those positions the agency has chosen and are not required to request for all possible positions. This allows agencies to request hazardous coverage for positions as their budget allows.

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 the personnel administration of the entity.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to retirement benefits of police, fire and other similar positions which may qualify for hazardous coverage.

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 cost is dependent on whether the agency pays the cost of converting past service to hazardous coverage or not. The other cost associated are the contributions required by 105 KAR 1:010.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:140. Contribution reporting.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System are required to report creditable compensation and contributions to the retirement systems and other information that the Board of Trustees may require. This regulation sets out the reporting requirements for all participating agencies.

Section 1. Each employer shall report the creditable compensation and contributions of its employees at least once per month on the Summary of Wages Earned, Form 3, dated June 1991, or in the format determined by the the retirement system. Employers who report on magnetic diskette or tape may report on a semimonthly basis. Employers shall report only the creditable compensation earned during the period for which the report is prepared and shall report only the employee and employer contributions on the basis of this creditable compensation.

Section 2. If creditable compensation in excess of actual compensation is reported, the employer shall request a refund of the excess employer and employee contributions. The retirement system shall remit the excess employer and employee contributions to the employer in the form of checks made payable to the employer and employee. The employer shall distribute the employee's check to the employee if the amount is due the employee or shall

redeposit the check into the account from which the funds were drawn.

Section 3. If creditable compensation less than actual creditable compensation paid is reported, the employer shall report the deficiency by pay period to the retirement system along with the employer and employee contributions owed as a result of the deficiency. The employer may report the additional creditable compensation by letter or other form which shall include:

(1) The Social Security number, name and gross creditable compensation of the employee by pay period.

(2) The total employer and employee contributions required on the additional creditable compensation and the computation of both amounts.

(3) The signature of the individual authorized by the agency to report contributions to the retirement system.

Section 4. If an expense allowance is paid to a county official by the state, the state shall withhold the employee contributions applicable to the amount and remit it to the retirement system on behalf of the county. The county shall report the employer contributions on the Expense Allowances Quarterly Report, Form 3-E dated July 1991.

Section 5. An employer may change the name or address of an employee on its reports. The employer shall submit within thirty (30) days of the change a letter or personnel document effecting the change signed by a personnel or payroll official.

Section 6. Each employer shall provide to the retirement system, upon request and in the form prescribed by the retirement system, information relating to all employee wages, employment status or other employment related information. Upon request, each employer shall make all records related to its employees available to the retirement system during regular working hours.

Section 7. The forms required by this regulation are incorporated by reference and may be obtained from the retirement office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, CHAIRMAN

APPROVED BY AGENCY: August 7, 1991

FILED WITH LRC: August 8, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson

(1) Type and number of entities affected: 1,180 state and local agencies participating in KERS, CERS and SPRS.

(a) Direct and indirect costs or savings to those affected: This administrative regulation does not affect costs. It describes the procedures to be followed in reporting contributions to the retirement system.

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: This regulation incorporates existing paperwork requirements.

(2) Effects on the promulgating administrative body: This regulation does not affect the retirement systems.

(a) Direct and indirect costs or savings: There are no costs associated with this regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: This regulation incorporates existing paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no impact on revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This procedure provides uniform contribution reporting. However, it allows agencies with computerized payroll systems to report by magnetic media instead of paper.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no known statute or regulation in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Reporting method is tailored to the agency's payroll system. Those agencies with computer systems are allowed to report by tape or diskette to avoid unnecessary paperwork.

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 payroll/personnel administration.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to reporting of employer and employee contributions.

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: This regulation will not affect agencies currently participating in the retirement systems financially because the expense is already being born by the agency. The new agencies that elect participation will have the expense of completing the monthly contribution reports. This cost will be dependent upon the number of employees and whether the agency reports using a computerized payroll system or manually.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:150. Installment purchase procedures.

RELATES TO: KRS 16.645(20), 61.552(16), 78.545(35)

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: The statute provides that an employee participating in the Kentucky Retirement Systems may purchase service credit by payroll deducted installments. This administrative regulation sets out the process and forms related to this option.

Section 1. Installment payment plans shall be allowed for the employees of an agency that has certified its willingness to deduct and remit installment payments on all employees participating in the Kentucky Retirement Systems. The certification shall be made on the Employer Certification Form, Form 113, dated June 1991, provided by the retirement system.

Section 2. The retirement system shall calculate the monthly payment necessary to pay the cost of the service being purchased. The employee may select a payment period of not less than one (1) year and not more than five (5) years in accordance with the statutory requirement. The retirement system shall provide an IPS Option Selection Form, Form 114, dated June 1991, to the employee showing his payment options and providing a space for selecting the option of his choice. The employee shall return the completed form to the retirement system by its due date. If the employee returns the form after the date, the cost shall be recalculated for a date not less than thirty (30) days following and returned to the employee.

Section 3. Upon receipt of the completed form, the retirement system shall print an Installment Service Purchase Agreement, Form 115, dated August 1989, and return the form to the employee. The agreement shall contain an authorization for withholding the installment payments and shall show the amount of the installment payment, the date the payment shall begin, the date the payments shall end, the total payments and the total service purchased. An amortization schedule shall be attached. The employee shall sign and return the agreement by its due date. The retirement system shall notify the employer of the date to begin deductions by providing a copy of the completed agreement.

Section 4. The employer shall remit the installments to the retirement system as required by the agreement, but shall be solely responsible for withholding sufficient amounts from the employee to allow the payment of the installments. The installments shall only be remitted to the retirement systems along with the employer's contribution report. If the employee is not employed twelve (12) months each year, the agency shall withhold sufficient funds to allow the agency to remit the required deductions with the contribution reports during any months in which the employee is not paid. The retirement system shall not accept personal checks from the employee as payment for these deductions.

Section 5. The amount required to purchase one (1) month of service credit shall be calculated by dividing the total of the installment payments due under the agreement by the number of months of service credit being purchased. Upon receipt of installment payments equal to this amount, the retirement system shall credit one (1) month of service credit to the member's account.

Section 6. The employee shall notify the retirement system in writing if he desires to terminate the installment agreement. Upon receipt of the notice from the employee, the retirement system shall notify the employee and his employer of the date to stop deductions.

Section 7. The retirement system may refuse to allow new installment agreements for employees of an agency which fails to deduct and remit the installment payments in accordance with the terms of this administrative regulation.

Section 8. The forms required by this administrative regulation are incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: August 7, 1991

FILED WITH LRC: August 8, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given

the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson
(1) Type and number of entities affected: 630 state and local government agencies currently deduct installment purchase deductions from employees paychecks.
(a) Direct and indirect costs or savings to those affected: No cost is associated with the program for employers. Employees have the deduction withheld from their paychecks.
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: Employers must report a separate deduction, which may require minor program changes for those reporting on magnetic tape or diskette.
(2) Effects on the promulgating administrative body: The more agencies that participate the larger the number of installment purchase estimates and agreements the systems must generate. All costs are absorbed in existing budget.
(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: The retirement system must maintain additional forms and reports in member folders and additional accounting records.
(3) Assessment of anticipated effect on state and local revenues: This does not affect local or state revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The installment system was required by KRS 61.552(16).
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. Agencies are not required to participate unless they have the capability of reporting the additional payroll deduction, but may elect to do so once the capability is obtained.

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 affects payroll/personnel administration.
3. State the aspect or service of local government to which this administrative regulation relates. This relates to retirement benefits of participating employees in agencies that deduct installment purchase amounts from employee checks.
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: No employer money is involved in the installment purchase. The employer must report the deductions. The added amount of work in reporting is minimal in most cases since the retirement systems provides the agency with the amounts and requests confirmation only.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:160. Sick leave plans.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: KRS 78.616 provides for retirement service credit for unused sick leave for members of the County Employees Retirement System. This regulation provides the requirements for participation in the program by individual county agencies, the calculation of the service credit and the payment of the cost of the credit by the employer.

Section 1. Definitions. (1) "Alternate plan" means the sick leave program described in KRS 78.616(5).
(2) "Standard plan" means the sick leave program as described in KRS 78.616(1), (3) and (4).

Section 2. An agency participating in the County Employees Retirement System may provide a sick leave program under KRS 78.616 by adopting an order appropriate to the agency and by completing and filing the form for the sick leave program provided by the retirement system.
(1) Only one (1) sick leave program under KRS 78.616 shall be offered to the employees of an agency.
(2) The agency shall certify to the retirement system that the program shall be universally administered.
(3) The agency shall pay all costs of the program.
(4) The agency shall certify to the retirement system the number of hours that constitutes a regular working day for employees of the agency.
(5) If the agency has no retirement sick leave program, it may choose the standard plan or it may choose the alternate plan. If the agency adopted the standard plan prior to July 1988, it

may choose to adopt the alternate plan. Once a sick leave program is adopted, the agency shall continue to offer a sick leave program to its employees.

Section 3. If the agency adopts the standard plan, upon a member's retirement:

(1) The agency shall certify the unused sick leave credit which the member has accumulated on the Sick Leave Authorization, Form 24, dated April 1984.

(2) The retirement system shall determine the number of days of credit and divide the number of days by twenty-one (21) which shall be the average number of working days in a month. If the remainder is equal to or greater than eleven (11), the member shall receive credit for an additional month. The cost of the credit, determined by the formula described in KRS 61.552(9), for up to six (6) months of service shall be paid by the agency within thirty (30) days of notification by the retirement system.

(3) If the total accumulated sick leave is greater than six (6) months, the member may purchase some or all of the additional months by paying the cost, determined by the formula described in KRS 61.552(9), to the retirement system before his retirement date.

Section 4. Agencies adopting the alternate plan, shall also certify the maximum number of sick leave days that an employee may accumulate prior to retirement. Upon a member's retirement:

(1) The agency shall compensate the member for all accumulated sick leave up to the maximum allowed. The rate of compensation for each day shall be based on the daily salary rate calculated from the member's current rate of pay.

(2) When notified by the retirement system, the agency shall withhold employer and employee contributions from the member's sick leave compensation and shall remit the contributions along with the sick leave certification form. The contributions and compensation shall not be reported with the regular payroll.

(3) If the member has one (1) or more months of service credit as determined in Section 2, the service shall be added to the member's total service credit.

(4) Compensation and service shall also be included in the member's final compensation as follows:

(a) The member's sick leave credit in months and the compensation for those months shall be included in the last fiscal year used in his final compensation until the service credit in the fiscal year has reached twelve (12) months.

(b) When service credit in the last fiscal year has reached twelve (12) months, the remaining months of service and compensation shall be included in the first fiscal year used in his final compensation until service credit in the fiscal year has reached twelve (12) months.

(c) When service credit in both the last and first fiscal years used in his final compensation have reached twelve (12) months, the remaining months and compensation shall be used in lieu of the member's service and salary in the first fiscal year of the members final compensation. The salary replaced shall be the monthly average of the member's actual salary in the fiscal year.

Section 5. The forms required by this administrative regulation are incorporated by reference and may be obtained from the retirement office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: August 7, 1991

FILED WITH LRC: August 8, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson

(1) Type and number of entities affected: Currently applies to 78 CERS agencies that have elected sick leave coverage and potentially 800 CERS agencies that could participate.

(a) Direct and indirect costs or savings to those affected: The cost of the program is based on the numbers of retirees, their salaries and total service as well as their total accumulated sick leave.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): Costs may be offset by retention effect of the benefit and the incentive it gives to employees to save sick leave credit rather than use it unnecessarily.

(b) Reporting and paperwork requirements: Employer must complete a form for each retiring employee.

(2) Effects on the promulgating administrative body: There is no measurable affect.

(a) Direct and indirect costs or savings: Costs of the additional credit are paid by the employers and the retirement systems remains adequately funded.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: This regulation incorporates existing paperwork requirements.

(3) Assessment of anticipated effect on state

and local revenues: This regulation only affects those agencies that choose to participate.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This program is established by statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. Agencies are allowed to participate if they choose and have the financial ability and may select the plan best suited to their benefit needs and sick leave policies.

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 affects payroll/personnel administration.
3. State the aspect or service of local government to which this administrative regulation relates. This relates to the retirement benefits of participating employees.
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 cost is dependent upon the number of employees retiring in each year, their ages, their salaries and the total amount of unused sick leave credit to be purchased for each. Local government agencies voluntarily participate in a sick leave program.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:170. Membership form requirements.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: KRS 16.530, 61.526 and 61.540 require a member of the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System to file information with the Board of Trustees as a condition of membership. This regulation establishes the information required for membership.

Section 1. An employee eligible for participation on the date his agency first participates shall complete an Election or Rejection Form, Form 2, dated July 1991, designating his desire to participate in or waive participation and benefits in the retirement system. The original form shall be kept on file in the retirement office.

Section 2. Within thirty (30) days of participation, an employee who is required to participate or who elects to participate shall complete a Membership Form, Form 1, dated December 1989. The membership form shall be kept on file in the retirement office.

Section 3. The employee may also complete a Beneficiary Designation Form, Form 35, dated July 1991 which shall be sent to the retirement office. If a designation of beneficiary form is not completed, if no beneficiary is named or if an improper beneficiary is named, the member's estate shall be the beneficiary until the member files a different designation with the retirement system.

Section 4. (1) If the employee is simultaneously eligible to participate in more than one (1) of the Kentucky Retirement Systems, the employee may elect to participate in only one (1) system and waive participation in and any rights to benefits from the employment in the other system during the period of simultaneous employment.
(2) The employee shall notify the retirement system in writing of his intent to exercise this right under KRS 61.545(3). Upon receipt of the notification, the retirement system shall provide the employee with an estimate of the benefits that may be forfeited by the employee the Simultaneous Employment Choice of Systems Form, Form 26, dated February 1991, necessary for making an election.
(3) If the employee does not complete and return the form, the employee shall participate in both systems simultaneously and his service shall be prorated between the systems based on his ratio of his creditable compensation in each system to his total creditable compensation from all systems.
(4) If the employee submits the completed form, the employer that participates in the system in which the employee rejected participation shall be notified that it shall not report creditable compensation or contributions on the employee for the period of simultaneous employment. If contributions were reported prior to receipt of the form, the employer and employee contributions shall be refunded to the employer and employee and all service credit under that system shall be deleted from the employee's account for the period of simultaneous employment.

Section 6. Upon termination of employment, an employee who is not vested for monthly benefits may request a refund of his account by completing and returning an Application for Refund, Form 25, dated July 1989.

Section 5. The forms required by this regulation are incorporated by reference and may be obtained from the retirement office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson
(1) Type and number of entities affected: All current and future employees of agencies participating in KERS, CERS and SPRS, 107,000 currently.
(a) Direct and indirect costs or savings to those affected: There is no cost to the individual.
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: Incorporates existing procedures and forms required by statute.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: The costs associated with this regulation are for printing the forms provided to the members. All forms printed for all regulations totals $6,800 per year.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: This regulation incorporates existing paperwork requirements and does not cause an increase.
(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The information is required by law and necessary for the issuance of benefits.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering does not apply. The same information is required of each member who participates in the retirement system.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:180. Death before retirement procedures.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statutes provide for the payment of certain benefits upon the death of a member prior to retirement. This administrative regulation sets out the procedures for issuance of benefits where death occurs prior to retirement.

Section 1. After learning of the death of a member prior to retirement, the retirement system shall contact the named beneficiary or estate of the deceased member. The retirement system shall require a Certification of Beneficiary, Form 7, dated July 1991, from the beneficiary named by the member.

Section 2. The following information shall be required before benefits shall be paid:
(1) A copy of the death certificate for the member.
(2) If a beneficiary is deceased, a copy of the death certificate for the beneficiary.
(3) If a beneficiary is a minor child, a copy of the child's birth certificate.
(4) If a beneficiary is a minor child of divorced parents, a copy of the court appointment of permanent guardianship, conservator or trustee.
(5) If a beneficiary is divorced from the member, a copy of the divorce decree.
(6) If monthly benefits are available to the beneficiary, copies of the birth certificates of the member and the beneficiary.
(7) If an estate is beneficiary, verification of the name of the individual authorized to manage the financial affairs of the deceased.

Section 3. If the death certificate shows the cause of death to be homicide or the subject of a pending investigation, the retirement office may require additional evidence relating to the cause of death or investigations and arrests by law enforcement agencies and may delay benefits until it deems the cause of death to be fully explained.

Section 4. Upon receipt of the death certificate, the retirement office shall provide to the beneficiary the monthly payment options available on the form Estimated Retirement Allowance, Form 6A, dated July 1991. If the member died in the same month as his effective retirement but prior to the drawing of the first check, the beneficiary shall also be offered the benefits payable to a beneficiary under the option the member selected. If a refund of the account is to be made, the beneficiary shall complete a Form 8, dated July 1991.

Section 5. No payment shall be made until all information, documents and forms required by the retirement system are received.

Section 6. The forms required by this administrative regulation are incorporated by reference and may be obtained from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, Monday through Friday between 8 a.m. and 4:30 p.m.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson
(1) Type and number of entities affected: Beneficiaries of members who die prior to retirement.
(a) Direct and indirect costs or savings to those affected: There is no cost associated with the regulation. This regulation sets out the forms and documents required to establish death and provide death benefits.
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: This regulation requires no additional forms from beneficiaries than currently required.
(2) Effects on the promulgating administrative body: There is no measurable cost in providing the forms required by this regulation.
(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: This regulation reduces the number of forms used internally by the retirement system.
(3) Assessment of anticipated effect on state and local revenues: This regulation has no effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The information required by this regulation is necessary for determining the beneficiary, date of death and benefits to be paid in the event of death.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering does not apply where the same information is required in each case where a death occurs.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:190. Qualified domestic relations orders.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: KRS 61.690(3) requires the retirement systems to honor qualified domestic relations orders which comply with the policy of the Board of Trustees established by this administrative regulation.

Section 1. Definitions. (1) "Alternate payee" means an individual who is named in a qualified domestic relations order to receive a portion of the member's retirement benefits.
(2) "Qualified domestic relations order" (QDRO) means a court order issued incident to an annulment, separation or divorce which establishes an alternate payee's rights to a portion of the member's benefit.

Section 2. A QDRO shall be accompanied by a statement from counsel that the QDRO is current and not superseded by a subsequent QDRO and shall contain the following:
(1) Certification by the clerk of the circuit court in which the QDRO was entered;
(2) The name, Social Security number and last known mailing address of the member and the alternate payee;
(3) The date of marriage and the date of decree of dissolution of marriage;
(4) The correct name of the system or systems to which it applies;
(5) If the member is retired, the percentage of the member's retirement allowance to be paid to the alternate payee or the specific amount to be paid to the alternate payee; and
(6) If the member is not retired, the percentage to be paid to the alternate payee upon the member's retirement, death or withdrawal from the system and whether the percentage pertains to the benefits attributable to the period of marriage, the member's entire period of employment or other specified period.

Section 3. If the retirement system determines that a QDRO does not meet the requirements of Section 2 of this regulation, the retirement system shall do the following:
(1) Notify the participant, alternate payee and their legal counsel, if known, that the QDRO

is not in compliance and will not be followed and the necessary changes to be made to the QDRO to bring it into compliance.

(2)(a) If the member is retired, the general manager shall direct the percentage or amount of benefits to be paid to the alternate payee, if determinable from the QDRO, to be withheld from the member's retirement allowance and placed in abeyance until the QDRO is amended.

(b) If the QDRO is not amended to comply with this regulation within eighteen (18) months from the date the QDRO was first received, the percentage or amount of the member's retirement allowance held in abeyance shall be restored to the member's account and paid to the member.

(c) A QDRO or amended QDRO received after the close of the eighteen (18) month period and determined to be in compliance shall only be applied prospectively.

Section 4. A QDRO shall not be effective until received by the retirement system and shall apply only to those monthly retirement allowances that have not been processed by the retirement system by the date of receipt.

Section 5. If the QDRO is received prior to the member's retirement, then upon the member's retirement pursuant to KRS 61.590, the system shall notify the member and the alternate payee of the benefits payable under the QDRO which shall be calculated as follows:

(1) The benefit payment shall be divided between the member and the alternate payee as follows: The alternate payee shall receive the amount computed by multiplying the basic option amount due the member by the percentage allocated to the alternate payee by the terms of the QDRO multiplied by a fraction, the numerator of which shall be the period of service specified in the QDRO and the denominator of which shall be the member's total service credit. The member shall be paid all amounts in excess of the amounts paid to the alternate payee.

(2) If a lump sum payment equal to balance of the member's account is to be made, the percentage determined by this calculation shall be multiplied by the balance of the member's account and the result paid to the alternate payee. The member shall be paid all amounts in excess of the amounts paid the alternate payee.

(3) If a monthly benefit is paid, the options made available to the alternate payee shall be derived from the member's basic option.

(4) Service added for disability under KRS 61.605 or KRS 16.581(2) shall not be included in the member's total service for determining the amount payable to the alternate payee. Purchased service credit for employment or service during the period of marriage shall be included in the calculation under this subsection.

(5) The payment options offered to the alternate payee shall be based on the alternate payee's life expectancy. The alternate payee shall be offered the payment options described in KRS 61.635 which do not provide lifetime benefits to a beneficiary and, if the member's is eligible, the ten (10) year certain option as proved by KRS 16.576(5).

(6) If the alternate payee predeceases the member after the member's retirement, a lump sum, determined actuarially, of the payments remaining to the alternate payee shall be paid to the alternate payee's estate.

(7) The alternate payee shall receive a pro rata share of any increases given recipients under KRS 61.691.

Section 6. (1) If the member dies prior to retirement and prior to the death of the alternate payee, the member's account shall be divided in accordance with the QDRO between the alternate payee and the beneficiary.

(2) If the death benefit is a refund of the member's contribution account, the alternate payee shall only be offered a lump sum payment representing a portion of the member's account calculated in accordance with Section 5 of this administrative regulation.

(3) If the death benefit is calculated under KRS 16.578 or 61.640, the alternate payee shall be allowed to choose a lifetime annuity, a sixty (60) month certain payment, a 120 month payment or an actuarial lump sum payment.

Section 7. If the QDRO is received after the member's retirement, then the alternate payee shall receive the percentage or amount of the member's retirement allowance as stated in the QDRO until the benefit payable to the member or the member's beneficiary ceases under the terms of the payment option previously selected by the member.

Section 8. If the alternate payee dies prior to the member's death, retirement or withdrawal of account, an amount shall be paid to the alternate payee's estate in a lump sum. In computing this amount, the member's benefit shall be determined as if the member had applied for benefits on the first day of the month following receipt of the QDRO. If the member was not eligible for monthly benefits on that date, the alternate payee's estate shall receive a portion of the member's contribution account calculated in accordance with Section 5 of this administrative regulation. At the time of the member's actual death, retirement or withdrawal from the system, the member's benefit shall be actuarially reduced to reflect the payment made to the alternate payee's estate.

Section 9. When benefits become payable to the alternate payee, the retirement system shall establish a separate account for the alternate payee which shall consist of the alternate payee's pro rata share of the member's contributions, service and benefit. Once the alternate payee's account has been established, the alternate payee shall not be entitled to further benefits acquired by the member.

Section 10. The payment options shall be offered to the alternate payee on an Estimate of Monthly Retirement Allowance, Form 6A-QDRO, dated July 1991, incorporated by reference. The form can be obtained from the Kentucky Retirement Systems at its office at 1260 Louisville Road, Frankfort, Kentucky between 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: August 7, 1991

FILED WITH LRC: August 8, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson
(1) Type and number of entities affected: All members who divorce and whose divorce settlement involves division of the member's retirement benefits.
(a) Direct and indirect costs or savings to those affected: There is no cost associated with the regulation. This sets out the procedures and requirements for an order affecting an account in Kentucky Retirement Systems.
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: This regulation should eliminate unnecessary correspondence and paperwork by clarifying what is required for an order.
(2) Effects on the promulgating administrative body: There are no costs associated with this regulation.
(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: This regulation should reduce the number of incomplete orders received.
(3) Assessment of anticipated effect on state and local revenues: There is no impact on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation meets all the requirements established by the actuary and legal counsel for dividing a retirement benefit in the case of divorce.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. The benefit division is determined by the member's status (retired/not retired) and the division is proportionate to the member's service earned during the marriage.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:200. Retirement procedures and forms.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: This administrative regulation sets out the procedures for application for and receipt of retirement benefits by members of the Kentucky Retirement Systems.

Section 1. The member shall submit a Notification of Retirement, Form 6, dated January 1991, to the retirement systems prior to his desired effective retirement date. The member shall designate the beneficiary of his retirement allowance on the form. The form shall be dated and the employee's signature shall be witnessed.

Section 2. The retirement system shall estimate the member's retirement allowance based on the salary reported to the system and information that may be supplied by the member or his employer. The payment options and amounts available to the member shall be printed on the Estimated Retirement Allowance, Form 6A, dated July 1991, and provided to the member with a place to designate his choice of payment options.

Section 3. The member shall designate a desired payment option and sign and date the form. The member's signature shall be witnessed and the form returned to the retirement office. If the member is retiring under early retirement provisions, the member may return the form within six (6) months of his retirement date and retain the effective date of retirement shown on the form. If the member fails to return the form within six (6) months of his retirement date, the member's notification of retirement shall be considered void and he shall be required to submit a new notification of retirement.

Section 4. The member shall provide the retirement system a copy of his birth certificate and, if a survivorship payment option is selected, a copy of the birth certificate of the beneficiary named on his notification of retirement. If a birth certificate is not available, the retirement system may accept other proof of age accompanied by a letter stating that a birth certificate is not available. The retirement system may accept one (1) or more of the following as proof of age of the member or his beneficiary: age record of the Social Security Administration, hospital record, baptismal record, marriage license, birth certificate of child or military discharge.

Section 5. The retirement system shall provide an Authorization for Deposit Form, Form 107, dated June 1983, to the member to have his monthly retirement allowance deposited to his account in a financial institution. The member and his financial institution shall provide the information and authorizations required for the

electronic transfer of funds from the state treasurer's office to the designated financial institution.

Section 6. The retirement office shall provide a Form 103, dated July 1991, to the member to certify service with another agency participating in the Kentucky Retirement Systems for which he may be eligible to purchase credit prior to retirement. The retirement office shall provide the member with the cost of purchasing the service and an estimate of the benefits attributable to the additional service prior. The member shall have the right to purchase the service credit within thirty (30) days of his retirement date.

Section 7. The retirement office shall provide forms effective July 1991 necessary for the selection of medical insurance coverage for himself and his spouse and dependents under the group insurance plan or to waive the right to insurance coverage at the time of retirement. Members who fail to submit the forms within thirty (30) days of their effective retirement date shall not be eligible for benefits under the insurance plan until the following open enrollment period.

Section 8. The retirement office shall provide an Income Tax Withholding Preference, Form 17, dated October 1989, to the member to request that federal income taxes be withheld or not withheld from his retirement allowance.

Section 9. The retirement office shall provide a Death Benefit Designation, Form 36, dated June 1991, to the member to designate a beneficiary for the death benefit provided by the Kentucky Retirement Systems.

Section 10. The forms required by this administrative regulation are incorporated by reference and are available from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson
(1) Type and number of entities affected: Every retiring member, 4,952 in FY 90-91.
(a) Direct and indirect costs or savings to those affected: There is no cost to the member. This regulation sets out the forms necessary for obtaining retirement benefits.
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: The regulation incorporates existing paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: The cost is the cost of printing forms. The cost of printing all forms for the retirement systems is $6,800.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: The regulation incorporates existing paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: This regulation does not affect state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: These forms are required by law or are reasonable to obtain the information necessary to issue monthly retirement benefits.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. The same information is required of each retiring member. Tiering does not apply.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:210. Disability procedures.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statutes provide for disability benefits to members of the retirement systems and for a process of appealing a denial of disability benefits. This administrative regulation describes those procedures.

Section 1. (1) Application for disability benefits shall be made on the Notification of Retirement, Form 6, dated January 1991.

(2) The application shall be received in the retirement office within twelve (12) months of the employee's last day of paid employment, which shall consist of 365 calendar days. The year shall begin on the day after the last day of paid employment and shall end at close of business on the 365th day following. If the last day of the period is a Saturday, Sunday or holiday, then the application shall be valid if received in the retirement office by the close of the next business day following the weekend or holiday. The employer shall certify the last day of paid employment. The application may be submitted prior to the member's last day of paid employment.

Section 2. If the member is eligible to begin drawing early retirement benefits, the member shall be notified of his right to a retirement allowance while his disability application is being processed. Election of early retirement by the member shall not affect his application for disability retirement.

Section 3. If the member is not in a hazardous position, a Job Description, dated August 1988, shall be completed by the member and by his employer and submitted to the retirement office. The descriptions shall be on the form provided by the retirement office. The retirement office may require additional details from the member and the employer on the member's job duties.

Section 4. The retirement office shall request the medical records of the member from the physicians or medical facilities named on the application. The member's physicians or medical facilities shall submit copies of all medical records, test results or other information applicable to the member to the retirement office. Statements by the physicians shall not be considered medical evidence unless accompanied by documented medical records or test results. The retirement office shall pay a reasonable fee for the copies. Amounts above that paid by the retirement office for the copies shall be the responsibility of the member.

Section 5. The member shall provide to the retirement system information concerning his status with regard to Workers' Compensation and Social Security disability benefits.

Section 6. When both of the job descriptions and all medical information from at least two (2) physicians or medical facilities that have treated the member have been received, the information shall be submitted to the medical examiner.

Section 7. The medical examiner shall base his determination on the medical records contained in the member's retirement file. The medical examiner may contact the member or the member's physicians to request additional medical information.

Section 8. The time limits in KRS 61.665 for the member's actions in response to a denial, reduction or discontinuance of benefits shall be counted beginning on the day following receipt of notice by the member from the retirement office and shall continue until close of business on the date the member files the necessary action with the retirement office or the date the time period elapses. The period shall toll until the member is in receipt of written notice from the retirement office of further denial. When the periods allowed under the statute have been exhausted, the member shall have no further right to appeal to the hearing officer.

Section 9. The member shall make a request for a formal appeals hearing in writing. If the member is unable to attend or desires to reschedule a formal appeals hearing, the member shall send the retirement office a request in writing prior to the date of the hearing, and the hearing officer may reschedule the hearing upon a finding of good cause.

Section 10. The hearing officer may allow the member to introduce, among other evidence, the determination of Workers' Compensation or Social Security Administration awarding disability benefits to the member. The hearing officer shall only consider competent medical evidence within or attached to the determination and shall not consider any preexisting illnesses or vocational factors.

Section 11. The hearing officer may request a prehearing conference or may consider new medical evidence not already part of the member's retirement file.

Section 12. All parties shall have seven (7) working days to submit written exceptions to the hearing officer's findings and conclusions to the retirement office, beginning on the day following receipt of the hearing officer's recommended order.

Section 13. (1) If the member's application for disability is approved, the member's disability benefit shall be paid retroactive to the month following the month of the member's last day of paid employment.

(2) If the member did not receive early retirement benefits, upon the member's selection of a payment option, the retirement office shall pay the member the total monthly retirement allowances owed.

(3) If the member received early retirement benefits, the retirement office shall calculate and pay to the member the difference between the early retirement benefit which was paid to the member and the disability benefit. The member shall not change his payment option.

(4) Any increases provided to recipients under KRS 61.691 shall be applied to the member's disability benefit in determining the total retroactive payment owed to the member.

Section 14. The forms required by this administrative regulation are incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

Section 15. 105 KAR 1:110, Definition of permanent disability is hereby repealed.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this

administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson
(1) Type and number of entities affected: Every disability applicant, 564 in FY 90-91.
(a) Direct and indirect costs or savings to those affected: There is no cost to the disability applicant.
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: This regulation incorporates existing paperwork requirements.
(2) Effects on the promulgating administrative body: This regulation does not increase administrative costs.
(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: This regulation incorporates existing paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: This regulation has no impact on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The forms contained in this regulation are required by KRS 61.665.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering does not apply. The same information is required of each disability applicant.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:215. Administrative hearing.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statutes provide that an affected person aggrieved by a decision of the Board of Trustees, which is not a determination relating to disability retirement benefits, may appeal the decision to Franklin Circuit Court. There exists a need for an administrative appeal process for these individuals prior to the filing of an appeal in court. This regulation establishes the administrative appeal process.

Section 1. Definition. "Affected person" means a member, retired member or recipient as defined in KRS 16.505, 61.510 and 78.510.

Section 2. When the system takes action which substantially impairs an affected person's benefits or rights under KRS 16.505 to 16.652, 61.510 to 61.705 or 78.510 to 78.852, except action which relates to entitlement to disability benefits, the system shall notify the affected person of the opportunity to request a hearing. The notification shall be contained in the notice of action. An affected person may request a hearing by submitting such request in writing within thirty (30) days after the date of the notice of the opportunity to request a hearing. The request for hearing shall be filed with the general manager of the system at its office in Frankfort. The request for hearing shall contain a short and plain statement of the basis for request.

Section 3. Failure of the affected person to request a formal hearing within the period of time specified shall preclude the affected person from proceeding any further with his cause of action. This section shall not limit the affected person's right to appeal to a court.

Section 4. Upon request, the system shall schedule a hearing to be held not more than sixty (60) days after the request for a hearing has been received by the system unless otherwise agreed. The notice of hearing shall be served as described in Section 20 of this regulation and shall include a statement of the time, place and nature of the hearing.

Section 5. The system may, either through review of its records or conference with the affected person, recommend a favorable determination prior to scheduling a hearing. Upon notification of a favorable determination, the affected person may withdraw the hearing request or request that the hearing be scheduled.

Section 6. Any party to a hearing may be represented by counsel, make oral or written argument, offer testimony, orally or by deposition, cross-examine witnesses, introduce direct testimony from an expert approved by the hearing officer through a written report, or take any combination of these actions. Witness testimony may be given by deposition in lieu of personal appearance. An impartial hearing officer appointed and paid by the board shall

preside at the hearing, keep order and conduct the hearing. Oaths and affirmations shall be administered by the hearing officer or court reporter. The hearing officer shall permit any party to represent himself. Failure to appear without good cause or failure to comply with any prehearing or interlocutory order of the hearing officer shall be grounds for a default.

Section 7. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Upon request, parties shall be given an opportunity to compare any copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the system's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The system's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Section 8. Each formal hearing shall be recorded, and a transcript made available on the motion of any party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay the cost thereof. When certified as a true and correct copy of the testimony by the system, the transcript shall constitute the official transcript of the evidence.

Section 9. The hearing officer shall prepare findings of fact and conclusions of law based on the evidence appearing in the record as a whole and make a recommendation.

Section 10. The hearing officer shall, within thirty (30) days of the close of the formal hearing make a report and a recommended order to the board. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. If the board finds upon written request of the hearing officer that additional time is needed, then the board may grant a reasonable extension. The hearing officer shall mail postage prepaid, a copy of his report and recommended order to all parties. The parties may file within fourteen (14) days of mailing of the hearing officer's report and recommended order exceptions to the report and recommended order. There shall be no other or further submissions.

Section 11. The board shall consider the report and recommended order and any exception filed and pass upon the case within a reasonable time. The board may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the system's final order, or issue their own final order.

Section 12. The system shall mail the final decision of the board to the affected person or his legal representative. If any extension of time is granted by the board for a hearing officer to complete his report, the system shall notify the affected person or his legal representative at the time of the granting of the extension.

Section 13. The board shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

Section 14. A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.

Section 15. There shall be no exparte communications between the parties or representatives of the parties and the hearing officer regarding an affected person.

Section 16. Formal hearings shall be held at the system's office in Frankfort unless another location is determined by the hearing officer.

Section 17. All requests for a hearing pursuant to this section shall be made in writing.

Section 18. The board may establish an appeals committee whose members shall be appointed by the chairman and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.

Section 19. Any affected person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing suit in the Franklin Circuit Court within the time period prescribed in KRS 61.645(14). No new or additional evidence shall be introduced in that proceeding and the court shall hear the case upon the record as attested.

Section 20. Any proposed order or order shall be served by one (1) of the following methods:

(1) The system may place a copy of the document to be served in an envelope, and address the envelope to the affected person to be served at the address of the affected person existing in the system files or at the address set forth in written instructions furnished by the affected person or his legal representative. The system shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The system shall forthwith enter the fact of mailing in the record and make entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the

record. The system shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope. The return receipt shall be proof of the time, place, and manner of service.

(2) The system may cause the document, with necessary copies, to be transferred for service to any person authorized by the board or by any statute or rule to deliver them, who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service.

(3) The methods of service specified herein shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable law.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: August 15, 1991

FILED WITH LRC: August 15, 1991 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 10 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson

(1) Type and number of entities affected: This number cannot be determined because it is a new procedure. Those affected will be certain individuals who are adversely affected by a decision of the board.

(a) Direct and indirect costs or savings to those affected: There is no cost to those affected. Costs can be absorbed within the existing budget.

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: The evidence required by the hearing will benefit the individual by providing an avenue of administrative relief.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Some cost will be associated with the procedure. The cost will depend on the number of individuals affected by board decisions, which cannot be determined until the procedure is in place.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The benefit to the member will offset the additional paperwork required of the retirement systems.

(3) Assessment of anticipated effect on state and local revenues: There will be no impact to state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is an obvious need for an administrative hearing procedure for certain individuals.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Both the individuals affected and the board should benefit from the administrative hearing procedure, which provides due process to the individuals and may eliminate some litigation.

TIERING: Was tiering applied? Tiering does not apply. The hearing process must treat all individuals equally.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:220. Annual disability review.

RELATES TO: KRS 16.596, 61.610, 78.545

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: The statutes provide for an annual medical or financial review of certain members of the Kentucky Retirement Systems who retired under disability. This regulation sets out the process for those annual reviews.

Section 1. (1) The board shall review the medical status of hazardous members who are receiving disability benefits, other than total and permanent, each year on the anniversary of the member's initial approval by the board until the member reaches age fifty-two (52) prior to the board meeting.

(2) The member shall submit the names of the physicians or medical facilities that treated the member within the preceding twelve (12) months.

(3) The retirement office shall request the member's medical records from the physicians and medical facilities and shall submit the records received to the board's medical examiners.

(4) The board shall take action to continue, discontinue or reduce the member's disability benefit based on the recommendation of the medical examiners. The retirement office shall notify the member of the board's action within ten (10) business days of the meeting at which the member's status was reviewed.

(5) The member shall notify the retirement office immediately upon employment in any capacity. The medical examiners shall review the duties of the position in which the disabled member is employed and recommend to the board if the employment constitutes a change in the member's disability status.

Section 2. (1) Annually, the board shall review the status of each nonhazardous disability retiree and each hazardous retiree receiving total and permanent disability benefits whose effective retirement date is July 1, 1988 or earlier and who has drawn disability retirement benefits for at least twenty-four (24) months.

(2) If the nonhazardous member reaches age sixty-two (62) prior to July 1 of the current calendar year or if the hazardous member reaches age fifty-two (52) prior to July 1 of the current calendar year, the board shall not review the status of the member.

(3) The member shall complete an Annual Disability Certification form dated July 1991 supplied by the retirement office which shall request information concerning the member's income and status with regard to benefits from the federal Social Security Administration or Black Lung program.

(4) The board may not require further review of a member who is receiving Social Security disability and who has no other income.

(5) The board shall review the financial status of members who had income of $100 or more during the previous twelve (12) months.

(6) If the member is not receiving Kentucky Teachers' Retirement System or Social Security disability, the board shall require the member to undergo a medical review, pursuant to Section 1(2), (3) and (4) of this regulation, every four (4) years following the initial review.

(7) The retirement office shall notify the member if the board changes the member's disability status within ten (10) business days of the meeting at which the member's status was reviewed.

Section 3. (1) Annually, the board shall review the status of each nonhazardous disability retiree and each hazardous retiree receiving total and permanent disability benefits whose effective retirement date is August 1, 1988 or later and who has drawn disability benefits for at least twelve (12) months.

(2) The board shall not review the status of a nonhazardous member beginning in the year he reaches age sixty-two (62). The board shall not review the status of a hazardous member beginning in the year he reaches age fifty-two (52).

(3) The member shall complete an annual Disability Certification form, dated July 1991, supplied by the retirement office which shall request information concerning the member's income and status with regard to benefits from the Social Security Administration and Black Lung program.

(4) No change shall be made in benefits to a member who is receiving Social Security disability and who has no other income.

(5) The board shall review the status of members who had income of $100 or more during the previous twelve (12) months.

(6) If the member is not receiving Social Security disability, the board shall require the member to undergo a medical review pursuant to Section 1(2), (3) and (4) of this regulation each year following the initial review.

(7) If the board changes the member's disability status, the retirement office shall notify the member within ten (10) business days of the meeting at which the member's status is reviewed.

Section 4. The board may request financial information from other state or federal agencies to determine if a member is receiving income or a Social Security disability benefit.

Section 5. The board may not require a medical review if the member's medical status is reviewed by the Kentucky Teachers' Retirement System.

Section 6. The retirement office shall pay a reasonable fee for copies of medical records requested from the member's physicians or medical facilities.

Section 7. The forms required by the administrative regulation are incorporated by reference and may be obtained from the retirement office located at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson

(1) Type and number of entities affected: All disability recipients, 2,796 in FY 90-91.

(a) Direct and indirect costs or savings to those affected: There is no cost to the members.

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: This regulation incorporates existing paperwork requirements.

(2) Effects on the promulgating administrative body: This regulation does not increase administrative costs.

(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: This administrative regulation incorporates existing paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: This regulation does not have an impact on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The medical reviews are required by statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation is not in conflict with statutes or regulations.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. The board may exempt those individuals who are already undergoing a medical examination by Teachers' Retirement or the Social Security Administration to avoid requiring redundant reviews.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:220. Annual disability review.

RELATES TO: KRS 16.596, 61.610, 78.545
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statutes provide for an annual medical or financial review of certain members of the Kentucky Retirement Systems who retired under disability. This regulation sets out the process for those annual reviews.

Section 1. (1) The board shall review the medical status of hazardous members who are receiving disability benefits, other than total and permanent, each year on the anniversary of the member's initial approval by the board until the member reaches age fifty-two (52) prior to the board meeting.
(2) The member shall submit the names of the physicians or medical facilities that treated the member within the preceding twelve (12) months.
(3) The retirement office shall request the member's medical records from the physicians and medical facilities and shall submit the records received to the board's medical examiners.
(4) The board shall take action to continue, discontinue or reduce the member's disability benefit based on the recommendation of the medical examiners. The retirement office shall notify the member of the board's action within ten (10) business days of the meeting at which the member's status was reviewed.
(5) The member shall notify the retirement office immediately upon employment in any capacity. The medical examiners shall review the duties of the position in which the disabled member is employed and recommend to the board if the employment constitutes a change in the member's disability status.

Section 2. (1) Annually, the board shall review the status of each nonhazardous disability retiree and each hazardous retiree receiving total and permanent disability benefits whose effective retirement date is July 1, 1988 or earlier and who has drawn disability retirement benefits for at least twenty-four (24) months.
(2) If the nonhazardous member reaches age sixty-two (62) prior to July 1 of the current calendar year or if the hazardous member reaches age fifty-two (52) prior to July 1 of the current calendar year, the board shall not review the status of the member.
(3) The member shall complete an Annual Disability Certification form dated July 1991 supplied by the retirement office which shall request information concerning the member's income and status with regard to benefits from the federal Social Security Administration or Black Lung program.
(4) The board may not require further review of a member who is receiving Social Security disability and who has no other income.
(5) The board shall review the financial status of members who had income of $100 or more during the previous twelve (12) months.
(6) If the member is not receiving Kentucky Teachers' Retirement System or Social Security disability, the board shall require the member to undergo a medical review, pursuant to Section 1(2), (3) and (4) of this regulation, every four (4) years following the initial review.
(7) The retirement office shall notify the member if the board changes the member's disability status within ten (10) business days of the meeting at which the member's status was reviewed.

Section 3. (1) Annually, the board shall review the status of each nonhazardous disability retiree and each hazardous retiree receiving total and permanent disability benefits whose effective retirement date is August 1, 1988 or later and who has drawn disability benefits for at least twelve (12) months.
(2) The board shall not review the status of a nonhazardous member beginning in the year he reaches age sixty-two (62). The board shall not review the status of a hazardous member beginning in the year he reaches age fifty-two (52).
(3) The member shall complete an annual Disability Certification form, dated July 1991, supplied by the retirement office which shall request information concerning the member's income and status with regard to benefits from the Social Security Administration and Black Lung program.
(4) No change shall be made in benefits to a member who is receiving Social Security disability and who has no other income.
(5) The board shall review the status of members who had income of $100 or more during the previous twelve (12) months.
(6) If the member is not receiving Social Security disability, the board shall require the member to undergo a medical review pursuant to Section 1(2), (3) and (4) of this regulation each year following the initial review.
(7) If the board changes the member's disability status, the retirement office shall notify the member within ten (10) business days

of the meeting at which the member's status is reviewed.

Section 4. The board may request financial information from other state or federal agencies to determine if a member is receiving income or a Social Security disability benefit.

Section 5. The board may not require a medical review if the member's medical status is reviewed by the Kentucky Teachers' Retirement System.

Section 6. The retirement office shall pay a reasonable fee for copies of medical records requested from the member's physicians or medical facilities.

Section 7. The forms required by the administrative regulation are incorporated by reference and may be obtained from the retirement office located at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson
(1) Type and number of entities affected: All disability recipients, 2,796 in FY 90-91.
(a) Direct and indirect costs or savings to those affected: There is no cost to the members.
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: This regulation incorporates existing paperwork requirements.
(2) Effects on the promulgating administrative body: This regulation does not increase administrative costs.
(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: This administrative regulation incorporates existing paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: This regulation does not have an impact on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The medical reviews are required by statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation is not in conflict with statutes or regulations.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. The board may exempt those individuals who are already undergoing a medical examination by Teachers' Retirement or the Social Security Administration to avoid requiring redundant reviews.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:230. Reemployment after retirement.

RELATES TO: KRS 61.637
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statute provides that a member who retires and who is reemployed within the same retirement system from which he is drawing a benefit may have his retirement stopped and be required to participate. This administrative regulation sets out the procedures for a member who is reemployed.

Section 1. The retired member or his employer shall notify the retirement system if he accepts any employment with an agency participating in the same retirement system from which he retired. If the member is under a contract, the member shall submit a copy of his contract to the retirement system and the retirement system shall determine if the member is an independent contractor for purposes of retirement benefits. The member shall compete and return a Reemployment After Retirement, Form 60, dated June 1991.

Section 2. If the member is age seventy (70) or will be age seventy (70) during the calendar year, the member may certify that his income will exceed the maximum allowed by the Social Security Administration for a retired person over age sixty-five (65) and that he wishes to have his retirement allowance stopped and become a contributing member. The member may elect to have his payments continue and not contribute to the retirement system.

Section 3. If the member is under age seventy (70), he shall certify whether his anticipated earnings will exceed the maximum allowable by the Social Security Administration for a retired person.

Section 4. Upon receipt of the reemployed member's certification, the retirement system shall notify the employer to withhold or not withhold contributions on the member.

Section 5. The form required by the administrative regulation is incorporated by reference and may be obtained from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson
(1) Type and number of entities affected: Every member who returns to work in the system from which he retired, currently 150.
(a) Direct and indirect costs or savings to those affected: There is no cost to the member.
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: This regulation incorporates existing paperwork requirements.
(2) Effects on the promulgating administrative body: This regulation does not affect administrative cost.
(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: This regulation incorporates existing paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: This regulation does not affect state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The information requested on the form is necessary to administer KRS 61.637.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. Those members over age 70 are permitted to participate or not depending on the most beneficial action for their situation.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:240. Death after retirement procedures.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: Certain benefits are payable upon the death of a recipient. This administrative regulation sets out the information required before benefits are paid.

Section 1. After learning of the death of a recipient, the retirement system shall contact the named beneficiary or estate of the deceased.

Section 2. The retirement system shall require verification of the death in the form of a copy of the death certificate.

Section 3. If the payments are due an estate, the retirement system shall also require verification of the name of the individual authorized to manage the financial affairs of the deceased.

Section 4. The beneficiary or authorized individual shall sign an affidavit for recipient, dated July 1991, provided by the retirement system and shall select a payment option, if a choice is available.

Section 5. Payments shall not be made until the affidavit has been completed and all verification submitted.

Section 6. If other evidence of death is submitted, the retirement system may pay the death benefit provided by KRS 61.705 prior to receipt of the death certificate of the member.

Section 7. The form required by this administrative regulation are incorporated by reference and may be obtained from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: August 8, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 25, 1991, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260

Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson
(1) Type and number of entities affected: Each beneficiary of a deceased member.
(a) Direct and indirect costs or savings to those affected: There is no cost to the beneficiary or estate.
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: This regulation will require less paperwork than currently required.
(2) Effects on the promulgating administrative body: There is no cost to this administrative regulation.
(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: This regulation will reduce the forms required to be retained in the file.
(3) Assessment of anticipated effect on state and local revenues: There is no impact on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation requires reasonable proof of the beneficiary's identity and the member's death to assure that death benefits are properly issued.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering does not apply. The same information is required of each beneficiary in the case of death.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board

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

RELATES TO: KRS 324A.010(11), 324A.015, 324A.020, 324A.030, 324A.035, 324A.040, 324A.045, 324A.050, 324A.070, 324A.075, 12 USC 3331-3351
STATUTORY AUTHORITY: KRS 324A.020
NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A, to set standards, and to protect the public.

Section 1. Licensed Real Property Appraisers. (1) There is created a "licensed real property appraiser" classification.
(2) Licensed real property appraisers shall be qualified to perform appraisals of:
(a) Noncomplex, one (1) to four (4) residential units, having a transaction value less than $1,000,000.
(b) Complex, one (1) to four (4) residential units, having a transaction value less than $250,000.
(c) Nonresidential properties having a transaction value less than $250,000.
(3) Licensed real property appraisers shall successfully pass an examination approved by the board and which complies with the requirements of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.
(4) Licensed real property appraisers shall within two (2) years of original licensure complete seventy-five (75) hours of approved instruction in:
(a) Subjects related to real estate appraisal which shall include coverage of the Uniform Standards of Professional Appraisal Practice of the Appraisal Standards Board of the Appraisal Foundation; and
(b) Subjects which show particular emphasis in the appraisal of one (1) to four (4) unit residential properties.
(5)(a) Licensed real property appraisers shall within two (2) years of original licensure have 2,000 hours of appraisal experience. Acceptable appraisal experience includes, but is not limited to, the following:
1. Fee and staff appraisal;
2. Ad valorem tax appraisal;
3. Review appraisal;
4. Appraisal analysis;
5. Real estate counseling;
6. Highest and best use analysis;
7. Feasibility analysis or study; and
8. Teaching of appraisal courses but only if not claimed for education credit.
(b) If requested, experience documentation in the form of reports or file memoranda shall be made available to the board to support the claim for experience.
(c) Appraisal experience credit shall not be limited to individuals who are state certified or state licensed.
(d) The verification for experience credit claimed by an applicant shall be by oath and affidavit on forms prescribed by the board.
(6) Licensed real property appraisers shall

attend and complete ten (10) classroom hours of approved continuing education each license year, and furnish the board with proof of compliance.

(7) Licensed real property appraiser licenses shall be granted only to those persons who are qualified and who make application to the board on:

(a) The "Appraiser License/Certification Application", revised May 1991. This application form is hereby incorporated by reference and may be obtained at the Real Estate Appraisers Board, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.; or

(b) The "Appraiser Provisional License Application", revised July 1991. This application form is hereby incorporated by reference and may be obtained at the Real Estate Appraisers Board, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.

(8) The licenses of licensed real property appraisers who do not complete the education and experience requirements of this administrative regulation within two (2) years of original licensure shall expire after two (2) years of original licensure.

Section 2. Certified Residential Real Property Appraisers. (1) There is created a "certified residential real property appraiser" classification.

(2) Certified residential real property appraisers shall be qualified to perform appraisals of one (1) to four (4) residential units without regard to transaction value or complexity.

(3) Certified residential real property appraisers shall successfully pass an examination approved by the board and which complies with the requirements of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

(4) Certified residential real property appraisers shall have completed 105 classroom hours of approved instruction. After January 1, 1994, the 105 hours shall increase to 165 hours for initial applicants after that date. The instruction shall be:

(a) In subjects related to real estate appraisal which shall include coverage of the Uniform Standards of Professional Appraisal Practice of the Appraisal Standards Board of the Appraisal Foundation; and

(b) In subjects which show particular emphasis in the appraisal of one (1) to four (4) unit residential properties.

(5)(a) Certified residential real property appraisers shall have two (2) years appraisal experience. A year is defined in terms of hours within a calendar year. 1,000 hours constitutes a year of appraisal experience. A minimum of two (2) calendar years is required. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience.

(b) If requested, experience documentation in the form of reports or file memoranda shall be made available to the board to support the claim for experience.

(c) Acceptable appraisal experience includes, but is not limited to the following:

1. Fee and staff appraisal;
2. Ad valorem tax appraisal;
3. Review appraisal;
4. Appraisal analysis;
5. Real estate counseling;
6. Highest and best use analysis;
7. Feasibility analysis or study; and
8. Teaching of appraisal courses but only if not claimed for education credit.

(d) The verification for experience credit claimed by an applicant shall be by oath and affidavit on forms prescribed by the board.

(e) Appraisal experience credit is not limited to individuals who are state certified or state licensed.

(6) Certified residential real property appraisers shall attend and complete ten (10) classroom hours of approved continuing education each license year, and furnish the board with proof of compliance.

(7) Certified residential appraiser certifications shall be granted only to those persons who are qualified and who make application to the board on the "Appraiser License/Certification Application", revised May 1991. This application form is hereby incorporated by reference and may be obtained at the Real Estate Appraisers Board, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.

Section 3. Certified General Real Property Appraisers. (1) There is created a "certified general real property appraiser" classification.

(2) Certified general real property appraisers shall be qualified to perform appraisals of all types of real property.

(3) Certified general real property appraisers shall successfully pass an examination approved by the board and which complies with the requirements of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

(4) Certified general real property appraisers shall have completed 165 hours of approved instruction in:

(a) Subjects related to real estate appraisal which shall include coverage of the Uniform Standards of Professional Appraisal Practice of the Appraisal Standards Board of the Appraisal Foundation; and

(b) In subjects which show particular emphasis on the appraisal of nonresidential properties. Residential means one (1) to four (4) residential units.

(5)(a) Certified general real property appraisers shall have two (2) years of appraisal experience. A minimum of two (2) calendar years is required. A year is defined in terms of hours within a calendar year. 1,000 hours constitutes a year of appraisal experience. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience.

(b) The applicant, for two (2) years experience credit, must have accumulated a total of 2,000 hours of appraisal experience of which at least fifty (50) percent (1,000 hours) must be in nonresidential appraisal work. Residential is defined as one (1) to four (4) residential units.

(c) If requested, experience documentation in the form of reports or file memoranda shall be made available to the board to support the claim for experience.

(d) Acceptable appraisal experience includes, but is not limited to the following:

1. Fee and staff appraisal;
2. Ad valorem tax appraisal;

3. Review appraisal;
4. Appraisal analysis;
5. Real estate counseling;
6. Highest and best use analysis;
7. Feasibility analysis or study; and
8. Teaching of appraisal courses but only if not claimed for education credit.

(e) The verification for experience credit claimed by an applicant shall be by affidavit on forms prescribed by the board.

(f) Appraisal experience credit is not limited to individuals who are state certified or state licensed.

(6) Certified general real property appraisers shall attend and complete ten (10) classroom hours of approved continuing education each license year, and furnish the board with proof of compliance.

(7) Certified general real property appraiser certifications shall be granted only to those persons who are qualified and who make application to the board on the "Appraiser License/Certification Application", revised May 1991. This application form is hereby incorporated by reference and may be obtained at the Real Estate Appraisers Board, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.

Section 4. Education for Licensure and Certification. (1) A classroom hour is defined as fifty (50) minutes out of each sixty (60) minute segment.

(2) Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen (15) hours, and the individual successfully completes an examination pertinent to that educational offering.

(3) Credit for the classroom hour requirement may be obtained from the following:
(a) Colleges or universities;
(b) Community or junior colleges;
(c) Real estate appraisal or real estate related organizations;
(d) State or federal agencies or commissions;
(e) Proprietary schools; or
(f) Other providers approved by the board.

(4) There is no time limit regarding when qualifying education credit must have been obtained.

(5) The board may grant credit for courses where the applicant obtained credit from the course provider by challenge examination without attending the courses, provided that such credit was granted by the course provider prior to July 1, 1990, and provided further that the board is satisfied with the quality of the challenge examination that was administered by the course provider.

(6) Various appraisal courses may be credited toward the classroom hour education requirement. Applicants must demonstrate that their education involved coverage of all of the following:
(a) Influences on real estate value;
(b) Legal considerations in appraisal;
(c) Types of value;
(d) Economic principles;
(e) Real estate markets and analysis;
(f) Valuation process;
(g) Property description;
(h) Highest and best use analysis;
(i) Appraisal statistical concepts;
(j) Sales comparison approach;
(k) Site value;
(l) Cost approach;
(m) Income approach;
(n) Valuation of partial interests;
(o) Appraisal standards and ethics; and
(p) Other topics approved by the board.

Section 5. Mandatory Continuing Education. (1) A classroom hour is defined as fifty (50) minutes out of each sixty (60) minute segment.

(2) Credit toward the classroom hour requirement may be granted only where the length of the educational offering is at least two (2) hours.

(3) Credit for the classroom hour requirement may be obtained from the following:
(a) Colleges or universities;
(b) Community or junior colleges;
(c) Real estate appraisal or real estate related organizations;
(d) State or federal agencies or commissions;
(e) Proprietary schools; or
(f) Other providers approved by the board.

(4) Credit may be granted for educational offerings which cover real estate related appraisal topics such a those listed in this section and which are consistent with the purpose of continuing education stated in subsection (6) of this section.
(a) Ad valorem taxation;
(b) Arbitration;
(c) Business courses related to practice of real estate appraisal;
(d) Construction estimating;
(e) Ethics and standards of professional practice;
(f) Land use planning, zoning and taxation;
(g) Management, leasing, brokerage, timesharing;
(h) Property development;
(i) Real estate appraisal (valuations/evaluations);
(j) Real estate law;
(k) Real estate litigation;
(l) Real estate financing and investment;
(m) Real estate appraisal related computer applications;
(n) Real estate securities and syndication;
(o) Real property exchange.

(5) Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs.

(6) The purpose of continuing education shall be to ensure that the appraiser participates in a program that maintains and increases his skill, knowledge and competency in real estate appraising.

(7) Failure to comply with this regulation shall be grounds for nonrenewal of licensure or certification by the board.

Section 6. The following fees shall be collected by the board:

(1) An initial licensed real property appraiser, certified residential real property appraiser and certified general real property appraiser application fee of $200.

(2) A licensed real property appraiser, certified residential real property appraiser and certified general real property appraiser examination fee of $200.

(3) A licensed real property appraiser, certified residential real property appraiser

and certified general real property appraiser annual renewal fee of $200.

Section 7. Renewal Date. The renewal date for licensed real property appraisers, certified residential real property appraisers and certified general real property appraisers shall be July 1 of each year.

Section 8. Appraisal Report Requirement. All appraisal reports made by a licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser, given in connection with any federally related transaction must be in writing.

Section 9. (1) All certified residential real property appraisers and certified general real property appraisers who have not already done so, shall by December 31, 1991, provide to the board, acceptable evidence that they have complied with the education requirements set forth in this administrative regulation.

(2) Failure to comply with this section shall result in the automatic suspension of the certificate issued by the board on December 31, 1991.

(3) Upon receiving, by July 1, 1992, acceptable evidence of compliance with the education requirments set forth in this administrative regulation, the certificate shall be reissued by the board at no charge.

(4) All applicants for certification, after December 31, 1991, shall submit with their application, acceptable evidence that they have complied with the education requirements set forth in this administrative regulation.

Section 10. All licensed real property appraisers, certified residential real property appraisers and certified general real property appraisers shall comply with the Uniform Standards of Professional Appraisal Practice, revised July 1991. The Uniform Standards of Professional Appraisal Practice, are incorporated by reference and may be obtained at the Real Estate Appraisers Board, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, from 8 a.m. to 4:30 p.m.

DON PARIS, Chairman

APPROVED BY AGENCY: August 13, 1991

FILED WITH LRC: August 14, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 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: John L. Ackman, Jr., Real Estate Appraiser Board, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Ackman

(1) Type and number of entities affected: This agency is unaware of the exact number of real property appraisers in Kentucky. Our estimate is between 300 and 1,000.

(a) Direct and indirect costs or savings to those affected: There will be testing fees, initial application fees, and annual renewal fees for participating appraisers.

1. First year: A test fee of $200 and an initial application fee of $200 will be charged.

2. Continuing costs or savings: First year costs will continue to apply for new applicants and a $200 renewal fee will be charged.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: Applications will be required.

(2) Effects on the promulgating administrative body: All applications must be reviewed to determine qualifications, and the board will administer KRS Chapter 324A.

(a) Direct and indirect costs or savings: The cost of the test is $60 for preregistered applicants and $75 for all walk-in applicants. Administrative support is from the Real Estate Commission with one additional staff person funded from this agency.

1. First year: The same costs set out above.

2. Continuing costs or savings: The test charge will continue only for new applicants.

3. Additional factors increasing or decreasing costs: KRS Chapter 324A states administrative support by the Real Estate Commission sunsets on 7/1/92.

(b) Reporting and paperwork requirements: This agency will administer and maintain records of the appraiser licensing and certification function.

(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: No alternative methods were considered. This program is federally mandated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS Chapter 324A does not provide for the exact same appraiser classifications this regulation has.

(a) Necessity of proposed regulation if in conflict: The appraiser classifications in this regulation are those set down by the appraiser's qualifications board under Title XI.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, two of the three appraiser classifications in the regulation are from KRS Chapter 324A, and the third classification is not barred by KRS Chapter 324A.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not appropriate.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 12 USC 3331 through 12 USC 3351 (Title XI).
2. State compliance standards. KRS Chapter 324A sets forth the state licensing and certification criteria. KRS 324A.035(2) requires that the state education and experience requirements not exceed federal minimum standards.
3. Minimum or uniform standards contained in the federal mandate. The requirements of Title XI are that states license and certify real property appraisers according to the standards adopted by the Appraisers Qualification Board of the Appraisal Foundation. The education, experience and testing standards of the Appraisal Qualification Board are included in 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 only change from the federal mandate is that the board will charge $35 as a roster fee, and the cost the board pays to the Appraisal Subcommittee under Title XI is $25.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The $10 increase is to defray administrative costs.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board

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

RELATES TO: KRS 324A.015, 324A.020, 324A.030, 324A.035, 324A.040, 324A.045, 324A.050, 324A.070, 324A.075, 12 USC 3331-3351
STATUTORY AUTHORITY: KRS 324A.020
NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institution Reform, Recovery and Enforcement Act of 1989, (12 USC 3331 through 12 USC 3351), to set standards, and to protect the public.

Section 1. The board shall maintain a roster of licensed real property appraisers, certified residential real property appraisers and certified general real property appraisers.

Section 2. The board shall transmit the roster to the appraisal subcommittee of the Federal Financial Institutions Examination Council's Appraisal Subcommittee at least annually.

Section 3. The board shall collect an annual roster fee of thirty-five (35) dollars from each licensed real property appraiser, certified residential real property appraiser and certified general real property appraiser.

Section 4. The board shall transmit to the appraisal subcommittee of the Federal Financial Institutions Examination Council the appropriate roster fees at least annually.

Section 5. (1) The board shall delete from its roster the name of any licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser, who has been deleted from the roster maintained by the Federal Financial Institutions Examination Council's Appraisal Subcommittee.

(2) The board shall notify each licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser whose name it intends to delete from its roster of its intent, in writing, to the address on record with the board, at least fifteen (15) days before the board takes such action.

(3) Upon the written request of the licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser whose name the board intends to delete from the roster, the board or its designee shall conduct a hearing limited to the issue of whether the Federal Financial Institutions Examination Council's Appraisal Subcommittee has in fact deleted said name from its federal roster.

DON PARIS, Chairman
APPROVED BY AGENCY: August 13, 1991
FILED WITH LRC: August 14, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 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: John L. Ackman, Jr., Real Estate Appraiser Board, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Ackman
(1) Type and number of entities affected: This agency is unaware of the exact number of real property appraisers in Kentucky. Our estimate is between 300 and 1,000.
(a) Direct and indirect costs or savings to those affected: The roster fee is $35 for each appraiser on the roster.
1. First year: The same will apply as set forth above.
2. Continuing costs or savings: The same will apply as set forth above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): It is anticipated that the same appraisers doing federally related appraisals will become certified or licensed to be on the roster; therefore, there should be no effect.
(b) Reporting and paperwork requirements: To

become and remain on the roster, the licensed or certified appraiser must file an application and must renew annually.

(2) Effects on the promulgating administrative body: The agency must compile an accurate roster of licensed and certified appraisers and transmit it for the Appraisal Subcommittee as required in Title XI.

(a) Direct and indirect costs or savings: The roster fee the agency pays to the Appraisal Subcommittee is $25 for each roster member annually.

1. First year: The same will apply as set forth above.

2. Continuing costs or savings: The same will apply as set forth above.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: The agency must compile the roster and transmit it to the Appraisal Subcommittee at least annually.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. This program is federally mandated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None are known.

(a) Necessity of proposed regulation if in conflict: No conflicting laws are known.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflicting laws are known.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not appropriate.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 12 USC 3331 through 12 USC 3351 (Title XI).

2. State compliance standards. KRS Chapter 324A sets forth the state licensing and certification criteria. KRS 324A.035(2) requires that the state education and experience requirements not exceed federal minimum standards.

3. Minimum or uniform standards contained in the federal mandate. The requirements of Title XI are that states license and certify real property appraisers according to the standards adopted by the Appraisers Qualification Board of the Appraisal Foundation. The education, experience and testing standards of the Appraisal Qualification Board are included in 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 only change from the federal mandate is that the board will charge $35 as a roster fee, and the cost the board pays to the Appraisal Subcommittee under Title XI is $25.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The $10 increase is to defray administrative costs.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board

201 KAR 30:120. Temporary appraisal permits.

RELATES TO: KRS 324A.015, 324A.020, 324A.030, 324A.035, 324A.040, 324A.045, 324A.050, 324A.070, 324A.075, 12 USC 3331-3351

STATUTORY AUTHORITY: KRS 324A.020

NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, (12 USC 3331 through 12 USC 3351), to set standards, and to protect the public.

Section 1. (1) The board shall grant temporary appraisal permits to those appraisers, licensed or certified by another state, and whose name appears on the federal roster of the Federal Financial Institutions Examination Council's Appraisal Subcommittee.

(2) Temporary appraisal permits shall be granted only to persons who are qualified under this administrative regulation and who apply to the board on a "Nonresident Application for Temporary Appraiser Permit", revised May, 1991. This application form is hereby incorporated by reference and may be obtained at the Real Estate Appraisers Board, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.

(3) Temporary appraisal permits shall be granted only to persons whose appraisal assignment in Kentucky is temporary in nature, not to exceed six (6) months.

(4) A temporary appraisal permit must be obtained for each appraisal assignment.

(5) The temporary appraisal permit shall be only for the appraiser classification designated on the federal roster of the Appraisal Subcommittee.

(6) The board shall collect a $200 fee for each temporary appraisal permit, which shall be paid at the time of application and which shall be nonrefundable.

DON PARIS, Chairman

APPROVED BY AGENCY: August 13, 1991

FILED WITH LRC: August 14, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 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: John L. Ackman, Jr., Real Estate Appraiser Board, 10200 Linn

Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Ackman
(1) Type and number of entities affected: The affected entities are non-Kentucky appraisers with appraisal assignment in Kentucky. The number is not calculable.
(a) Direct and indirect costs or savings to those affected: The cost is $200 for each temporary permit.
1. First year: The same costs apply.
2. Continuing costs or savings: The same costs apply. No savings are known.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.
(b) Reporting and paperwork requirements: Those affected must file an application for permit.
(2) Effects on the promulgating administrative body: Each applicant must be verified as licensed or certified from another state and be on the federal roster.
(a) Direct and indirect costs or savings: This agency must provide administrative support for the temporary permit process.
1. First year: The same as set forth above.
2. Continuing costs or savings: The same as set forth above.
3. Additional factors increasing or decreasing costs: There are no additional factors.
(b) Reporting and paperwork requirements: This agency must administer the temporary permit process.
(3) Assessment of anticipated effect on state and local revenues: There is no effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. This program is federally mandated.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are none.
(a) Necessity of proposed regulation if in conflict: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.
(6) Any additional information or comments: No
TIERING: Was tiering applied? No. Tiering is not appropriate.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 12 USC 3331 through 12 USC 3351 (Title XI).
2. State compliance standards. KRS Chapter 324A sets forth the state licensing and certification criteria. KRS 324A.035(2) requires that the state education and experience requirements not exceed federal minimum standards.
3. Minimum or uniform standards contained in the federal mandate. The requirements of Title XI are that states license and certify real property appraisers according to the standards adopted by the Appraisers Qualification Board of the Appraisal Foundation. The education, experience and testing standards of the Appraisal Qualification Board are included in 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 only change from the federal mandate is that the board will charge $35 as a roster fee, and the cost the board pays to the Appraisal Subcommittee under Title XI is $25.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The $10 increase is to defray administrative costs.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board

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

RELATES TO: KRS 324A.015, 324A.020, 324A.030, 324A.035, 324A.040, 324A.045, 324A.050, 324A.070, 324A.075, 12 USC 3331-3351
STATUTORY AUTHORITY: KRS 324A.020
NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, (12 USC 3331 through 12 USC 3351), to set standards, and to protect the public.

Section 1. (1) All real estate appraisal education courses, offered after July 1, 1991, in order to qualify for education credit, or continuing education credit, shall be approved by the board in advance.
(2) Each education provider shall apply for approval on the "Application for Course Approval" revised May 1991. This application form is hereby incorporated by reference and may be obtained at the Real Estate Appraisers Board, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.
(3) Board approval shall be given to those education courses which the board finds will provide competent instruction in real estate appraisal so as to establish, maintain and increase the student's skill, knowledge and competency in real estate appraising.
(4) The board shall collect an annual fee from each education provider applying for board approval. The fee shall be $100 for each sixteen (16) hour or less education course and fifty (50) dollars for each two (2) hour continuing education course, and the fee shall be nonrefundable.

DON PARIS, Chairman
APPROVED BY AGENCY: August 13, 1991
FILED WITH LRC: August 14, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 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: John L. Ackman, Jr., Real Estate Appraiser Board, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Ackman

(1) Type and number of entities affected: The known appraisal education and continuing education providers number: 16 colleges, 2 proprietary schools and 4 private associations.

(a) Direct and indirect costs or savings to those affected: The fee for application is: $100 per education course and $50 per continuing education course.

1. First year: The same cost applies.

2. Continuing costs or savings: The same cost applies.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: Education providers must file an application.

(2) Effects on the promulgating administrative body: Education provider applications must be reviewed for compliance.

(a) Direct and indirect costs or savings: The agency must administer the education provider review.

1. First year: They are the same as set forth above.

2. Continuing costs or savings: They are the same as set forth above.

3. Additional factors increasing or decreasing costs: There are none.

(b) Reporting and paperwork requirements: The agency must administer the education provider review.

(3) Assessment of anticipated effect on state and local revenues: There is no effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. This process is federally mandated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are none.

(a) Necessity of proposed regulation if in conflict: There are none.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There are none.

(6) Any additional information or comments: There are none.

TIERING: Was tiering applied? No. Tiering is not appropriate.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 12 USC 3331 through 12 USC 3351 (Title XI).

2. State compliance standards. KRS Chapter 324A sets forth the state licensing and certification criteria. KRS 324A.035(2) requires that the state education and experience requirements not exceed federal minimum standards.

3. Minimum or uniform standards contained in the federal mandate. The requirements of Title XI are that states license and certify real property appraisers according to the standards adopted by the Appraisers Qualification Board of the Appraisal Foundation. The education, experience and testing standards of the Appraisal Qualification Board are included in 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 only change from the federal mandate is that the board will charge $35 as a roster fee, and the cost the board pays to the Appraisal Subcommittee under Title XI is $25.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The $10 increase is to defray administrative costs.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:195. Raptor propagation and falconry.

RELATES TO: KRS 150.010, 150.025, 150.180, 150.183, 150.290, 150.305, 150.320, 150.330, 150.360, Title 50 CFR Parts 13, 17, 21, 22

STATUTORY AUTHORITY: KRS 13A.350, Title 50 CFR Parts 13, 17, 21, 22

NECESSITY AND FUNCTION: This regulation pertains to the securing and use of birds of prey for breeding and hunting. It is necessary for the continuing protection and conservation of the birds of prey to insure a permanent and continued supply of this wildlife resource for the purpose of furnishing biological diversity, sport and recreation for present and future residents of the state. This regulation is also necessary to comply with corresponding federal regulations.

Section 1. Definitions. (1) "Legal hunting raptor" includes the great horned owl (Bubo virginianus) and all hawks and falcons of the families Falconidae and Accipiteridae, except those that are endangered or threatened. Under conditions described in Section 4(1)(c) of this regulation, golden eagles (Aquila chrysaetos) as well as threatened species, may be used for falconry.

(2) "Exotic raptors" means those species which have no subspecies occurring in the wild in the United States or Mexico. Any person holding a joint state/federal falconry permit may possess lawfully acquired exotic raptors in addition to the number of nonexotic raptors legally held.

Section 2. Articles Incorporated by Reference: Title 50 - Wildlife and Fisheries, Code of Federal Regulations (CFR), Part 13 - General Permit Procedures, Part 17, Subpart B, Section 17.11 - Endangered and Threatened Wildlife, Part 21 - Migratory Bird Permits and Part 22 - Eagle Permits, September 14, 1989. Copies of these documents are available for review weekdays from

8 a.m. - 4:30 p.m. in the offices of the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Copies may be obtained from the U.S. Fish and Wildlife Service, 75 Spring Street, Atlanta, Georgia 30303.

Section 3. Hunting License, Falconry Permit Requirements and Transportation Permit Waiver. Wildlife may be taken within state hunting seasons and bag limits with any legal hunting raptor provided the falconer has in possession a valid state/federal falconry permit(s) and a valid Kentucky resident or nonresident hunting license. Licensed falconers may undertake intrastate transportation of any legally held raptor without possessing a transportation permit as required in 301 KAR 2:080.

Section 4. Classes of Falconry Permits, Sponsors, Application, Processing and Issuance, Examination Required, Duration of Permits and Fees. (1) Classes of falconry permits.

(a) Apprentice falconry permits. Apprentice falconers shall be at least fourteen (14) years of age and shall have a sponsor holding a general or master falconry permit. Applicants between the ages of fourteen (14) and sixteen (16) years shall provide a written consent form or letter from a parent or guardian. An apprentice may take and possess only one (1) nonexotic raptor, which shall be taken from the wild, and shall not take more than one (1) replacement from the wild during any twelve (12) month period which begins when the first replacement raptor is taken from the wild. Only an American kestrel (Falco Sparverius), red-tailed hawk (Buteo jamaicensis), red-shouldered hawk (Buteo Lineatus), or any exotic legal hunting raptor may be possessed or taken by an apprentice falconer. The red-tailed and red-shouldered hawks shall be first year (passage) age class birds, capable of flight. Any American kestrel which has left the nest and is capable of flight may be taken from the wild. There is no age restriction on exotic raptors. Apprentice falconers may buy and sell only exotic raptors.

(b) General falconry permits. General permittees shall be at least eighteen (18) years of age, have at least two (2) years experience in the practice of falconry at the apprentice level, and have complied with all reporting requirements of this regulation. A permittee at the general level may possess no more than two (2) nonexotic raptors and shall not take more than two (2) replacements from the wild during any twelve (12) month period which begins when any replacement raptor is taken from the wild. General permittees may take and possess any legal hunting raptor defined in this regulation.

(c) Master falconry permits. Master permittees shall have at least five (5) years experience in the practice of falconry at the general class level and have complied with all requirements of this regulation. A master permittee may possess no more than three (3) nonexotic raptors. No more than two (2) raptors for replacement birds shall be taken from the wild during any twelve (12) month period which begins when any replacement raptor is taken from the wild. A master permittee may take and possess any legal hunting raptor, but shall not take, in any twelve (12) month period, as part of the three (3) bird limitation, more than one (1) raptor listed as threatened in Title 50 CFR Part 17, Subpart B, Section 17.11, and then only when approved by the U.S. Fish and Wildlife Service and the Department of Fish and Wildlife Resources. Master falconers may replace any number of captive bred raptors a year provided the possession limit at one (1) time is not exceeded. Provided a permit has been issued by the department and in accordance with the Bald Eagle Protection Act and Title 50 CFR Part 22, Subpart B, Section 22.24, master permittees may take and possess golden eagles for falconry purposes. Master permittees shall not take any species listed as endangered by Title 50 CFR Part 17, Subpart B, Section 17.11, but may possess such species in accordance with the Endangered Species Act and implementing regulations.

(2) Sponsors. Sponsors shall hold a master or general falconry permit. A sponsor shall not have more than three (3) apprentices at any one (1) time. A sponsor withdrawing sponsorship shall notify the department in writing giving reasons for withdrawal and shall notify the apprentice. If the apprentice does not have a new sponsor within thirty (30) days from the date of notification of withdrawal, his permit shall be deemed cancelled and his birds relocated.

(3) Application, processing and issuance. To obtain any class of joint state/federal falconry permit, an applicant shall complete a standard falconry permit application form, as designated by the Department of Fish and Wildlife Resources and approved by the U.S. Fish and Wildlife Service, which is available from the Department of Fish and Wildlife Resources, and submit it to the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Accompanying the completed application shall be two (2) checks, one (1) payable to the Department of Fish and Wildlife Resources in the amount specified for a falconry permit in 301 KAR 3:021 and one (1) payable to the U.S. Fish and Wildlife Service in the amount specified in Title 50 CFR Part 13, Subpart B, Section 13.11. Also accompanying the application shall be an inventory of raptors which the applicant possesses at the time of application as specified in Section 6(1) of this regulation and Title 50 CFR Part 21, Subpart C, Section 21.28. Upon receipt of a completed application, inventory and fees, the application shall be forwarded to the appropriate state conservation officer who shall administer the required examination and inspect equipment and facilities. Should the equipment and facilities be adequate and the applicant pass the examination as specified in subsection (4) of this section, the state conservation officer shall certify such by affixing his signature on a letter of recommendation, and the Department of Fish and Wildlife Resources shall forward the application, certification, appropriate fee and test score to the U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service may then issue the permit(s) according to the applicable terms and conditions of Title 50 CFR Parts 13, 21, or 22.

(4) Examination required. Applicants for all classes of falconry permits shall take an appropriate written examination and score no less than eighty (80) percent. The test shall be approved in accordance with Title 50 CFR Subpart C, Part 21.29(f) and shall be administered and

supervised by the Department of Fish and Wildlife Resources at a designated site.

(5) Duration of permits. Permits shall be valid for a period of three (3) years from date of issuance.

(6) Fees. Falconry permit fees are as listed in 301 KAR 3:021.

Section 5. Facilities and Equipment. Facilities and equipment shall meet the minimum standards described in Title 50 CFR Part 21, Subpart C, Section 21.29. Facilities, equipment and raptors shall be made available at all times for inspection by authorized personnel of the Department of Fish and Wildlife Resources and the U.S. Fish and Wildlife Service.

Section 6. Marking. All peregrine falcons (Falco peregrinus), gyrfalcons (Falco rusticolus) and Harris hawks (Parabuteo unicinctus) shall be banded with markers supplied by the U.S. Fish and Wildlife Service at all times according to provisions of Title 50 CFR Part 21, Subpart C, Section 21.29.

Section 7. License Requirements and Conditions for Taking Raptors From the Wild. (1) License requirements. Holders of Kentucky falconry permits shall have in their possession a valid annual Kentucky hunting license before taking any raptor from the wild. Before taking a raptor from the wild, a nonresident shall have a Kentucky nonresident annual hunting license and joint state/federal permit(s) or individual state and federal falconry permit(s) from his home state and a special permit from the Department of Fish and Wildlife Resources. Application for such special permit(s) shall be made by writing the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, at least fifteen (15) days in advance of the date on which the permit is desired, and describing the nature of your request, your name, address, and status and number of your federal/state falconry permit.

(2) Conditions for taking raptors from the wild.

(a) Eyasses. Young birds not yet capable of flight (eyasses) may be taken only by a general or master falconer and only during the period May 12 through July 14. No more than two (2) eyasses shall be taken from the wild by the same permittee during this period. At least one (1) young shall be left in any nest from which raptors are taken.

(b) Passage birds. First year (passage) birds may be taken only during the period September 7 through December 31.

(c) Retrapping. Raptors may be retrapped only in accordance with Title 50 CFR Part 21, Subpart C, Section 21.29.

(d) Mature birds. Only American kestrels and great horned owls may be taken when over one (1) year old, except that any legal hunting raptor taken under a depredation or special purpose permit may be used for falconry by general and master falconers. All traps or other devices for taking raptors alive shall be tagged with the owners' name and address.

(e) All raptors taken from the wild shall be reported to the U.S. Fish and Wildlife Service as required in Title 50 CFR Part 21, Subpart C, Sections 21.28, 21.29 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources in the same time frame.

Section 8. Raptors Acquired Before 1977. (1) A person possessing raptors legally acquired before January 1, 1977, and who fails to meet the permit requirements, shall be allowed to retain the raptors with a nonhunting raptor permit. These raptors shall not be replaced nor used for hunting. Facilities and equipment for holding them shall meet the standards in Section 5 of this regulation.

(2) A falconry permittee legally possessing raptors acquired before January 1, 1977, in excess of the number allowed under his class permit, shall be allowed to retain and hunt the extra raptors. No replacement shall occur, nor shall an additional nonexotic raptor be obtained, until the number in possession is at least one (1) less than the total number authorized by the class of permit held by the permittee.

Section 9. Importation, Trading or Transferring, Purchasing, Bartering or Selling, Temporary Care and Feathers of Raptors. (1) Importation. Holders of valid falconry permit(s) may transport any legally held raptor into or within the state of Kentucky without a transportation permit from the Department of Fish and Wildlife Resources as required in 301 KAR 2:080.

(2) Trading or transferring. Any class falconry permittee may trade or transfer a raptor to another permittee if the transaction occurs entirely within the state of Kentucky and no money or other consideration is involved. A permittee may trade or transfer a raptor to another permittee in an interstate transaction if the prior written approval of all states involved is obtained and no money or other consideration is involved in the transaction, except as allowed in Title 50 CFR Part 21, Subpart C, Section 21.28(d)(8). All such transactions shall be reported to the U.S. Fish and Wildlife Service as required in Title 50 CFR Part 21, Subpart C, Sections 21.28 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources in the same time frame.

(3) Purchasing, bartering or selling. General and master class permittees may purchase, barter or sell any lawfully possessed raptor which is bred in captivity under authority of a raptor propagation permit issued pursuant to Title 50 CFR Part 21, Subpart C, Sections 21.28 and 21.30, subject to the following conditions:

(a) Any permittee who buys from, sells to or barters with any person in the United States or a foreign country shall meet the conditions specified in Title 50 CFR Part 21, Subpart C, Section 21.30(d)(5);

(b) Raptor propagation permittees who sell or barter raptors shall have a commercial propagation permit issued by the Department of Fish and Wildlife Resources according to provisions of 301 KAR 2:080;

(c) All transactions shall be reported to the U.S. Fish and Wildlife Service as required in Title 50 CFR Part 21, Subpart C, Sections 21.28 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources in the same time frame.

(4) Temporary relocation of raptors. Raptors may be temporarily held for a permittee only by individuals who themselves are authorized to possess raptors, and subject to all other conditions in Title 50 CFR Part 21, Subpart C,

Section 21.29(j)(4).
(5) Feathers. Molted feathers or feathers from birds that die in captivity, may be retained and exchanged by permittees only for imping purposes.

Section 10. Release of Raptors. No person shall intentionally release to the wild any species not native to Kentucky without first obtaining written permission from the commissioner. The marker from the released bird shall be removed and surrendered to the department. The marker from an intentionally released indigenous bird shall also be removed and surrendered to the department. A federal bird band shall be affixed to a captive bred raptor intentionally released to the wild.

Section 11. Raptor Propagation Requirements, Authorized Activities, Applications, Records, and Reports. (1) Raptor propagation requirements. No person shall breed or propagate raptors without obtaining the appropriate Kentucky pet and propagation permit as required in 301 KAR 2:080. A commercial pet and propagation permit authorizes the propagation and sale of raptors. A noncommercial permit authorizes only propagation. Permittees shall comply with all requirements, including permit application, of Title 50 CFR Part 21, Subpart C, Section 21.30.
(2) Authorized activities. All activities permitted by Title 50 CFR Part 21, Subpart C, Section 21.30 are authorized in Kentucky except as otherwise noted in this regulation.
(3) Applications, records, and reports. Copies of all raptor propagation applications, records, and reports required by the U.S. Fish and Wildlife Service in Title 50 CFR Part 21, Subpart C, Section 21.30, shall be submitted to the Department of Fish and Wildlife Resources on the same dates as required by Title 50 CFR Part 21, Subpart C, Section 21.30.

Section 12. 301 KAR 2:190 is hereby repealed.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
RONALD E. GENTRY, Secretary
APPROVED BY AGENCY: August 13, 1991
FILED WITH LRC: August 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 24, 1991 at 2 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 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 60 falconers and raptor propagators in Kentucky.
(a) Direct and indirect costs or savings to those affected:
1. First year: Direct costs are not impacted by this regulation. Indirect costs will be lowered as a result of less paperwork.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Application procedures and reporting requirements are less.
(2) Effects on the promulgating administrative body: There are no positive or negative impacts on the administrative body.
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: They are less.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The impact of this regulation is entirely positive for the falconers and was requested by them.
(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:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 50 – Wildlife and Fisheries, CFR Part 13 – General Permit Procedures, Part 17, Subpart B, Section 17.11 – Endangered and Threatened Wildlife, Part 21 – Migratory Bird Permits and Part 22 – Eagle Permits, September 14, 1989.
2. State compliance standards. Migratory birds are the province of the federal government in cooperation with the state fish and wildlife agency. State law virtually mimics the federal laws cited above, except that, in addition to the required federal permits, falconers in Kentucky must have a state falconry permit and appropriate propagation permits.
3. Minimum or uniform standards contained in the federal mandate. State and federal standards are the same.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Only as they relate to additional permits described in item 2 above.
5. Justification for the imposition of the

stricter standard, or additional or different responsibilities or requirements. Administration of the falconry program in Kentucky is a joint state/federal undertaking. In order for the state to uniformly apply provisions of pet and propagation regulations and adequately supply the first level of responsibility for compliance, the additional permits are necessary.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 50:046. Capture efficiency test procedures.

RELATES TO: KRS 224.320, 224.330, 224.340
STATUTORY AUTHORITY: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides capture efficiency test procedures for volatile organic compounds.

Section 1. Definitions. As used in this regulation, all terms not defined in this section shall have the meaning given them in 401 KAR 50:010.

(1) "Capture" means the containment or recovery of emissions from a process for direction into a duct which may be exhausted through a stack or sent to a control device.

(2) "Capture system" means all equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(3) "Capture efficiency" means the weight per unit time of volatile organic compounds (VOCs) entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs, expressed as a percentage.

(4) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.

(5) "Control system" means a combination of one (1) or more capture systems and control devices working in concern to reduce discharges of pollutants to the ambient air.

(6) "Destruction or removal efficiency" means the efficiency, expressed as a decimal fraction, of a control device in destroying or removing contaminants. It is calculated as one (1) minus the amount of VOCs existing the control device divided by the amount of VOCs entering the control device.

(7) "Gas-gas method" means either of two (2) methods for determining capture of emissions which rely on only gas phase measurements. One (1) method requires construction of a total temporary enclosure to assure all would-be fugitive emissions are measured; the other method uses the room or building which houses the emission source as an enclosure.

(8) "Hood" means a partial enclosure or canopy for capturing and exhausting, by means of a draft, the organic vapors or other fumes rising from a coating process or other source.

(9) "Liquid-gas method" means either of two (2) methods for determining capture of emissions which require both gas phase and liquid phase measurements and analysis. One (1) liquid-gas method requires construction of a temporary enclosure; the other uses the building or room which houses the facility as an enclosure.

(10) "Overall emission reduction efficiency" means the weight per unit time of VOC removed by a control device divided by the weight per unit time of VOC emitted by an emission source, expressed as a percentage. With the efficiencies expressed as decimal fractions, the overall emission reduction efficiency is the product of the capture efficiency and the control equipment destruction or removal efficiency.

(11) "PTE" means a permanent total enclosure which contains a process that emits VOC and meets the specifications given in Procedure T.

(12) "TTE" means a temporary total enclosure which is built around a process that emits VOC and meets the specifications given in Procedure T.

(13) "BE" means a building or room enclosure that contains a process that emits VOC. If a BE is to serve as a PTE or TTE, the appropriate requirements given in Procedure T shall be met.

(14) "Procedure F.1" means Procedure F.1 in "VOM Measurement Techniques for Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.

(15) "Procedure F.2" means Procedure F.2 in "VOM Measurement Techniques for Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.

(16) "Procedure G.2" means Procedure G.2 in "VOM Measurement Techniques for Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.

(17) "Procedure L" means Procedure L in "VOM Measurement Techniques for Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.

(18) "Procedure T" means Procedure T in "VOM Measurement Techniques for Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.

Section 2. Applicability. This regulation shall apply to all regulated VOC emitting processes employing a control system, except as provided in subsections (1) and (2) of this section.

(1) If a source installs a PTE which directs all VOCs to a control device, the capture efficiency shall be assumed to be 100%, and the source shall be exempt from Section 3 of this regulation. This exemption shall not exempt a source from performance of control device efficiency testing required under this or other regulations. In addition, a source shall demonstrate that all criteria for a PTE are met during the testing for control efficiency.

(2) If a source uses a control device designed to collect and recover VOCs (e.g., carbon adsorber), an explicit measurement of capture efficiency shall not be necessary if the overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure of 401 KAR 59:213 shall be used to compare the input liquid VOC to the recovered liquid VOC with the following additional restrictions:

(a) The source shall be able to equate solvent usage with solvent recovery on a twenty-four

(24) hour (daily) basis, rather than a thirty (30) day weighted average as given in 401 KAR 59:213. This shall be done within seventy-two (72) hours following each twenty-four (24) hour period; and

(b) The solvent recovery system (i.e., capture and control system) shall be dedicated to a single process line (e.g., one (1) process line venting to a carbon adsorber system); or

(c) If the solvent recovery system controls multiple process lines, the source shall be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

Section 3. Testing Protocols. (1) An error margin associated with a test protocol shall not be incorporated into the results of a capture efficiency test.

(2) An affected facility shall use one (1) of the following protocols to measure capture efficiency, unless an alternative protocol is approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(a) Protocol 1: Gas-gas method using TTE. The specifications in Procedure T shall be used to determine if a temporary enclosure is a TTE. For this protocol, the following capture efficiency equation shall be used:

$$CE = Gw / (Gw + Fw)$$

Where:

CE = Capture efficiency, decimal fraction.

Gw = Mass of VOCs captured and delivered to the control device, using a TTE. Procedure G.2 shall be used to obtain Gw.

Fw = Mass of fugitive VOC that escapes from a TTE. Procedure F.1 shall be used to obtain Fw.

(b) Protocol 2: Liquid-gas method using TTE. The specifications in Procedure T shall be used to determine if a temporary enclosure is a TTE. For this protocol, the following capture efficiency equation shall be used:

$$CE = (L - F) / L$$

Where:

CE = Capture efficiency, decimal fraction.

L = Mass of liquid VOCs input to process. Procedure L shall be used to obtain L.

F = Mass of fugitive VOC that escapes from a TTE. Procedure F.1 shall be used to obtain F.

(c) Protocol 3: Gas-gas method using BE in which the affected facility is located as the enclosure and in which the mass of VOC captured and delivered to a control device and the mass of VOC leaving the process as gaseous fugitive emissions are measured while operating only the affected facility. All fans and blowers in the building or room shall be operated as they would be under normal production. For this protocol, the following capture efficiency equation shall be used:

$$CE = G / (G + F_B)$$

Where:

CE = Capture efficiency, decimal fraction.

G = Mass of VOCs captured and delivered to a control device. Procedure G.2 shall be used to obtain G.

F_B = mass of fugitive VOC that escapes from BE. Procedure F.2 shall be used to obtain F_B.

(d) Protocol 4: Liquid-gas method using BE in which the affected facility is located as the enclosure and in which the mass of VOC input to the process in liquid form and the mass of VOC leaving the process as gaseous fugitive emissions are measured while operating only the affected facility. All fans and blowers in the building or room shall be operated as they would be under normal production. For this protocol, the following capture efficiency equation shall be used:

$$CE = (L - F_B) / L$$

Where:

CE = Capture efficiency, decimal fraction.

L = Mass of VOC input to process. Procedure L shall be used to obtain L.

F_B = mass of fugitive VOC that escapes from BE. Procedure F.2 shall be used to obtain F_B.

Section 4. Recordkeeping and Reporting. (1) All affected facilities shall maintain on file a copy of the capture efficiency protocol submitted to the cabinet. All results of the appropriate test methods and capture efficiency protocols shall be reported to the cabinet within sixty (60) days of the test date. A copy of the results shall be kept on file with the source.

(2) If a change is made to capture or control equipment, the source shall notify the cabinet of these changes and a new test may be required.

(3) The source shall notify the cabinet thirty (30) days prior to performing a capture efficiency or control efficiency test.

(4) A source utilizing a PTE shall demonstrate that this enclosure meets the requirements given in Procedure T for a PTE during testing of the control device.

(5) A source utilizing a TTE shall demonstrate that its TTE meets the requirements given in Procedure T for a TTE during testing of the control device. The source shall also provide documentation that the quality assurance criteria for a TTE have been achieved.

Section 5. Reference Material. (1) Incorporation by Reference. The following document is incorporated by reference: "VOM Measurement Techniques for Capture Efficiency," available in 40 CFR 52, Subpart O, Appendix B, published in 55 FR 26887 (June 29, 1990).

(2) The document incorporated by reference in subsection (1) of this section is available for public inspection and copying, subject to copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time.

(a) Kentucky Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;
(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and
(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: August 15, 1991
FILED WITH LRC: August 15, 1991 at noon
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation and proposed amendments will be conducted on September 30, 1991, at 10 a.m. (ET) in the Auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five (5) days prior to the hearing, Mr. Kenneth M. Hines, Manager, Program Development Branch, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Hisham M. Saaid
(1) Type and number of entities affected: This regulation applies to all regulated processes which emit volatile organic compounds (VOC) and employ a control system. This regulation presents the new procedures and methods required by the U.S. EPA for measuring VOC collection efficiencies. The entities affected are actually controlled by the division's individual applicable regulation. Previously entities used the old U.S. EPA method which is contained in 401 KAR 50:016, Policies incorporated by reference.
(a) Direct and indirect costs or savings to those affected: There have been questions raised by industry and other states concerning cost, universal applicability, improvement in accuracy, length of test, and, possibly, safety of the new method. This new method is required by the U.S. EPA, however, Section 3(2) of this regulation allows case-by-case alternatives if approved by the cabinet and the U.S. EPA. The U.S. EPA is conducting a project to address these concerns. Phase 1 addressed the costs.
1. First year: Industry reports the cost of testing in the range of $6,000 to $8,000 per test for the old method. A report developed for Phase 1 by Midwest Research Institute titled "Cost and Feasibility of the Temporary Total Enclosure Method of Determining Capture Efficiency" presented total costs for five (5) industries for this new method ranging from $20,100 to $29,800. Design costs were $500. Construction and dismantling cost $4,600-$9,400. Testing costs ranged from $15,000 to $22,600.
2. Continuing costs or savings: Please see discussion under first year, 1. above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): The length of the test influences the hours of lost production and, therefore, the cost. This test will be required everywhere by the U.S. EPA.
(b) Reporting and paperwork requirements: Section 4 of this regulation contains the recordkeeping and reporting requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Testing activities are part of the division's normal day-to-day operations and are budgeted accordingly.
2. Continuing costs or savings: Testing activities are part of the division's normal day-to-day operations and are budgeted accordingly.
3. Additional factors increasing or decreasing costs: It is possible that training for the new method could add to first year costs. The longer length of time for the new method could add to continuing costs.
(b) Reporting and paperwork requirements: The division will review data and issue reports as part of normal day-to-day operations.
(3) Assessment of anticipated effect on state and local revenues: No effects on state and local revenues are anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered at this time because this method is a U.S. EPA requirement. However, case-by-case alternatives are allowed under Section 3(2).
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is conflict on the capture efficiency procedures between this regulation and 401 KAR 50:016, Policies incorporated by reference.
(a) Necessity of proposed regulation if in conflict: This regulation contains the new capture efficiency protocols required by the U.S. EPA. 401 KAR 50:016 requires the previous U.S. EPA capture efficiency procedure. The U.S. EPA identified capture efficiency procedures as a deviation between Kentucky's State Implementation Plan (SIP) and U.S. EPA policy. 401 KAR 50:016 is not part of Kentucky's SIP. This regulation will be part of the SIP. Amending 401 KAR 50:016 would not eliminate the SIP deviation.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 401 KAR 50:016 will be amended or repealed to eliminate the conflict. 401 KAR 50:016 is not part of Kentucky's SIP, therefore, amending only 401 KAR 50:016 would not satisfy the deviation between EPA's new policy and Kentucky's SIP.
(6) Any additional information or comments: There have been questions raised by industry and other states concerning cost, universal applicability, improvement in accuracy, length of test, and, possibly, safety of the new method. This new method is required by the U.S. EPA, however, Section 3(2) of this regulation allows case-by-case alternatives if approved by the cabinet and U.S. EPA. The U.S. EPA is conducting a project to address these concerns.
TIERING: Was tiering applied? No. This method is required by the U.S. EPA for all sources. However, case-by-case alternatives are allowed under Section 3(2).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation is being proposed to maintain Kentucky's State Implementation Plan (SIP) under the Clean Air Act as amended November 15, 1990. This proposed regulation eliminates deviations between Kentucky's SIP and U.S. EPA policy.
2. State compliance standards. This proposed regulation contains the U.S. EPA's new

procedures for capture efficiency.
3. Minimum or uniform standards contained in the federal mandate. The procedures in the proposed regulation are the new procedures required by the U.S. EPA.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation imposes the same requirements, and responsibilities as required by the U.S. EPA.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation imposes no stricter standards, responsibilities or requirements.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Division of Motor Vehicle Enforcement

601 KAR 40:010. Identification of motor vehicles transporting solid waste.

RELATES TO: KRS 174.450
STATUTORY AUTHORITY: KRS 174.450
NECESSITY AND FUNCTION: This regulation sets forth the specific requirements for the placard identification of motor vehicles transporting solid waste which are operating in the Commonwealth of Kentucky. This administrative regulation is needed because the motor carrier industry has an unwritten concept of "placard" which appears to be more stringent than the requirements of KRS 174.450.

Section 1. Definitions. "Placard" means any method chosen by the motor vehicle owner to display the words "solid waste" on the motor vehicle. Examples of a placard include paint, magnetic letters, magnetic signs, or other removable device, if that device meets the identification and legibility requirements of this administrative regulation.

Section 2. Size, Shape and Color of the Placard. (1) The placard shall be in letters that contrast sharply in color with the background on which they are placed.
(2) The placard shall be in all capital letters and readily legible, during daylight hours from a distance of fifty (50) feet while the vehicle is stationary.
(3) The placard shall be kept and maintained in a manner that retains the legibility requirements of subsection (2) of this section.

Section 3. Placement of the Placard. KRS 174.450(10) specifies the placement of the placard on the motor vehicle. The list of locations shall not be interpreted to include any location on the motor vehicle where the placard is not clearly visible such as the rear of the power unit of the motor vehicle if the power unit is hauling a trailer or semitrailer.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: July 15, 1991
FILED WITH LRC: July 23, 1991 at 11 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on September 23, 1991 at 9 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by September 18, 1991 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be accepted until September 18, 1991. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: Estimated 500 transporters of municipal solid waste.
(a) Direct and indirect costs or savings to those affected: KRS 174.450 requires that "SOLID WASTE" be on each vehicle which is transporting solid waste. This administrative regulation sets forth the size, shape, color and placement of the words "solid waste". Since the General Assembly required the words in KRS 174.450, this administrative regulation adds no additional cost to the persons on whom the provisions are imposed. However, it is estimated that the placards can be prepared for as little as $5 per vehicle or cost as much as $50.
1. First year: KRS 174.450 requires that "SOLID WASTE" be on each vehicle which is transporting solid waste. This administrative regulation sets forth the size, shape, color and placement of the words "solid waste". Since the General Assembly required the words in KRS 174.450, this administrative regulation adds no additional cost to the persons on whom the provisions are imposed. However, it is estimated that the placards can be prepared for as little as $5 per vehicle or cost as much as $50.
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: Members of the solid waste transportation industry requested assistance in determining what would be acceptable and visible to the vehicle enforcement officers.
(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: Alternative size or method of attachments were discarded as being too expensive. By leaving the requirements so

flexible, each transporter can prepare the placards in the most cost efficient method.

(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. KRS 174.450 requires that all solid waste transporters identify their vehicles. All vehicles should have similar markings.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Office of General Counsel

601 KAR 40:020. Application for license to operate vehicles transporting solid waste.

RELATES TO: KRS 174.450

STATUTORY AUTHORITY: KRS 174.450

NECESSITY AND FUNCTION: KRS 174.450(9) requires that the Transportation Cabinet promulgate regulations to establish a solid waste transportation licensing program by August 26, 1991, and that on or after November 26, 1991, that each vehicle being used to transport solid waste be identified by the licensee.

Section 1. (1) An applicant for a license to operate municipal solid waste transportation vehicles within the Commonwealth of Kentucky, shall apply to the Transportation Cabinet, Office of General Counsel, 501 High Street, Frankfort, Kentucky 40622.

(2) The following information shall be provided in, or with, the application:

(a) Name in which license is sought. (NOTE: This name shall be identical to the motor carrier's current KYU number issued by the Department of Vehicle Regulation, if applicable. See question below relating to Kentucky Highway Use Tax Identification Number);

(b) Business address, including street address, city, state and zip code;

(c) Telephone number;

(d) Name of a natural person who is either the applicant, or an officer of the applicant, position of this person, Social Security number of this person and home address of this person:

(e) Number of vehicles which the licensee intends to operate;

(f) If the applicant is not a resident of Kentucky and anticipates transporting solid waste from outside Kentucky to a municipal solid waste management facility in Kentucky, a copy of the applicant's "Consent to Service" document as required to be filed with the Natural Resources and Environmental Protection Cabinet;

(g) The applicant's highway use tax identification number, as required by KRS 138.665. (NOTE: If the applicant does not currently have a KYU number, it shall attach a statement of why its transportation operations do not fall within the purview of KRS 138.665);

(h) A statement that the applicant does now have, or is in the process of obtaining, liability insurance on each vehicle in the amounts currently required by Kentucky law;

(i) A statement of whether the applicant or any principal stockholder thereof has ever been convicted of a felony; and

(j) If the applicant is a corporation, a copy of its articles of incorporation, along with a list of stockholders who own ten (10) percent or more of the outstanding stock.

(3) The official signing on behalf of the applicant shall be sworn, state that the information is true and correct to the best of his knowledge and belief and have his signature and oath notorized.

(4) The Transportation Cabinet shall make available a form listing the information required in subsections (2) and (3) of this section to any person wishing to apply for a license to operate municipal solid waste transportation vehicles. These forms may be obtained from the Office of General Counsel, 501 High Street, Frankfort, Kentucky 40622, or by telephoning 502/564-7650.

Section 2. The Transportation Cabinet shall within thirty (30) days of receipt of an application either approve the application to operate municipal solid waste transportation vehicles, disapprove the application or request additional information from the applicant. However, the Transportation Cabinet shall not issue a license to anyone who has not filed a fully completed application form.

Section 3. As soon as the applicant has been licensed to operate municipal solid waste transportation vehicles, the Transportation Cabinet shall provide a form to the licensee so that the individual solid waste transportation vehicles used by that licensee can be identified. This form shall contain space for the licensee to submit the following information:

(1) The municipal solid waste transporter license number and name of the solid waste transporter;

(2) KYU number (if applicable) of the licensee;

(3) Telephone number of the licensee;

(4) Address of the licensee;

(5) Licensee's contact person;

(6) A sworn and notorized statement made by an official of the licensee certifying that the named licensee has, and shall maintain, liability insurance on each vehicle operated under this license. In addition, the official shall state that the applicant has access to, and is familiar with, all applicable regulations of the United States Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and that the applicant shall comply with these regulations;

(7) Identification of each vehicle to be used to transport solid waste which shall include the vehicle's company unit number, complete vehicle identification number (serial number), make of vehicle, year of manufacture, declared gross weight, type of truck, and number of axles, state of license of the vehicle, license plate number (if the vehicle is Kentucky licensed), name of the lessor (if the vehicle is leased), the amount of the fee paid and whether it is a first or renewal registration of that individual vehicle. To identify the type of truck and number of axles, the licensee shall, for a straight truck, code the letters "ST", followed by the total number of axles. For a tractor-trailer, the licensee shall code the

letters "TR", followed by the total number of axles.

Section 4. Solid waste transporter vehicle identification cards shall expire at midnight of December 31 of each year.

Section 5. The fee for a solid waste transporter vehicle identification card which shall become effective January 1, or a renewal of an identification card shall be ten (10) dollars. If the card becomes effective in a month other than January, the cost of the identification card shall be prorated by using the following schedule: February - $9.17, March - $8.34, April - $7.50, May - $6.67, June - $5.84, July - $5.00, August - $4.17, September - $3.34, October - $2.50, November - $1.67, December - $0.84.

Section 6. The original vehicle identification card shall be carried in the power unit of the vehicle for which it was issued. No photocopies, reproductions or facsimiles shall be allowed.

Section 7. Even though the Transportation Cabinet does not have the authority to issue temporary identification cards for solid waste transportation vehicles, the cabinet shall promptly issue identification cards to a licensee who has properly applied for the identification cards.

Section 8. The appropriate identification card shall be in the cab of each vehicle transporting municipal solid waste beginning January 1, 1992.

Section 9. The Transportation Cabinet shall notify the Natural Resources and Environmental Protection Cabinet of all persons found to be transporting municipal solid waste, either without a license to do so, or without a vehicle identification card for the transportation of municipal solid waste.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: July 15, 1991
FILED WITH LRC: July 23, 1991 at 11 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on September 23, 1991 at 9:30 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by September 18, 1991 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be accepted until September 18, 1991. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: Estimated 500 transporters of municipal solid waste.
(a) Direct and indirect costs or savings to those affected: As established by KRS 174.450 the applicant will have to submit a $10 annual fee for each vehicle to be identified as a solid waste transportation vehicle.
1. First year: As established by KRS 174.450 the applicant will have to submit a $10 annual fee for each vehicle to be identified as a solid waste transportation vehicle.
2. Continuing costs or savings: As established by KRS 174.450 the applicant will have to submit a $10 annual fee for each vehicle to be identified as a solid waste transportation vehicle.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Application for solid waste transporters license and identification of each vehicle will have to be accomplished.
(2) Effects on the promulgating administrative body: The first year the Office of General Counsel will have to dedicate two employees to the processing of applications for solid waste transporters. Thereafter, only part of an individual will be needed. The Division of Motor Carriers will have to hire two persons on a permanent full-time basis to process the vehicle identification cards. The Division of Motor Vehicle Enforcement will have to expand its routine inspections to include the paperwork for licensing as a solid waste transporter. A separate computer tracking program will have to be prepared.
(a) Direct and indirect costs or savings:
1. First year: The cost will be close to $200,000 the first year.
2. Continuing costs or savings: The cost will reduce to $75,000 to $100,000 each year thereafter.
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: Since this licensing program is a spin-off of the motor carrier program, it was structured much the same in order to simplify matters both for the industry and the Transportation Cabinet.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. The application process is slightly less involved for those transporters who are not required to process a Kentucky highway use tax license.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance

806 KAR 3:160. Life reinsurance agreements.

RELATES TO: KRS 304.3-200, 304.3-240, 304.5-120, 304.33-140
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may adopt regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation restricts the use of life reinsurance agreements as so-called "surplus relief" when the effect is to distort reporting of the life insurer's true financial condition, take credit for or a reduction from liability for reinsurance agreements which do not involve a transfer of risk, and which conceal the fact that the insurer is in hazardous financial condition.

Section 1. Purpose and Scope. (1) The Department of Insurance recognizes that life insurers routinely enter into reinsurance agreements that yield legitimate relief to the ceding insurer from strain to surplus.

(2) However, the department has become aware that some life insurers, in the capacity of ceding insurers, have at times entered into reinsurance agreements for the principal purpose of producing significant surplus aid for the ceding insurer while providing little or no indemnification of policy benefits by the reinsurer. In addition, the Department of Insurance is concerned with reserve credits taken under reinsurance agreements which provide some indemnification of policy benefits where those policy benefits are not included in the gross reserves established by the ceding insurer, such as catastrophic mortality or extraordinary survival. The terms of these agreements and those described in Section 2 of this regulation would violate:

(a) KRS 304.3-240 relating to financial statements of insurers because they result in distorted financial statements which do not properly reflect the financial condition of the ceding life insurer;

(b) KRS 304.5-120 relating to reinsurance reserve credits because they result in a ceding insurer improperly reducing liabilities or establishing assets for reinsurance ceded; and

(c) KRS 304.3-200 and 304.33-140 relating to creation of a situation that may be hazardous to policyholders and the people of Kentucky.

(3) This regulation shall apply to all domestic life insurers and to all other authorized life insurers which are not subject to a substantially similar regulation in their domiciliary state.

Section 2. Accounting Requirements. (1) A life insurer subject to this regulation shall not, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the Department of Insurance if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

(a) The primary effect of the reinsurance agreement is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a "risk charge" and the agreement does not provide for material participation by the reinsurer in one (1) or more of the following risks: mortality, morbidity, investment, or surrender benefit;

(b) The reserve credit taken by the ceding insurer is not in compliance with the insurance code or Department of Insurance regulations, or actuarial interpretations or standards approved by the Department of Insurance;

(c) The reserve credit taken by the ceding insurer is greater than the underlying reserve of the ceding insurer supporting the policy obligations transferred under the reinsurance agreement;

(d) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against prior years' losses nor payment by the ceding insurer of an amount equal to prior years' losses upon voluntary termination of in-force reinsurance by the ceding insurer shall be considered a reimbursement to the reinsurer for negative experience;

(e) The ceding insurer may be deprived of surplus at the reinsurer's option or automatically upon occurrence of some event, such as insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums shall not be considered to be a deprivation of surplus;

(f) The ceding insurer must, at specific points in time scheduled in the agreement, terminate, or automatically recapture, all or part of the reinsurance ceded;

(g) No cash payment is due from the reinsurer, throughout the lifetime of the reinsurance agreement, with all settlements prior to the termination date of the agreement made only in a "reinsurance account", and no funds in this account are available for the payment of benefits; or

(h) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income reasonably expected from the reinsured policies.

(2) A life insurer subject to this regulation may, with prior approval of the Commissioner of Insurance, take reserve credit as the Commissioner of Insurance may deem consistent with the insurance code, regulations of the Department of Insurance, or actuarial interpretation or standards approved by the Department of Insurance.

Section 2. Written Agreements. (1) Reinsurance agreements or amendments to any agreements shall not be used to reduce any liability or establish any asset in any financial statement filed with the Department of Insurance unless the agreement, amendment, or letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.

(2) In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time not exceeding ninety (90) days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

Section 4. Existing Agreements. Life insurers subject to this regulation may continue to reduce liabilities or establish assets in financial statements filed with the Department

of Insurance for reinsurance ceded under types of reinsurance agreements described in Sections 1(2) and 2 of this regulation if:

(1) The agreements were executed and in force prior to the effective date of this regulation;

(2) No new business is ceded under the agreements after the effective date of this regulation;

(3) The reduction of the liability or the asset established for the reinsurance ceded is reduced to zero by December 31, 1994, or a later date approved by the Commissioner of Insurance as a result of an application made by the ceding insurer prior to December 31 of the year in which this regulation becomes effective;

(4) The reduction of the liability or establishment of the asset is otherwise permissible under all other applicable provisions of the insurance code, regulations of the Department of Insurance, or actuarial interpretations or standards approved by the Department of Insurance; and

(5) The Department of Insurance is notified within ninety (90) days following the effective date of this regulation of the existence of the reinsurance agreements and all corresponding credits taken in the ceding insurer's 1990 annual statement.

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: August 12, 1991

FILED WITH LRC: August 13, 1991 at 10 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for September 23, 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 September 23, 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 (5) 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: The proposed regulation is needed to restrict the use of life reinsurance agreements which are used merely as "surplus relief", and do not involve the transfer of any material risk to the reinsurer. "Rent-a-surplus" agreements of this type distort a life insurer's financial condition as reported in its annual statement by making surplus appear to be greater than it actually is, or by allowing the life insurer to create an asset or reduce liabilities in an illusory manner. Arrangements of this type can hide an insurer's true financial condition, making it appear to be in good condition when it is actually in hazardous financial condition. The proposed regulation is substantially identical to the National Association of Insurance Commissioners Model Regulation on Life Reinsurance Agreements. This regulation is one of those required by the NAIC under its Financial Regulation Accreditation Standards. Since Kentucky desires to receive accreditation, promulgation of this regulation is necessary.

(1) Type and number of entities affected: There are 20 domestic life insurers in Kentucky.

(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): Many states have adopted the model regulation and require Kentucky domiciled life insurers to submit additional reports because Kentucky does not have this regulation. Thus, adoption of the regulation will reduce the expense of doing business in other states for Kentucky domiciled life insurers.

(b) Reporting and paperwork requirements: The Department of Insurance must be notified if a life insurer desires to continue using existing reinsurance agreements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: 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 applied in that the regulation recognizes that there are several different types of risks that can be transferred to a reinsurer which would result in a legitimate reinsurance arrangement.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance

806 KAR 3:170. Annual audited financial reports.

RELATES TO: KRS 304.3-240

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. KRS 304.3-240 authorizes the Commissioner of Insurance to require additional information to the annual statement filed by insurers. This regulation requires annual filing of audited financial reports by insurers.

Section 1. Definitions. As used in this regulation:

(1) "Audited financial report" means and includes those items specified in Section 4 of this regulation;

(2) "Accountant" and "independent certified public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice, and for Canadian and British insurers, mean a Canadian-chartered or British-chartered accountant;

(3) "Commissioner" means the Commissioner of the Kentucky Department of Insurance;

(4) "Department" means the Kentucky Department of Insurance;

(5) "Insurer" means an insurer authorized to do business in Kentucky by the commissioner; and

(6) "Work papers" mean the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the independent certified public accountant's examination of the financial statements of an insurer. Work papers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of insurer documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the independent certified public accountant's examination of the financial statements of an insurer and which support the independent certified public accountant's opinion of the financial statements of an insurer.

Section 2. Purpose and Scope. (1) The purpose of this regulation is to improve the department's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accounts of the financial statements reporting the financial position and results of operations of insurers.

(2) Every insurer shall be subject to this regulation. Insurers having direct premiums written in this state of less than one (1) million dollars in any calendar year and less than 1,000 policyholders or certificate holders of directly written policies nationwide at the end of the calendar year shall be exempt from this regulation for years in which these conditions exist (unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities), except that insurers having assumed premiums pursuant to contracts or treaties of reinsurance of one (1) million dollars or more shall not be exempt.

(3) Foreign or alien insurers filing audited financial reports in another state, pursuant to the other state's requirement of audited financial reports which has been found by the commissioner to be substantially similar to the requirements of this regulation, are exempt from this regulation if:

(a) A copy of the audited financial report, report on significant deficiencies in internal controls, and the accountant's letter of qualifications which are filed with the other state are filed with the commissioner in accordance with the filing dates specified in Sections 4, 11, and 12 of this regulation respectively (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance); and

(b) A copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in Section 9 of this regulation.

(4) This regulation shall not prohibit, preclude, or in any way limit the commissioner from ordering, conducting, or performing examinations of insurers under the Kentucky Insurance Code.

Section 3. Filing and Extensions for Filing of Annual Audited Financial Reports. (1) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer.

(2) Extensions of the June 1 filing date may be granted by the commissioner for thirty (30) day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting the extension and determination by the commissioner of good cause for an extension. The request for extension shall be submitted in writing not less than ten (10) days prior to the due date and contain sufficient detail to permit the commissioner to make an informed decision as to the requested extension.

Section 4. Contents of Annual Audited Financial Report. (1) The annual audited financial report shall report the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance supervisory authority of the insurer's state of domicile.

(2) The annual audited financial report shall include the following:

(a) Report of independent certified public accountant;

(b) Balance sheet for reporting admitted assets, liabilities, capital, and surplus;

(c) Statement of operations;

(d) Statement of cash flows;

(e) Statement of changes in capital and surplus;

(f) Notes to financial statements. These notes shall be those required by the appropriate National Association of Insurance Commissioners Annual Statement Instructions and any other notes required by generally accepted accounting principles and shall also include:

1. A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to KRS 304.3-240 with a written description of the nature of these differences; and

2. A summary of ownership and relationships of the insurer and all affiliated companies; and

(g) The financial statements included in the audited financial report shall be prepared in a

form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted. The annual statement forms and instructions are those prescribed by the National Association of Insurance Commissioners, Life and Accident and Health (Form 1, 1990) and Fire and Casualty (Form 2, 1990), incorporated by reference and available from the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. (ET), weekdays.

Section 5. Designation of Independent Certified Public Accountant. (1) Each insurer required by this regulation to file an annual audited financial report shall, within sixty (60) days after becoming subject to this requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this regulation. Insurers not retaining an independent certified public accountant on the effective date of this regulation shall register the name and address of their retained certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.

(2) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner, stating that the accountant is aware of the provisions of the insurance laws of the insurer's state of domicile that relate to accounting and financial matters and affirming that the accountant will express the accountant's opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the insurance regulatory authority in that state, specifying any exceptions as the accountant may believe appropriate.

(3) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns the insurer shall within five (5) business days notify the department of this event. The insurer shall also furnish the commissioner with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding the accountant's resignation there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The disagreements required to be reported in response to this subsection include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision making level, that is, between personnel of the insurer responsible for presentation of its financial statements and personnel for the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's leter, and, if not, stating the reasons for which the accountant does not agree, and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

Section 6. Qualifications of Independent Certified Public Accountant. (1) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or, for a Canadian or British insurer, that is not a chartered accountant.

(2) Except as otherwise provided in this regulation, an independent certified public accountant shall be recognized as qualified as long as the independent certified public accountant conforms to the standards of the accounting profession, as contained in the Code of Professional Conduct of the American Institute of Certified Public Accountants (January 12, 1988) and statutes, regulations, and codes of ethics and rules of professional conduct administered by the State Board of Accountancy of Kentucky (1991), or similar code both incorporated by reference and available from the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m. (ET), on weekdays.

(3) No partner or other person responsible for rendering a report may act in that capacity for more than seven (7) consecutive years. Following any period of service the person shall be disqualified from acting in that or a similar capacity for the same insurer or its insurance subsidiaries or affiliates for a period of two (2) years. The requirements of this subsection shall become effective two (2) years after the effective date of this regulation.

(a) An insurer may make application to the commissioner for relief from this rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
2. Premium volume of the insurer;
3. Number of jurisdictions in which the insurer transacts business.

(b) The commissioner shall not recognize as a qualified independent certified public accountant, nor except any annual audited financial report, prepared in whole or in part by any natural person who:

1. Has been convicted of fraud, bribery, a conviction of the Racketeer Influenced and Corrupt Organizations Act, 18 USC 1961, 1968, or any dishonest conduct or practices under federal or state law;
2. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this regulation; or

3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this regulation.

(4) If an insurer disagrees with a determination made by the commissioner pursuant to subsection (3) of this section, it may request a hearing as set forth in KRS Chapter 304.2.

Section 7. Consolidated or Combined Audits. An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial reports if the insurer is part of a group of insurers which utilizes a pooling or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In these cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

(2) Amounts for each insurer subject to this section shall be stated separately;

(3) Noninsurance operations may be shown on the worksheet or a combined or individual basis;

(4) Explanations of consolidating and eliminating entries shall be included; and

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown in the annual statements of the insurers.

Section 8. Scope of Examination and Report of Independent Certified Public Accountant. Financial statements furnished pursuant to Section 4 of this regulation shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. Consideration shall also be given to other procedures illustrated in the financial condition examiner's handbook of the National Association of Insurance Commissioners (1990), incorporated by reference and available from the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m. (ET), weekdays, which the independent certified public accountant deems necessary.

Section 9. Notification of Adverse Financial Condition. (1) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirements of the Kentucky Insurance Code as of that date. An insurer which has received a report pursuant to this subsection shall forward a copy of the report to the commissioner within five (5) business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of this report being furnished to the commissioner. If the independent certified public accountant fails to receive this evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five (5) business days.

(2) It is not the intent of the commissioner that an independent certified public accountant be liable in any manner to any person for any statement made in connection with subsection (1) of this section if the statement is made in good faith in compliance with subsection (1) of this section.

(3) If the accountant, subsequent to the date of the audited financial report filed pursuant to this regulation, becomes aware of facts which might have affected his report, the commissioner notes the obligation of the accountant to take the action prescribed in volume 1, section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants (1990), incorporated by reference and available from the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. (ET), weekdays.

Section 10. Report on Significant Deficiencies in Internal Controls. In addition to the annual audited financial statements, each insurer shall furnish the commissioner with a written report prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. SAS 60 communication of internal control structure matters noted in an audit (AU §325 of the Professional Standards of the American Institute of Certified Public Accountants, (1990), available from the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. (ET), weekdays) requires an accountant to communicate significant deficiencies (known as "reportable conditions") noted during a financial statement audit to the appropriate parties within an entity. No report shall be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the department within sixty (60) days after the filing of the annual audited financial statement. The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the accountant's report.

Section 11. Accountant's Letter of Qualifications. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(1) That the accountant is independent with respect to the insurer and conforms to the standards of the accountant's profession as contained in the Code of Professional Conduct and Pronouncements of the American Institute of Certified Public Accountants (January 12, 1988) and statutes, regulations, and rules of professional conduct of the State Board of Accountancy of Kentucky (1991), both available

from the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. (ET), weekdays, or similar code;

(2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing in this regulation prohibits the accountant from utilizing staff as the accountant deems appropriate where use is consistent with the standards prescribed by generally accepting auditing standards;

(3) That the accountant understands the annual audited financial report, that the accountant's opinion on it will be filed in compliance with this regulation, and that the commissioner will be relying on this information in monitoring and regulation of the financial position of insurers;

(4) That the accountant consents to the requirements of Section 12 of this regulation and that the accountant consents and agrees to make available for review by the commissioner, his designee, or his appointed agent, the work papers;

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing of the American Institute of Certified Public Accountants;

(6) A representation that the accountant is in compliance with the requirements of Section 6 of this regulation.

Section 12. Availability and Maintenance of Certified Public Accountant Work Papers. (1) Every insurer required to file an audited financial report pursuant to this regulation shall require the accountant to make available for review by department examiners all work papers prepared in the conduct of the accountant's examination and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the offices of the department, or any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit work papers and communications until the department has filed a report on examination covering the period of the audit, but no longer than seven (7) years from the date of the audit report.

(2) In the conduct of the periodic review by department examiners described in subsection (1) of this section, it shall be agreed that photocopies of pertinent audit work papers may be made and retained by the department. Reviews by the department examiners shall be considered investigations and all working papers and communications obtained during the course of shall be afforded the same confidentiality as other examination work papers generated by the department.

Section 13. Exemptions and Effective Dates. (1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with this regulation if the commissioner finds, upon review of the application, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted any time and from time to time for a specified period or periods. Upon denial of an insurer's written request for an exemption from this regulation, the insurer may request a hearing on its application for an exemption pursuant to KRS Chapter 304.2

(2) Domestic insurers retaining a certified public accountant on the effective date of this regulation who qualify as independent shall comply with this regulation for the year ending December 31, 1991, and each year thereafter unless the commissioner permits otherwise.

(3) Domestic insurers not retaining a certified public accountant on the effective date of this regulation who qualify as independent shall meet the following schedule for compliance unless the commissioner permits otherwise:

(a) As of December 31, 1991, file with the commissioner:

1. Report of independent certified public accountant;
2. Audited balance sheet; and
3. Notes to audited balance sheet.

(b) For the year ending December 31, 1991, and each year thereafter, these insurers shall file with the commissioner all reports required by this regulation. Foreign insurers shall comply with this regulation for the year ending December 31, 1991, and each year thereafter, unless the commissioner permits otherwise.

Section 14. Canadian and British Companies. (1) In the case of Canadian and British insurers, the annual audited financial reports shall be defined as the annual statement of total business in the manner filed by these insurers with their domiciliary supervisory authority duly audited by an independent chartered accountant.

(2) For Canadian and British insurers, the letter required by Section 5 of this regulation shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the commissioner pursuant to Section 3 of this regulation and shall affirm that the opinion expressed is in conformity with the requirements of Section 3 of this regulation.

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: August 12, 1991
FILED WITH LRC: August 14, 1991 at 2 p.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for September 23, 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 September 23, 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 (5) 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 304.3-240(2), which permits insurance regulators to require the filing of additional reports to

the annual statement. The National Association of Insurance Commissioners, as part of its financial regulation accreditation standards, requires states to adopt the NAIC Model Regulation Requiring Annual Audited Financial Reports. The proposed regulation is substantially identical to the model regulation. The proposed regulation requires filing of a series of audited financial reports by insurers by June 1 of each year and specifies the persons who qualify as independent certified public accountants to audit the financial reports.

(1) Type and number of entities affected: The regulation specifically applies to the 52 domestic insurers authorized to do business in Kentucky, and potentially affects an unknown number of foreign insurers whose domiciliary states have not adopted this or a similar regulation. About one-half of the states have adopted the model, and all will be adopting it in the near future.

(a) Direct and indirect costs or savings to those affected:

1. First year: If the insurer does not have an independent certified public accountant to audit its financial statements, it must retain one.

2. Continuing costs or savings: Insurers must file the audited financial reports with the Commissioner of Insurance each year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Audited financial reports must be filed with the Commissioner of Insurance by June 1 of each year. If an insurer and its accountant disagree and the accountant resigns, the insurer and the accountant must report this to the commissioner.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Department of Insurance will have to establish procedures to receive and review audited financial reports.

2. Continuing costs or savings: The Department of Insurance will have to review audited financial reports every year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Kentucky Department of Insurance desires to obtain accreditation under the financial regulation accreditation standards established by the National Association of Insurance Commissioners. The proposed regulation is necessary to achieve 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 insurers with low premium volume are exempt from the regulation. Tiering is also recognized in that insurers may apply to the commissioner for exemption for good cause shown.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance

806 KAR 7:100. Insurer investments in medium grade and lower grade obligations.

RELATES TO: KRS 304.6-010, 304.6-020, 304.7-080, 304.7-100, 304.7-110

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 restrictions on insurer investments in medium grade and lower grade obligations (so-called "junk bonds").

Section 1. Definitions. As used in this regulation:

(1) "Admitted assets" means the amount of admitted assets as of the last day of the most recently concluded annual statement year, computed in the same manner as "admitted assets" in KRS 304.6-010.

(2) "Aggregate amount" of medium grade and lower grade obligations means the aggregate statutory statement value of medium grade and lower grade obligations.

(3) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(4) "Institution" means a corporation, a joint-stock company, an association, a trust, a business partnership, a business joint venture, or similar entity.

(5) "Lower grade obligations" means obligations which are rated four (4), five (5), or six (6) by the Securities Valuation Office of the National Association of Insurance Commissioners.

(6) "Medium grade obligations" means obligations which are rated three (3) by the Securities Valuation Office of the National Association of Insurance Commissioners.

Section 2. Purposes. (1) The purposes of this regulation are:

(a) To protect the interests of the insurance buying public by establishing limitations on the concentration of medium grade and lower grade obligations in which a domestic insurer may invest; and

(b) To implement KRS 304.6-010, 304.6-020, 304.7-080, 304.7-100, and 304.7-110 by regulating the acts and practices of domestic insurers with respect to the concentration of investments in medium grade and lower grade obligations.

(2) The commissioner is concerned that changes in economic conditions and other market variables could adversely affect domestic insurers having a high concentration of these investments. Accordingly, the commissioner has concluded that a limitation on the percentage of total admitted assets that a domestic insurer may prudently invest in these obligations is reasonable, necessary, and required in order to carry out the commissioner's responsibilities under the Kentucky Insurance Code.

(3) The commissioner understands that medium grade and lower grade obligations can have a place in a well-diversified portfolio. However, it is also understood that the special risks associated with these investments require a high degree of management even when they are held

within an aggregate limit. While this regulation will leave all domestic insurers with authority to invest a substantial portion of their assets in medium grade and lower grade obligations, the prudent management of the attendant risks remain an essential element of investing.

Section 3. Investment Restrictions. (1) A domestic insurer shall not acquire, directly or indirectly, any medium grade or lower grade obligation of any institution if, after giving effect to the acquisition, the aggregate amount of all medium grade and lower grade obligations then held by the domestic insurer would exceed twenty (20) percent of its admitted assets, but no more than ten (10) percent of its admitted assets shall consist of obligations rated four (4), five (5), or six (6) by the Securities Valuation Office of the National Association of Insurance Commissioners, and no more than three (3) percent of its admitted assets shall consist of obligations rated five (5) or six (6) by the Securities Valuation Office of the National Association of Insurance Commissioners, and no more than one (1) percent of its admitted assets shall consist of obligations rated six (6) by the Securities Valuation Office of the National Association of Insurance Commissioners. Attaining or exceeding the limit of any one category shall not preclude an insurer from acquiring obligations in other categories subject to the specific and multicategory limits.

(2) A domestic insurer shall not invest more than an aggregate of one (1) percent of its admitted assets in medium grade obligations issued, guaranteed, or insured by any one (1) institution, nor may it invest more than one-half (1/2) of one (1) percent of its admitted assets in lower grade obligations issued, guaranteed, or insured by any one (1) institution. However, a domestic insurer shall not invest more than one (1) percent of its admitted assets in any medium or lower grade obligations issued, guaranteed, or insured by any one (1) institution.

(3) Nothing contained in this regulation prohibits a domestic insurer from acquiring any obligation which it has committed to acquire if the insurer would have been permitted to acquire that obligation pursuant to this regulation on the date on which the insurer committed to purchase that obligation.

(4) A domestic insurer may acquire an obligation of an institution in which the insurer already has one (1) or more obligations, if the obligation is acquired in order to protect an investment previously made in the obligations of the institution, but all obligations acquired in this manner shall not exceed one-half (1/2) of one (1) percent of the insurer's admitted assets.

(5) Nothing in this regulation prohibits a domestic insurer from acquiring an obligation as a result of a restructuring of a medium or lower grade obligation already held.

(6) This regulation does not require a domestic insurer to sell or otherwise dispose of any obligation legally acquired prior to the effective date of this regulation.

(7) The board of directors of any domestic insurer which acquires or invests, directly or indirectly, more than two (2) percent of its admitted assets in medium grade and lower grade obligations of any institution shall adopt a written plan for making these investments. The plan, in addition to guidelines with respect to the quality of the issues invested in, shall contain diversification standards such as standards for issuer, industry, duration, liquidity, and geographic location.

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: August 12, 1991
FILED WITH LRC: August 13, 1991 at 10 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for September 23, 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 September 23, 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 (5) 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: The proposed regulation is necessary to restrict domestic insurers' investments in medium grade and lower grade obligations, that is, so-called junk bonds. Generally, the proposed regulation restricts a domestic insurer's junk bond holdings to 20% of admitted assets. There are additional inside limits of 10% on bonds rated four through six, 3% on bonds rated five or six, and 1% on bonds rated six. There are also limits on investments in individual issuers of 1% on bonds rated three, and 1/2% on bonds rated four through six. The regulation is substantially identical to the National Association of Insurance Commissioners Investments in Medium Grade and Lower Grade Obligations Model Regulation. The NAIC has not yet made this regulation part of the Financial Regulatory Accreditation Standards, but it seems likely it will do so in the future.

(1) Type and number of entities affected: The regulation potentially affects Kentucky's 52 domestic insurers.

(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: If a domestic insurer acquires or invests, directly or indirectly, more than 2% of its admitted assets in medium grade and lower grade obligations of any institution, a written plan must be adopted for making these investments.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state

and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Kentucky currently does not have domestic insurers which have substantial problems with junk bond investments. However, it has no specific guidelines to assure that the status quo remains. The proposed regulation is promulgated to provide those guidelines.
(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 "junk bond" obligations are divided into medium grade and lower grade bonds. While there is an overall maximum of 20% of admitted assets, there are additional "inside limits" depending on the quality of the bonds.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:535. Tax assessment schedule for mental health centers.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.576
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance under Title XIX of the Social Security Act. This regulation sets forth provisions relating to the tax assessment of mental health centers as authorized by KRS 205.576.

Section 1. Tax Assessments. (1) The tax assessment for each Medicaid participating mental health center for each calendar quarter shall be one-half (1/2) of the increase in revenues realized by the mental health center which results from the July 1, 1991 fee schedule update but not to exceed fifteen (15) percent of the mental health center's gross Medicaid revenues for the calendar quarter.
(2) Due date for tax assessments.
(a) The tax assessment for each mental health center shall be due by the 45th day following the end of each calendar quarter.
(b) A mental health center may request a delay in its assessment payment due date based on unforeseeable circumstances affecting its ability to pay in a timely manner. Unforeseeable circumstances may include, but are not limited to, substantial disruptions of management or operations from occurrences such as fire, flood, storm, bankruptcy or other demonstrated financial hardship. Simple inability to pay, unless combined with a filing of bankruptcy or other demonstrated financial hardship by the mental health center, shall not constitute justification for a delayed payment schedule. If a delay is granted, the delay shall not exceed sixty (60) days. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be justification for a delay in payment of the assessment until the court case is resolved.

Section 2. Waiver of the Late Payment Penalties. The Commissioner of the Department for Medicaid Services shall waive the late payment penalty specified in KRS 205.576 only when good cause exists. Good cause shall be determined to exist only when an unforeseeable circumstance occurs affecting timely payments. Unforeseeable circumstances may include substantial disruptions of management or operations from occurrences such as fire, flood, storm or similar events. Failure to pay due to insufficient funds shall not be good cause for a waiver of the penalty unless combined with a bankruptcy filing of the provider. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount shall be considered to meet the criteria for good cause.

Section 3. The provisions of this regulation shall be applicable for calendar quarters beginning on and after July 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 1, 1991
FILED WITH LRC: July 22, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 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 September 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: 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 mental health centers participating in the Medicaid program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: 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: *Tax funds in excess of those paid to mental health centers as part of the reimbursement will be placed in the Medicaid Assessment Improvement Trust (MAIT) fund.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the August 5 and 6, 1991 Meeting

The July meeting of the Administrative Regulation Review Subcommittee was held on Monday, August 5, 1991 at 2 p.m. in Room 327 of the Capitol and on Tuesday, August 6, 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 July 1 and 2, 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: Representative Ramsey Morris; Wanda Deleplane, Louis Rom, Attorney General's Office; Arthur Hatterick, Jr., Personnel Board; James Utter, Department of Personnel; John Merchant, Marilyn Eaton, Chris Bowling, Kentucky Infrastructure Authority; David Carby, Board of Medical Licensure; Thomas Young, Lauren Schaaf, Department of Fish and Wildlife Resources; Joy Morgan, Betty Beshoar, Division of Waste Management; Jack Damron, Lori Poole, Corrections Cabinet; David Garnett, Motor Vehicle Commission; Joseph W. Kelly, Chairman, State Board of Elementary and Secondary Education; Gary Bale, Bernie Carr, Gary Bale, Elizabeth Nelli, Debbie Schumacher, Woodrow Smither, Phyllis Webster, Department of Education; Catherine Staib, Alcoholic Beverage Control Board; Kembra Taylor, Guy Schoolfield, Labor Cabinet; Patrick Watts, Department of Insurance; Ronda Paul, Division of Securities; David Nichols, Jim Corum, Mark Hooks, Danna Droz, Robert P. McWilliams, Linda Yeary, Donald Hughes, Barbara Coleman, David Crawe, Eric Friedlander, Ralph Von Deran, Ed Crews, Michele T. Gore, Judy Trigg, Anita Moore, Janice Kline, Mark Cornett, Michael Cheek, Richard Newman, Diana Gaetz, Jim McClure, Cabinet for Human Resources; Ted Bradshaw, Independent Insurance Agents of Kentucky; Gerald H. Lunney, Council of Independent Kentucky Colleges and Universities; Kathy Gannoe, Bluegrass Long-term Care Ombudsman, Inc.; Nancy Cox, Karen M. Ring, Alzheimer's Association; Mary Haynes, Susan Cecil, Wellington Parc Health Systems; Anne Barton, Kentucky Association of Health Care Facilities; Bill Doll, Kentucky Medical Association; Sarah Cunningham, Metropolitan Sewer District.

LRC Staff: Joe Hood, Greg Karambellas, Susan Wunderlich, Donna Pierce, Peggy Jones, and Susan Eastman.

Press: Tim Weldon, WLEX-TV.

The Subcommittee determined that the following administrative regulation does not comply with KRS Chapter 13A:

Cabinet for Human Resources: Department for Health Services: Health Services and Facilities

902 KAR 20:290 (Nursing home standards for freestanding facilities limited to the care of patients with Alzheimer's or related disorders.) This regulation sets forth operating standards for Alzheimer's facilities constructed pursuant to KRS 216B.071. It was originally filed on January 15, 1991, and was amended by the Administrative Regulation Review Subcommittee on April 2, 1991, to delete the minimum staffing ratios. The Interim Joint Committee on Health and Welfare subsequently voted to restore the staffing ratios on April 19; however, a quorum was not present and the amendment was not adopted. This amendment restores the staffing ratios as originally included in the regulation.

When this regulation was initially considered, proponents of a minimum staff-to-patient ratio stated that adequate care of patients with Alzheimers required that the Cabinet impose minimum staff requirements.

Karen Ring, Nancy Cox, Alzheimer's Association; Susan Coomes Cecil, Mary Haynes, Wellington Parc Health Systems; Anne Barton, Kentucky Association of Health Care Facilities; and Kathy Gannoe, Bluegrass Long-term Care Ombudsman, Inc. appeared to testify on this regulation. Eric Friedlander appeared as the agency's representative.

Representatives of the facilities stated that a staffing ratio did not ensure quality care, and that the ratio requirements would be treated as establishing a maximum for staff. They added that the adequacy of staffing was a matter that could only be determined on an individual basis, and not by the establishment of an arbitrary number of staff. Cabinet personnel stated that the staff requirement would not affect its authority to survey a facility and to determine whether a different number of staff was required in order to provide proper care of patients. They added that the ratio was not a maximum number of staff. Those in favor of the staffing ratio stated that a minimum ratio was necessary in order to ensure adequate care of Alzheimer's patients, and that facilities were not prevented from increasing the number if necessary. Without a ratio, and without a counter proposal from facilities, there were no guidelines or requirements on ratio of staff to patients.

Senator Huff asked facility representatives and those speaking against the regulation whether restraints or sedation of patients was practiced, and would be required if an insufficient number of staff were on hand. He also asked whether costs were higher for the care of Alzheimer's patients as opposed to the care of other nursing home patients. Chairman Kerr pointed out that the ratio appeared to establish a minimum and not a maximum, and asked facility representatives how they would determine the number of staff required. He also asked if they had another ratio in mind.

Representative Bruce moved that the regulation be found deficient. He stated that the ratio had been deleted by the Subcommittee when the regulation was reviewed initially, and that the legislature needed to look at this issue. Representative Yates seconded the motion; motion passed. (Senator Huff requested that his vote against the motion be recorded.)

The Subcommittee determined that the following administrative regulations, as amended, do not comply with KRS Chapter 13A:

Education and Humanities Cabinet: Department of Education: Office of Local Services: School District Finance

702 KAR 3:250 (Preschool grant allocations.) Section 3(2) of this regulation was deleted since the 1990-91 school year is completed, and this subsection is no longer necessary. On

motion of Representative Bruce, seconded by Representative Yates, a letter of objection was attached to this regulation based on the fact that the method of implementation of grant allocations is in conflict with the legislative intent of the statute. Motion passed.

Office of Learning Development Programs: Instructional Services

704 KAR 3:410 (Preschool education program for four year old children.) Section 8(2)(d) was amended by deleting "and other quality indicators of effective, developmentally appropriate early childhood programs as identified in the literature." This language was deleted because it was vague and did not give school districts a notice of what was being expected. Representative Allen questioned the department's method of identification of children who are at risk for inclusion in the preschool program. The agency said that for funding purposes only children who are eligible for the free lunch program are counted. Upon motion by Representative Bruce, seconded by Representative Yates, the Subcommittee attached a letter of objection to this regulation because the regulation does not follow legislative intent. (A letter of objection was previously attached to this regulation at the November 11, 1990 meeting of the Administrative Regulation Review Subcommittee.)

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Finance and Administration Cabinet: Kentucky Infrastructure Authority

The following objections had been raised to the four regulations listed below. Separate regulations should have been promulgated for each fund. These regulations applied requirements, duties, criteria and standards, that are established by KRS Chapter 224A for separate funds, to all funds or programs. They contain restrictions or conditions for certain funds or programs that are not required by KRS Chapter 224A. For example, although KRS 224A.280 does not limit the Solid Waste Grant Program to the lowering of renovation or acquisition cost of solid waste facilities owned by low income communities, the regulation governing the Program contains such a limitation. These regulations establish procedures, requirements, priorities, duties, and functions for the Cabinet for Human Resources, even though KRS Chapters 224A and 13A requires the Cabinet to promulgate its own regulations. The Kentucky Infrastructure Authority (KIA) does not have the authority to establish requirements for the Cabinet, even if the Cabinet agreed. They improperly delegate authority to KIA staff that KRS Chapter 224A has delegated to or required of the Authority, itself. They repeat or summarize language found in KRS Chapter 224A; add to terms, definitions, and requirements established, required or defined in KRS Chapter 224A. They grant authority to KIA that has been granted by KRS Chapter 224A to another agency, or that has not been granted to KIA. They promulgate procedures or requirements that KRS Chapter 224A assigns to the Natural Resources and Finance and Administration Cabinets and to the Department of Local Government.

In addition, objections were raised to 200 KAR 17:040 and 200 KAR 17:050 because they imposed conditions on grants to certain projects specified in the provisions of the "Final Budget Memorandum" of the 1990-92 Biennial Budget. The "Final Budget Memorandum" specifically requires KIA to establish a program or to fund specified projects, regardless of certain other statutory requirements. KIA personnel stated that they would consider the projects specified in the Final Budget Memorandum, but those projects would have to meet requirements set out in these regulations as would any applicant.

KIA personnel stated that the broad grant of regulatory authority to KIA in KRS Chapter 224A permitted the promulgation, and requirements, of these regulations. They added that the Cabinet for Natural Resources and Environmental Protection, and the Department of Local Government, had assisted in the drafting of these regulations and had no objection to the requirements and procedures imposed by KIA.

KIA proposed various amendments to these four regulations that met some, but not all, of the objections raised. Generally, these amendments corrected the drafting requirements of KRS 13A.222, and were approved by the Subcommittee.

Chairman Kerr stated that, because of the questions relating to statutory and regulatory authority, and compliance with the Final Budget Memorandum, LRC should be requested to refer these regulations to the Interim Joint Committee on Appropriations and Revenue for review. He added that material relating to these regulations and the issues they raised should be included for referral to the Interim Joint Committee on Appropriations and Revenue. A motion was made and passed.

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.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:111 (Deer and turkey hunting on special areas.) Section 1(3)(d)(2) was amended to delete a sentence which conflicted with an amendment made to Section 1(3)(b), that changed deer hunting dates at the Fort Knox Wildlife Management Area from December 7 through 13 to December 14 through 15.

Corrections Cabinet: Office of the Secretary

501 KAR 6:020 (Corrections policies and procedures.) CPP 14-04-01 was amended to comply with an objection that minimum security institution law libraries did not have institutional policies and procedures without security sections. Such policies and procedures were provided.

501 KAR 6:050 (Luther Luckett correctional complex.) LLCC 15-02-01 was amended to comply with the drafting requirements of KRS 13A.222.

501 KAR 6:080 (Corrections cabinet manuals.) The Diet Manual was amended to comply with the drafting requirements of KRS 13A.222.

Education and Humanities Cabinet: Department of Education: Office of Commissioner

701 KAR 5:100 (Guidelines for alternative models for school-based decision making.) Sections 1 and 4 were amended to delete the word

"ex-officio" and insert in lieu thereof the word "nonvoting". The reason was to clarify the participation of nonclassified employees on school councils.

Labor Cabinet: Occupational Safety and Health
803 KAR 2:015 (General industry standards.) An objection had been raised concerning the absence of a summary of material incorporated by reference. Material was not incorporated by reference. An objection had been raised that the Regulatory Impact Analysis referred to an amendment of Section 1, and that section was not amended. Agency personnel inadvertently omitted the amendment to Section 1. It was presented to the Subcommittee and approved. An additional amendments to Sections 2 and 6 were approved to comply with the drafting requirements of KRS 13A.222. Finally, Section 6(5) was deleted. Language specifying the enforcement dates of various provisions was added to the specific provisions to which it applied.

Public Protection and Regulation Cabinet: Department of Insurance: Authorization of Insurers and General Requirements
806 KAR 3:150 (Standards for insurers deemed to be in hazardous financial condition.) This regulation was amended to incorporate by reference the required forms. The agency also submitted a copy of the incorporated material.

Department of Financial Institutions: Division of Securities
808 KAR 10:010 (Forms for application, registration--reporting and compliance.) This regulation was amended by inserting applicable dates on the material incorporated by reference. In Section 1, after the word "reference" the rest of the sentence and the following sentence were deleted. This language was unnecessary.
808 KAR 10:260 (Examination requirement for individuals advising the public on securities.) Section 2(1) was amended to clarify that individuals continuously employed since prior to July 1, 1991 are not required to take the examination.
808 KAR 10:270 (Registration exemption for securities listed on the Chicago board options exchange.) This regulation was amended to incorporate by reference the "Memorandum of Understanding" between the North American Securities Administrators Association, Inc. and the CBOE.

Cabinet for Human Resources: Department for Health Services: Controlled Substances
902 KAR 55:075 (Sale of seized and forfeited controlled substances.) This administrative regulation was amended to add to Section 1 the specific section of KRS Chapter 218A that governed; to amend Section 1 to comply with the drafting requirements of KRS 13A.222; and to amend Section 1(3) and (4) in order to conform to the drafting requirements of KRS 13A.222, and to provide the specific terms and conditions for the sale or purchase of seized and forfeited controlled substances.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Personnel: Personnel Board
101 KAR 1:325 (Probationary periods.)

General Government Cabinet: Kentucky Board of Medical Licensure
201 KAR 9:041 (Fee schedule.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Hunting and Fishing
301 KAR 3:021 (Hunting and fishing license fees.)

Corrections Cabinet: Office of the Secretary
501 KAR 6:070 (Kentucky correctional institution for women.)
501 KAR 6:140 (Bell county forestry camp.)

Education and Humanities Cabinet: Department of Education: Office of Commissioner
701 KAR 5:090 (Teacher disciplinary hearings.)
Office of Instruction: Education Professional Standards Board
704 KAR 20:590 (Alternative training program eligibility requirements for middle grade and secondary classroom teachers.)
704 KAR 20:600 (The alternative training program for preparation of candidates for initial teacher certification.)

Labor Cabinet: Occupational Safety and Health
803 KAR 2:318 (Adoption of 29 CFR Part 1910.301-1910.399.)
803 KAR 2:403 (Adoption of 29 CFR Part 1926.50-1926.59.)

Public Protection and Regulation Cabinet: Department of Alcoholic Beverage Control: Advertising Distilled Spirits and Wine
804 KAR 1:100 (General advertising practices.) Agency personnel explained to the Subcommittee that this regulation was being amended to permit the advertisement of alcoholic beverages in pamphlets or flyers that are delivered directly to residences. This amendment was made upon the recommendation of the Small Business Task Force, which felt that small businesses were at an economic disadvantage because they could not afford to advertise in newspapers. Representative Allen and Senator Huff objected to permitting delivery of such advertisements to households. A motion to find this regulation deficient was made. Senators Huff and Quinlan and Representative Allen voted aye; Representatives Kerr, Yates, and Bruce voted no. The motion failed.

Cabinet for Human Resources: Department for Employment Services: Unemployment Insurance
903 KAR 5:270 (Maximum weekly benefit rates.)
Department for Social Insurance: Food Stamp Program
904 KAR 3:020 (Financial requirements.)
904 KAR 3:025 (Technical requirements.)
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.) The initial review stated that the regulation did not incorporate certain policy manuals. It was pointed out that there were no manuals to incorporate because this regulation contained what had previously been in incorporated material, and was promulgated in order to comply with the Subcommittee's instructions to the agency to comply with the format and organization requirements of KRS Chapter 13A: all material was not to be incorporated in one

regulation; regulations would be divided into specific topics.

Chairman Kerr asked whether alleged perpetrators or parents of children involved in investigations of abuse were notified of the outcome of an investigation. Agency personnel stated that in some cases agency staff would inform parents of the investigation's outcome, although this did not mean that written notification was made. Insofar as the records of the investigation were concerned, a request under the Open Records Law would have to be made. In response to a question by Chairman Kerr, agency personnel stated that there was no one policy on oral notification of the results and that, whatever policy was followed, was no contained in a policy or memorandum that was not part of the regulation. Chairman Kerr asked whether a noncustodial parent was informed. Agency personnel stated that they were not informed and that they would have to request the records under the Open Records Law. In response to a further question by Chairman Kerr, agency personnel stated that there had been some concern that such information might be misused in a custody dispute and that the statute was explicit in restriction of this information. Senator Huff requested that his objection to this regulation be recorded.

Adult Services

905 KAR 5:070 (Adult protective services.)

Department for Medicaid Services: Medicaid Services

907 KAR 1:410 (Incorporation by reference of the vision services manual.)

The following regulations were deferred at the promulgating agency's request:

Department of Personnel: Classified

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

General Government Cabinet: Kentucky Board of Medical Licensure

201 KAR 9:031 (Examinations.)

201 KAR 9:300 (Interpretation of KRS 311.900(1).)

201 KAR 9:305 (Continued certification of athletic trainers.)

Board of Veterinary Examiners

201 KAR 16:010 (Code of conduct.)

Natural Resources and Environmental Protection Cabinet: Petroleum Storage Tank Environmental Assurance Fund Commission

415 KAR 1:010 (Definitions for terms used in 415 KAR Chapter 1.)

415 KAR 1:020 (General provisions for state financial responsibility.)

415 KAR 1:030 (Guidelines for financial assistance applications.)

Motor Vehicle Commission: Commission

605 KAR 1:190 (Motor vehicle advertising.)

Public Protection and Regulation Cabinet: Department of Mines and Minerals: Division of Oil and Gas

805 KAR 1:020 (Protection of fresh water zones.)

805 KAR 1:050 (Surety bonds; requirements, cancellation.)

805 KAR 1:120 (Operating or deepening existing wells and drilling deeper than the permitted depth.)

805 KAR 1:130 (Deep well regulation relating to casing, cementing, plugging, gas detection and blow-out prevention.)

805 KAR 1:140 (Directional and horizontal wells.)

Public Service Commission: Utilities

807 KAR 5:014 (Management and Operation audits.)

Department of Financial Institutions: Division of Securities

808 KAR 10:220 (Registration exemptions--NASDAQ/NMS exemption.)

Cabinet for Human Resources: Office of the Secretary: Family Resource & Youth Services Centers

900 KAR 4:010 (Criteria for awarding grants for family resource and youth services centers.)

OTHER BUSINESS:

Cabinet for Human Resources: Department of Health Services: Sanitation

902 KAR 10:085 (Kentucky on-site sewage disposal systems.) The issues raised by this regulation were discussed at length at the July 1991 meeting of the Administrative Regulation Review Subcommittee. The discussion at the August meeting was parallel to the discussion at the July meeting.

Dr. James Corum, Kenneth Wade, David Nichols, and Mark Hooks appeared before the Subcommittee. Implementation of this regulation has created problems for citizens who are not permitted to repair or replace septic tank systems or components thereof, with lot sizes insufficient to comply with lateral requirements, and where there is no sewer to which they may connect. Because of the refusal to permit repair or replacement, those who could not afford to meet the regulatory requirements were forced to move from their homes, or to stop construction on housing for which permits had already been granted.

Representatives Yates and Allen and Senator Quinlan and Chairman Kerr asked agency personnel why strict enforcement of requirements, which agency personnel alleged were imposed by these regulations, was delayed for a number of years; why local governmental agencies had not been informed until recently of these requirements; why there appeared to be a lack of coordination between state agencies and local governmental bodies; whether individual on-site inspections to determine whether permission to repair existing systems could be permitted without damage to the environment and public health were conducted; why systems in existence at the time the regulations became effective were not grandfathered in; why strict enforcement was not limited to areas in which sewers were available; why the requirements were being imposed even though an EPA study had concluded that pollution or other detrimental environmental effects had not occurred in the areas being considered by agency personnel and the Subcommittee at this meeting; and whether the agency would be willing to amend the regulations to alleviate the hardships caused by agency implementation.

It was pointed out that although the agency determined in 1987 that existing regulations permitted the imposition of stricter requirements, the regulation was not amended until 1988 in order to impose the stricter requirements. Agency personnel admitted that

strict enforcement of these requirements did not occur until relatively recently and after a change of personnel in the agency; and in many cases only after the agency had been notified by complaint or otherwise. The agency stated that many older lots had systems that were not now adequate, but that some funds for low interest loans to homeowners were available. Members of the Subcommittee pointed out that a great number of constituents were faced with costs in the thousands of dollars in order to meet agency requirements, were not affluent enough to carry even low interest loans, and should be permitted to repair existing systems. Although agency personnel stated that the EPA study omitted certain items, it was pointed out that initial drafts were not relevant, that the study and its conclusions as issued were relevant, and that the study concluded that contamination or pollution had not occurred.

Agency personnel were asked why several alternatives, such as manmade wetlands, were not suggested, offered, or implemented to individuals. After study of some of the alternatives, various members of the Subcommittee stated that it appeared that they were not feasible and would not address the problems caused by the situations under review. Various members of the Subcommittee disputed comments relating to the degree of pollution of the water table alleged by agency representatives.

Agency personnel presented a proposed amendment that would grant a variance for a period limited to one year for emergency or temporary repair of existing seepage pits if there were no technically feasible alternative disposal systems, or other approved sewage disposal methods available. Subcommittee members stated that the proposed amendment would not resolve the problems; that approved methods would not be available within a year; and that those facing the problems raised by implementation of this regulation would be found out of compliance. It was pointed out that Section 15 of the regulation appeared to prohibit repair of existing systems only if a change in the usage of the structure had occurred; and, that adherence to different requirements had been implemented only recently. Members of the Subcommittee disagreed with the interpretation of the agency that the change in structure usage was only one element that would require compliance with the recently enforced standards.

The Subcommittee approved a motion that the regulation exceeded statutory authority, that the legislature had intended the exemption of existing systems, that existing systems be exempted where no feasible alternatives or sewer system existed, that the stricter requirements had not been enforced by the agency until recently even though no amendment to the regulation had been made for a number of years. Members of the Subcommittee stated that expiration of this regulation would permit the General Assembly to address this issue and to provide explicit legislative guidelines.

Kentucky Higher Education Assistance Authority: Teacher Scholarship Loan Program

11 KAR 8:030 (Teacher scholarships.) This regulation was reviewed by the Subcommittee at its July 1991 meeting, at which time an objection had been raised to language in Sections 1(3), 2(1) and 5(1), that provided for teacher scholarships for Kentucky residents who, upon graduation, teach in accredited schools of the state. The objections stated that benefits from this program were limited by KRS 164.770(1),(2) to those who taught in public, rather than private or parochial, schools. In addition, OAG 91-82 expressed the opinion that KRS Chapter 164 and the Kentucky Constitution required beneficiaries under the program to teach in public schools. The agency proposed an amendment to comply with the objections and the OAG. Members of the Subcommittee stated that the legislative intent was to provide benefits to teachers who teach in accredited schools of the Commonwealth, regardless of whether they were considered public or not. No motion was made to accept the amendment. Therefore, the regulation was approved at the July meeting without change.

The regulation was referred by LRC to the Interim Joint Committee on Education, and was reviewed on July 8, 1991 meeting, at which time the Interim Committee on Education, with the approval of the agency, amended the regulation to comply with the objections raised and the OAG.

At its August meeting, the Subcommittee approved a motion, made by Senator Quinlan and seconded by Representative Yates, to review this regulation at its September meeting.

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 11:45 a.m. until September 3, 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 HEALTH AND WELFARE
Meeting of July 17, 1991

The Interim Joint Committee on Health and Welfare met on Wednesday, July 17, 1991, and submits this report. The Committee took no action on the following regulations:

902 KAR 20:008
902 KAR 55:080
904 KAR 2:016
907 KAR 1:013
907 KAR 1:017 & E
907 KAR 1:019 & E
907 KAR 1:382
907 KAR 1:390
907 KAR 1:400
907 KAR 1:476

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE
Meeting of July 29, 1991

The Interim Joint Committee on Appropriations and Revenue, at its July 29, 1991 meeting, approved four administrative regulations referred in the July 1-2, 1991 meeting of the Legislative Research Commission. The four approved regulations were: 200 KAR 14:010, 200 KAR 14:061, 200 KAR 14:080 and 200 KAR 14:090, promulgated by the State Investment Commission. This is to advise you of the Committees' action.

INTERIM JOINT COMMITTEE ON CITIES
Meeting of July 30, 1991

The Interim Joint Committee on Cities met on July 30, 1991, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A and has approved such regulations without objection:

815 KAR 20:030. Plumbing (license application; qualifications for examination, examination revival or reinstatement of licenses)
815 KAR 25:010. Mobile homes
815 KAR 25:020. Recreational vehicles

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of July 31, 1991

The Interim Joint Committee on Agriculture and Natural Resources met July 31, 1991, and submits this report:

The committee took no action on Department of Mines and Minerals administrative regulation 805 KAR 4:010.

The committee determined that Department of Fish and Wildlife Resources administrative regulation 301 KAR 1:085 does not comply with KRS Chapter 13A.

Department of Military Affairs administrative regulations 106 KAR 1:080, 106 KAR 1:090, 106 KAR 1:100, 106 KAR 1:110, 106 KAR 1:120, and 106 KAR 1:130 were deferred at the request of James H. (Mike) Molloy, Chairman, Kentucky Emergency Response Commission.

The committee adjourned at 3:20 p.m., July 31, 1991.

CUMULATIVE SUPPLEMENT

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NOTE: Emergency regulations expire 120 days from publication or upon replacement or repeal.

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11 KAR 5:140E	3353	5-15-91
Replaced	3480	8-2-91
11 KAR 11:030E	3355	5-15-91
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31 KAR 5:010E	2931	3-14-91
Replaced	3050	6-7-91
200 KAR 17:030E	3085	4-15-91
200 KAR 17:040E	3088	4-15-91
200 KAR 17:050E	3090	4-15-91
200 KAR 18:010E	2932	2-22-91
Replaced	3387	5-22-91
405 KAR 7:020E	2600	1-29-91
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405 KAR 8:010E	2609	1-29-91
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405 KAR 8:030E	2623	1-29-91
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405 KAR 8:040E	2636	1-29-91
Replaced	3401	5-22-91
405 KAR 12:020E	2651	1-29-91
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415 KAR 1:010E	3356	4-25-91
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501 KAR 6:020E	3093	3-22-91
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501 KAR 6:080E	3094	3-22-91
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601 KAR 1:005E	2655	1-24-91
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900 KAR 4:010E	3360	4-16-91
902 KAR 20:290E	3363	5-7-91
902 KAR 55:020E	3095	4-12-91
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902 KAR 55:025E	3096	4-12-91
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903 KAR 5:290E	3097	4-3-91
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904 KAR 2:016E	3372	5-15-91
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907 KAR 1:013E	3382	4-18-91
Replaced	3560	7-17-91
907 KAR 1:017E	3098	3-28-91
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Replaced	3287	6-19-91

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11 KAR 4:040		
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11 KAR 5:030		
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11 KAR 5:130		
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11 KAR 5:140		
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11 KAR 8:030		
Amended	3483	(See 18 Ky.R.)
11 KAR 11:020		
Amended	3486	8-2-91
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106 KAR 1:100	3311	(See 18 Ky.R.)
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200 KAR 14:080		
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301 KAR 2:170		
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301 KAR 2:210		
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400 KAR 1:040		
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401 KAR 6:310		
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