Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 18, NUMBER 4
TUESDAY, OCTOBER 1, 1991



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MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on October 7-8, 1991. See **tentative** agenda on pages 975-977 in this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - October 7, 1991
2 p.m. in Room 327, Capitol

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Kentucky Higher Education Assistance Authority

11 KAR 4:040. Educational institution participation requirements. (Amended After Hearing)

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101 KAR 2:035. Compensation plan and pay incentive systems. (Deferred from August) (Found Deficient by ARRS, November 7, 1990)

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Kentucky Employees' Retirement Systems

General Rules

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105 KAR 1:120. Participation of agencies.
105 KAR 1:130. Hazardous duty coverage.
105 KAR 1:140. Contribution reporting.
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105 KAR 1:160. Sick leave plans.
105 KAR 1:170. Membership form requirements.
105 KAR 1:180. Death before retirement procedures.
105 KAR 1:190. Qualified domestic relations orders.
105 KAR 1:200. Retirement procedures and forms.
105 KAR 1:210. Disability procedures.
105 KAR 1:215 & E. Administrative hearing.
105 KAR 1:220. Annual disability review.
105 KAR 1:230. Reemployment after retirement.
105 KAR 1:240. Death after retirement procedures.

TOURISM CABINET
Department of Fish and Wildlife Resources

Fish

301 KAR 1:015. Boats and outboard motors; restrictions.
301 KAR 1:075. Gigging, grabbling or snagging, tickling and noodling.
301 KAR 1:200. Seasons and limits for angling.

Game

301 KAR 2:044 & E. Taking of migratory wildlife. (Repeals 301 KAR 3:080.)
301 KAR 2:195. Raptor propagation and falconry. (Repeals 301 KAR 2:190.)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

Air Quality - General Administrative Procedures

401 KAR 50:010. Definitions and abbreviations of terms used in Title 401, Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65.
401 KAR 50:012. General application.
401 KAR 50:046. Capture efficiency test procedures.

Air Quality - New Source Requirements; Nonattainment Areas

401 KAR 51:017. Prevention of significant deterioration of air quality.

Air Quality - New Source Standards

401 KAR 59:214. New factory surface coating operations of flat wood paneling.
401 KAR 59:225. New miscellaneous metal parts and products surface coating operations.
401 KAR 59:230. New synthesized pharmaceutical product manufacturing operations
401 KAR 59:240. New perchloroethylene dry cleaning systems.

Air Quality - Existing Source Standards

401 KAR 61:124. Existing factory surface coating operations of flat wood paneling.
401 KAR 61:132. Existing miscellaneous metal parts and products surface coating operations.
401 KAR 61:137. Leaks from existing petroleum refinery equipment.
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Department for Surface Mining Reclamation and Enforcement

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405 KAR 7:020. Definitions of terms used in 405 KAR Chapter 7 through 24. (Amended After Hearing)
405 KAR 7:030. Applicability.
405 KAR 7:035. Exemption for coal extraction incidental to the extraction of other minerals. (Amended After Hearing)
405 KAR 7:080. Small operator assistants.

Permits

405 KAR 8:010. General provisions for permits. (Amended After Hearing)
405 KAR 8:020. Coal exploration.

405 KAR 8:030. Surface coal mining permits. (Amended After Hearing)
405 KAR 8:040. Underground coal mining permits. (Amended After Hearing)

Bond and Insurance Requirements

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Performance Standards for Surface Mining Activities

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405 KAR 16:200. Revegetation. (Amended After Hearing)
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Performance Standards for Underground Mining Activities

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EDUCATION AND HUMANITIES CABINET

Department of Education

School District Finance

702 KAR 3:220. Guidelines for waiver of school fees. (Not Amended After Hearing)

Pupil Transportation

702 KAR 5:030. Superintendent's responsibilities. (Deferred from September)
702 KAR 5:080. Bus driver's qualifications; responsibilities. (Amended After Hearing)

Office of Learning Programs Development

Instructional Services

704 KAR 3:006 & E. Annual performance reports and standards for students, program, service, and operational performance. (Repeals 704 KAR 3:005) (Amended After Hearing)

Office of Education for Exceptional Children

Exceptional and Handicapped Programs

707 KAR 1:054. Programs for children and youth with emotional-behavioral disabilities. (Amended After Hearing)

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - October 8, 1991
10 a.m. in Room 327, Capitol

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Policy and Management

109 KAR 10:010. Local government economic assistance fund grants.

Accounts

109 KAR 11:010. Reimbursable revenues of local courts.
109 KAR 11:020. Reimbursement to law enforcement officers for certain expenses.
109 KAR 11:030. Allocation of driving under the influence service fees.

Advancement to Sheriffs

109 KAR 12:020. Application form; information required.
109 KAR 12:030. Initial advancement; procedure.
109 KAR 12:040. Subsequent advancements.
109 KAR 12:050. Refunding procedure.

GENERAL GOVERNMENT CABINET

Board of Veterinary Examiners

201 KAR 16:010. Code of conduct. (Deferred since July Meeting)

Board of Examiners of Social Work.

201 KAR 23:070. Specialty certifications.

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.
201 KAR 30:110. Appraiser roster, transmission, fees, deletions, notification, and hearing.
201 KAR 30:120. Temporary appraisal permits.
201 KAR 30:130. Standards for education approval - fees.

DEPARTMENT OF AGRICULTURE

Ginseng

302 KAR 45:010. Ginseng, general provisions.

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Office of the Secretary

501 KAR 6:020 & E. Corrections policies and procedures.
501 KAR 6:040. Kentucky State Penitentiary.

501 KAR 6:130. Western Kentucky Correctional Complex.
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Division of Motor Carriers
Division of Motor Vehicle Enforcement

Transportation of Solid Waste
601 KAR 40:010. Identification of motor vehicles transporting solid waste.
601 KAR 40:020. Application for license to operate vehicles transporting solid waste.

TRANSPORTATION CABINET
Motor Vehicle Commission

Motor Vehicle Commission
605 KAR 1:190. Motor vehicle advertising. (Not Amended After Hearing) (Deferred since August)

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Authorization of Insurers and General Requirements.
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806 KAR 3:170. Annual audited financial reports.
Fees and Taxes
806 KAR 4:010. Fees of the Department of Insurance.
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806 KAR 7:100. Insurer investments in medium grade and lowest grade obligations.
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806 KAR 9:220. Agent continuing education.

CABINET FOR HUMAN RESOURCES
Department for Health Services

Sanitation
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Emergency Medical Technicians
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Health Services and Facilities
902 KAR 20:006 & E. Certificate of need process. (Repeals 902 KAR 20:127) (Found Deficient by ARRS on October 12, 1990)
902 KAR 20:018. Operation and services; renal dialysis facilities.
902 KAR 20:036. Operation and services; personal care homes.
902 KAR 20:041. Operation and services; family care homes.
902 KAR 20:106. Operation and services; ambulatory surgical center.
902 KAR 20:111. Medical detoxification services.
902 KAR 20:160. Chemical dependency treatment services and facility specifications.
902 KAR 20:220. Dual licensure of hospitals.
902 KAR 20:230. Comprehensive physical rehabilitation hospital; facility specifications.
902 KAR 20:240. Comprehensive physical rehabilitation hospital services.
902 KAR 20:250. Specialized medical technology services.
902 KAR 20:260. Special health clinics.
Food and Cosmetics
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902 KAR 45:100. Vending machines; food and beverages.
902 KAR 45:130. Inspector's manual for state food and drug officials.

Department for Social Insurance

Public Assistance
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Food Stamp Program
904 KAR 3:010. Definitions.
904 KAR 3:030. Application process.
904 KAR 3:035. Certification process.
904 KAR 3:045. Coupon issuance procedures.
904 KAR 3:050. Additional provisions.
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904 KAR 3:070. Fair hearings.

Department for Medicaid Services

Medicaid Services
907 KAR 1:013 & E. Payments for hospital inpatient services.
907 KAR 1:022 & E. Nursing facility and intermediate care facility for the mentally retarded services. (Not Amended After Hearing)
907 KAR 1:025 & E. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Amended After Hearing)
907 KAR 1:044 & E. Mental health center services.
907 KAR 1:045 & E. Payments for mental health services.
907 KAR 1:061. Payments for medical transportation. (Amended After Hearing)
907 KAR 1:535 & E. Tax assessment schedule for mental health centers.

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.

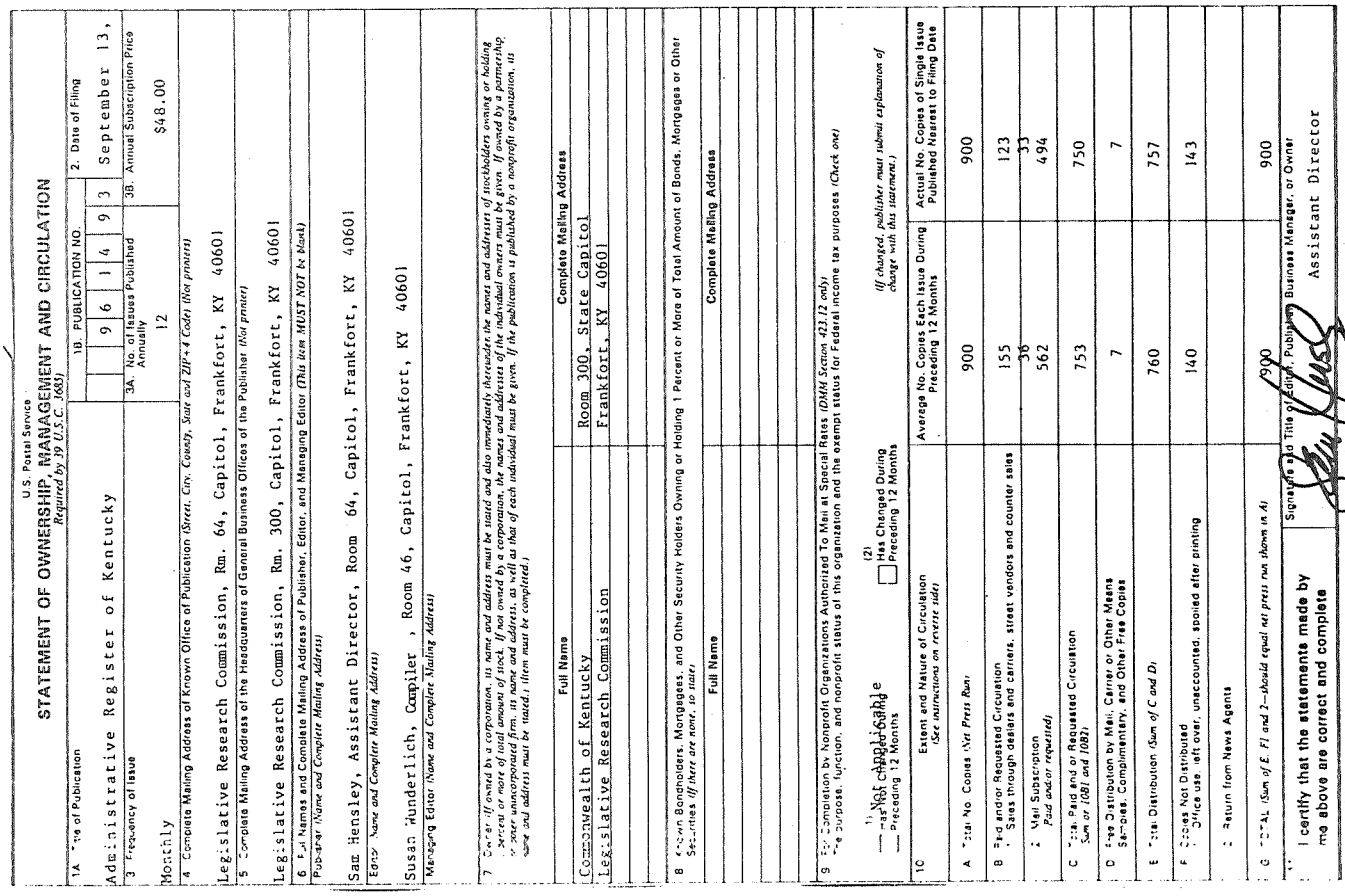
Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five (5) days before the scheduled hearing. If no written notice is received at least five (5) days before the hearing, the administrative body may cancel the hearing.

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.



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PS Form 3526, Feb. 1989

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
105 KAR 1:215E

This emergency administrative regulation establishes an administrative appeals procedures for individuals who have been aggrieved by a final decision of the Kentucky Retirement Systems Board of Trustees. There are currently individuals who may soon need an avenue of appeal to avoid litigation. In order to provide these individuals with due process in a timely manner, it is necessary to promulgate this administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on August 15, 1991.

WALLACE G. WILKINSON, Governor
JOHN D. ROBEY, Chairman

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:215E. 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)
EFFECTIVE: August 21, 1991
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 21, 1991 at 9 a.m.

STATEMENT OF EMERGENCY
200 KAR 5:330E

During the 1991 Extraordinary Session, the General Assembly enacted Senate Bill 2, which mandates that the Finance and Administration Cabinet promulgate on or before September 1, 1991, a regulation that establishes a minimum recycled material content for those goods, supplies, equipment, materials and printing purchased by state agencies. In order to promulgate this regulation by the statutory deadline of September 1, 1991, the Finance and Administration Cabinet must promulgate the regulation by emergency. This emergency regulation shall be replaced by an ordinary regulation. The ordinary administrative regulation was filed with the Regulations Compiler on August 30, 1991.

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

FINANCE AND ADMINISTRATION CABINET
Department for Administration

200 KAR 5:330E. Purchase of goods, supplies, equipment, materials and printing with minimum recycled content.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.520
EFFECTIVE: August 30, 1991
NECESSITY AND FUNCTION: KRS 45A.520 mandates that every state agency, when purchasing goods, supplies, equipment, materials and printing, must require a minimum recycled material content for those goods, supplies, equipment, materials and printing which it purchases. The recycled material content for these goods, supplies, equipment, materials and printing is to be established by administrative regulation promulgated by the Finance and Administration Cabinet. KRS 45A.520 further provides that if the United States Environmental Protection Agency has established a minimum recycled content for certain products, then the Finance and Administration Cabinet shall adopt at a minimum, those standards established by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended. This regulation further implements the provisions of KRS 45A.525 and 45A.530.

Section 1. Definitions. As used in this regulation, unless the context indicates otherwise:
(1) "Recovered fly ash" means the component of coal which results from the combustion of coal, and is the finely divided mineral residue which is typically collected from boiler stack gases by electrostatic precipitator or mechanical collection devices.
(2) "Mill broke" means any paper generated in a paper mill prior to completion of the paper manufacturing process which is unsuitable for end use applications and is subsequently reused in the paper manufacturing process.
(3) "Postconsumer waste" means products or materials which have been discarded by a consumer.
(4) "Recovered material" means those materials which have been separated, diverted or removed from the solid waste stream after a manufacturing process.
(5) "Recovered paper material" means paper products and paper byproducts which, if not recovered, would otherwise be solid waste, and which are intended for sale, use, reuse, or recycling, whether such materials or byproducts require subsequent separation and processing, excluding the virgin content of mill broke and sawdust.
(6) "Rerefined oil" means used oils from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.
(7) "Solid waste stream" means a path of discarded material from point of origin to ultimate disposition.
(8) "State agency" as used in this regulation, shall have the same definition as that provided in KRS 45A.505.

Section 2. Minimum Recycled Content For State Agency Purchases. Except as provided under KRS 45A.510, any goods, supplies, equipment, materials and printing purchased by a state agency shall contain the following minimum recycled content; products designated by an asterisk have the same minimum recycled content standards as products as listed in the Code of Federal Regulations promulgated by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended:
*(1) Xerographic paper (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
*(2) Carbonless printing paper (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
(3) Flat sheet printing papers.
*(a) Paper, offset and opaque (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which fifteen (15) percent shall be postconsumer waste.
*(b) Paper, text (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which fifteen (15) percent shall be postconsumer waste.
*(c) Paper, parchtex (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which fifteen (15) percent shall be postconsumer waste.
*(d) Paper, cover, antique on wove and text (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
*(e) Paper, index (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
(4) Business papers.
*(a) Paper, mimeographic (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
*(b) Paper, spirit process (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
*(c) Paper, rag bond (all sizes). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
*(d) Paper, sulfite bond (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
(5) Computer paper.
*(a) Continuous stock paper, carbon interleaved (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent is postconsumer waste.
*(b) Continuous stock paper, plain (all sizes and colors). Product must contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
(6) Miscellaneous office supplies.
(a) Blotters, desk (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
(b) Calendars (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(c) File pockets (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(d) Notebook filler (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(e) Angular heavy celluloid tab folder (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(f) File folder (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(g) Hanging folder (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(h) Open shelf file folder (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(i) Top tab folder (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(j) Two (2) inch expansion bottom gussett folder (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(k) Twenty-five (25) point classification folder (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(l) Guides, index monthly (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(m) Indexes, alphabetical (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(n) Mailing tubes (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent is postconsumer waste.

(o) Memo books (all types, sizes and colors). Product must contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(p) Memo case (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent is postconsumer waste.

(q) Memo sheets (all types, sizes and colors). Product must contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(r) Notebooks, three (3) hole punched (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(s) Notebooks, stenographic (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(t) Fan folded notes (all types, sizes and colors) Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(u) Columnar green pads (all types and sizes). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

*(v) Desk pads (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

*(w) Scratch pads (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer material.

(x) Adding machine paper (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(y) Tablets (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(z) Tags, shipping (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(aa) Wallet, elastic cord (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(bb) Wallet, expanding, string tie (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(cc) Legal pads, legal (all types, all sizes, all colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(dd) Telephone message pads (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

*(7) Toilet tissue. Product shall contain fifty (50) percent recovered paper material of which twenty (20) percent shall be postconsumer waste.

*(8) Paper towels. Product shall contain fifty (50) percent recovered paper material of which forty (40) percent shall be postconsumer waste.

*(9) Napkins. Product shall contain fifty (50) percent recovered paper material of which thirty (30) percent shall be postconsumer waste.

*(10) Industrial wipes. Product shall contain fifty (50) percent recovered paper material of which twenty (20) percent shall be postconsumer waste.

(11) Building insulation.

*(a) Cellulose loose-fill and spray-on. Product shall contain seventy-five (75) percent postconsumer waste.

*(b) Product shall contain Perlite composite board twenty-three (23) percent postconsumer waste.

*(c) Plastic rigid foam.

*1. Polyisocyanurate/polyurethane. Product shall contain the following:

a. Rigid foam: nine (9) percent recovered material.

b. Foam-in-place: five (5) percent recovered material.

c. Glass fiber reinforcer: six (6) percent recovered material.

*2. Phenolic rigid foam. Product shall contain five (5) percent recovered material.

*(d) Rock wool. Product shall contain fifty (50) percent recovered material.

*(12) Engine lubricating oils. Product shall contain twenty-five (25) percent rerefined oil.
*(13) Hydraulic fluid. Product shall contain twenty-five (25) percent rerefined oil.
*(14) Gear oils. Product shall contain twenty-five (25) percent rerefined oil.
*(15) Plastic sign blanks. Product shall contain 100 percent postconsumer waste.
*(16) Envelopes (all types, sizes and colors). Product shall contain fifty (50) percent postconsumer waste.
*(17) Doilies (all types, sizes and colors). Product shall contain fifty (50) percent postconsumer waste.
*(18) Corrogated boxes (all types and sizes). Product shall contain thirty-five (35) percent postconsumer waste.
*(19) Fiber boxes (all types and sizes). Product shall contain thirty-five (35) percent postconsumer waste.
*(20) Recycled paperboard (all types and sizes). Product shall contain eighty (80) percent postconsumer waste.
*(21) Brown papers (all types and sizes). Product shall contain five (5) percent postconsumer waste.
*(22) Pad backing (all types and sizes). Product shall contain ninety (90) percent postconsumer waste.
(23) Aluminum bars. Product shall contain twelve (12) percent recovered material.
(24) Aluminum bolts and nuts. Product shall contain twelve (12) percent recovered material.
(25) Aluminum channels. Product shall contain twelve (12) percent recovered material.
(26) Aluminum handrail post. Product shall contain twelve (12) percent recovered material.
(27) Aluminum sign blanks. Product shall contain twelve (12) percent recovered material.
(28) Aluminum sign panels. Product shall contain twelve (12) percent recovered material.
(29) Aluminum pipe. Product shall contain twelve (12) percent recovered material.
(30) Bituminous hot-mix. Product shall contain fifteen (15) percent postconsumer waste.
*(31) Cement. Product shall contain twenty (20) percent recovered fly ash.
*(32) Concrete cribbing. Product shall contain twenty (20) percent recovered fly ash.
*(33) Concrete pipe. Product shall contain twenty (20) percent recovered fly ash.
(34) Gabions. Products shall contain ten (10) percent postconsumer waste.
(35) Glass beads. Product shall contain fifty (50) percent postconsumer waste.
(36) Guardrail, guardrail post, and component parts. Product shall contain twenty (20) percent postconsumer waste.
(37) Metal bridge planks. Product shall contain ten (10) percent postconsumer waste.
(38) Metal pipe. Product shall contain ten (10) percent postconsumer waste.
*(39) Precast concrete buffer, curbs and headwalls. Product shall contain twenty (20) percent recovered fly ash.
*(40) Precast concrete bridges. Product shall contain twenty (20) percent recovered fly ash.
*(41) Ready-mix concrete. Product shall contain twenty (20) percent recovered fly ash.
(42) Reflective powder. Product shall contain fifty (50) percent postconsumer waste.
(43) Slag (boiler). Product shall contain 100 percent postconsumer waste.
(44) Sign brackets. Product shall contain ten (10) percent postconsumer waste.
(45) Steel cribbing. Product shall contain ten (10) percent postconsumer waste.
(46) Steel piling. Product shall contain ten (10) percent postconsumer waste.
(47) Steel post, sign and delineator. Product shall contain ten (10) percent postconsumer waste.
(48) Steel, open grid flooring. Product shall contain ten (10) percent postconsumer waste.
(49) Railroad rails. Product shall contain 100 percent postconsumer waste.

Section 3. State Agency Contracts for Construction, Repair, Renovation, and Demolition of Public Facilities and Improvements to Public Real Properties. Every state agency shall require, to the extent practicable, that every person, corporation, or other entity with whom it enters into a contract for building, altering, repairing, improving or demolishing any public structures or buildings or other improvements to any public real property, to use goods, supplies, equipment, materials, and printing to fulfill the contract, which meet the requirements for minimum recycled content established in Section 2 of this regulation.

Section 4. Projects Financed with State Bond Proceeds. Every state agency authorized to issue bonds shall require, to the extent practicable, that every project within the Commonwealth, fifty (50) percent or more of the cost of which is financed with the proceeds of bonds issued by the agency, be undertaken with goods, supplies, equipment, materials and printing which meet the requirements for minimum recycled material content established in Section 2 of this regulation.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: August 28, 1991
FILED WITH LRC: August 30, 1991 at noon

STATEMENT OF EMERGENCY
501 KAR 6:020E

In order to continue to operate the Corrections Cabinet in accordance with KRS Chapter 196, the Corrections Cabinet needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected cabinet policies must be revised immediately to establish operating policy and procedure for the cabinet's inmate account process. Recently, the Corrections Cabinet has sued an inmate who it is believed obtained approximately $60,000 by a fraudulent means through the U.S. mails and was deposited to her inmate account. There presently remains a large sum of money in this particular account which should be frozen until a court decision determines whether the funds are rightfully the inmate's. Other inmates at other penal institutions have also been under investigation to determine if they received funds through a fraudulent means. The emergency regulation is needed to prohibit inmates from disposing of said monies while an investigation is being conducted. This emergency regulation shall be replaced by the ordinary administrative regulation filed with LRC on August 15, 1991 in accordance with KRS Chapter 13A.

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

CORRECTIONS CABINET

501 KAR 6:020E. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: August 21, 1991
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 21, 1991 at 9 a.m.

STATEMENT OF EMERGENCY
902 KAR 20:006E

This emergency regulation revises 902 KAR 20:006, Certificate of need process, to correspond with KRS Chapter 216B respecting hearing procedures. KRS 216B.040 and 216B.075 authorize the commission to promulgate administrative regulations to establish the certificate of need review procedures. In order to implement these changes in a timely manner and promulgate regulations which are in accordance with KRS Chapter 216B, it is necessary to promulgate the regulation by emergency. In addition, an emergency exists because the regulation allows parties 10 days to file exceptions to the commission's hearing report. This allowance is creating a conflict for the commission in attempting to comply with the statutorily imposed 90 day review cycle. Further, cases are being remanded from the Franklin Circuit Court for the commission's failure to consider exceptions. There are no allowances in KRS Chapter 216B for filing exceptions. This emergency regulation shall be replaced by an ongoing administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on August, 1991.

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

CABINET FOR HUMAN RESOURCES
Commission for Health Economics Control in Kentucky

902 KAR 20:006E. 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
EFFECTIVE: August 22, 1991
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 22, 1991 at 9 a.m.

REGULATIONS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Medical Licensure
(As Amended)

201 KAR 9:031. Examinations.

RELATES TO: KRS 311.565(13, (16), (18), (22) [311.530 to 311.620, 311.990]
STATUTORY AUTHORITY: KRS 311.565(13), (16), (18), (22) [Chapter 13A]
NECESSITY AND FUNCTION: KRS 311.565 authorizes the board to promulgate administrative regulations governing examinations. The purpose of this administrative regulation is to establish standards and requirements relating to examinations. [empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish standards and rules regarding examination scope, content, passing scores, testing opportunities and test score recognition.]

Section 1. Basic Requirement; Passing Score. (1) An applicant for a license or permit issued by the board shall provide written proof that he has received a score:

(a) Of seventy-five (75), or its numerical equivalent;

(b) In a single sitting.

(2) A passing score for an applicant who takes Component I and Component II of the Federation Licensure Examination (FLEX) shall be a score of seventy-five (75) on each component. [All applicants for any license or permit issued by the board shall provide written proof of having successfully completed an examination approved by the board with a minimum passing score of seventy-five (75) or its numerical equivalent. The passing score must have been determined on the basis of performance in a single sitting and scores based on an average of scores from multiple sittings will not be considered. All applicants taking Component I and Component II of the FLEX must obtain a minimum score of seventy-five (75) on each component in order to be considered passing. No combination of Component I and Component II scores will be considered.]

Section 2. Examinations Approved by the Board. The following examinations are approved by the board in regard to the fulfillment of the examination requirement for licensure:

(1) Examinations administered by the licensure authority of another state, United States territory or Canadian province upon sufficient proof that the examination consisted of comprehensive testing in the basic and clinical sciences;

(2) FLEX [The Federation Licensure Examination (FLEX)];

(3) The examination administered by the National Board of Medical Examiners; and

(4) The examination administered by the National Board of Examiners for Osteopathic Physicians and Surgeons.

The board may deny a license or permit when in the board's opinion the examination by which the applicant is seeking to fulfill the examination requirement inadequately tested the applicant's knowledge, education, training and competency.

Section 3. Examination Administered by Board. (1) The board shall [will] administer the FLEX [Federation Licensure Examination (FLEX)] twice yearly in accord with protocol established by the Federation of State Medical Boards of the United States, Inc.

(2)(a) The executive director shall oversee the examination and may expel any person for fraudulent or disruptive behavior.

(b) [(2)] The executive director may allow an applicant to sit for the FLEX when in his [or her] opinion the applicant appears to have fulfilled the appropriate eligibility requirements.

(3) Allowing an applicant to sit for the FLEX or any component thereof shall not be considered as certification that any requirement for licensure has been fulfilled.

Section 4. Eligibility for Examination. (1) An applicant shall be eligible to take both components of the FLEX if the applicant has fulfilled all other requirements for regular licensure.

(2) An applicant shall be eligible to take Component I of the FLEX if the applicant has graduated from a medical school approved by the board [fulfilled all other requirements for limited licensure-institutional practice].

(3) An applicant shall be eligible to take Component II of the FLEX if the applicant has previously passed Component I or completed one (1) year of approved postgraduate training or is currently enrolled in an approved postgraduate training program [and has fulfilled all other requirements for regular licensure].

[(4) An applicant who has not fulfilled the particular postgraduate training requirement at the time the FLEX is administered may sit for the examination upon showing that this requirement will be fulfilled within seven (7) months of the examination date.]

(4) [(5)] (a) Except as provided in paragraph (b) of this subsection, an applicant shall not be eligible to sit for the FLEX, or a component thereof, if he has failed the FLEX, or a component thereof, three (3) times.

(b) An applicant who has failed the FLEX three (3) times may sit for the FLEX, or a component thereof, if he submits proof that he has completed an additional year of approved postgraduate training. [An applicant who has failed the FLEX on three (3) previous occasions may sit for the FLEX or a component thereof upon proof that the applicant has completed since the time of the applicant's last failure one (1) additional year of approved postgraduate training in addition to the number of years of postgraduate training normally required to sit for the FLEX or a component thereof.]

(c) Failure of FLEX, occuring prior to June 1, 1985, shall be added to determine the total number of failures.

(d) After June 1, 1985, failures of FLEX components shall be added to determine the total number of failures.

[(5) [(6)] No person shall be eligible to

sit for the FLEX or a component thereof if the applicant has failed the FLEX on three (3) previous occasions except as provided in subsection (5) of this section. All failures prior to June 1, 1985, and failures thereafter of the FLEX components shall be added together to determine an applicant's total number of prior failures. An applicant who by a combination of failures of the entire exam, whenever given, and components thereof has accumulated three (3) failures of the entire exam or a component thereof shall be ineligible to sit for the exam or any component thereof except as provided in subsection (5) of this section.]

Section 5. Recognition of Passing Scores by Endorsement. (1) Except as provided by subsection (3) of this section, the board shall not recognize a passing score of the FLEX by endorsement if the applicant has accumulated a total of three (3) failures.

(2) The three (3) failures may consist of failures of:

(a) The entire examination; or

(b) Components thereof; or

(c) A combination of the entire examination and components thereof.

(3) The board shall recognize a passing score by endorsement, made after an applicant's fourth examination, if he has submitted proof that he has completed an additional year of the approved postgraduate training required for the type of licensure he seeks. [The board will not recognize a passing score of the FLEX by endorsement if the applicant who by a combination of failures of the entire exam, whenever given, and components thereof has accumulated three (3) failures of the entire exam. The board will recognize a passing score on an applicant's fourth attempt upon proof that the applicant has obtained since the third failure one (1) additional year of approved postgraduate training in addition to the number of years of postgraduate training normally required for the type of licensure the applicant seeks.]

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: June 12, 1991
FILED WITH LRC: June 13, 1991 at 3 p.m.

GENERAL GOVERNMENT CABINET
Board of Medical Licensure
(As Amended)

201 KAR 9:175. Physician assistants; certification and supervision.

RELATES TO: KRS 311.565 [311.530 to 311.620, 311.990]
STATUTORY AUTHORITY: KRS 311.565(22) [Chapter 13A]
NECESSITY AND FUNCTION: It is the purpose of this regulation to promote the efficient and effective utilization of the skills of physicians by allowing them to delegate health care tasks to qualified physician assistants and in so doing, promote, sustain and enhance the health and welfare of the people of the Commonwealth.

Section 1. Definitions. As used in this regulation:

(1) "Physician assistant" means a person who has successfully completed an approved program and an approved examination, and who is certified by the board to assist a registered physician in the provision of medical care under the physician's supervision; the physician assistant is not an independent practitioner of the healing arts but only an adjunct to his or her supervising physician;

(2) "Anesthesia (or anesthesiology) assistant" means a physician assistant who assists in the provision of general or regional anesthesia;

(3) "Board" means the Kentucky Board of Medical Licensure;

(4) "Supervising physician" means a physician currently licensed to practice medicine in the Commonwealth who has been approved by the board to supervise physician assistants for whom the supervising physician takes responsibility;

(5) "Advisory committee" means the committee appointed by the board to advise the board on all matters related to physician assistants;

(6) "Approved program" means a program for the education and training of physician assistants which meets standards acceptable to the board;

(7) "Supervision" means control and direction of the services of physician assistants by their supervising physicians;

(8) "Approved examination" means an examination to test the knowledge and skills of physician assistants which meets standards acceptable to the board;

(9) "Certificate" means the board's official documentary authorization allowing a physician assistant to practice in the Commonwealth for the time specified; and

(10) "Trainee" means a person who is currently enrolled in an approved program for the training of physician assistants.

Section 2. Certification of Physician Assistants. (1) To be certified by the board as a physician assistant, a person must:

(a) Submit a completed application with the required fee;

(b) Be of good character and reputation;

(c) Be a graduate of an approved program;

(d) Have passed an examination approved by the board within three (3) attempts.

(2) If grounds for denial of certification do not exist, a temporary certificate may be issued by the board's executive director to a physician assistant after graduation from an approved program and prior to his taking the first available approved examination after graduation. This temporary certificate shall enable the holder to practice as a certified physician assistant pursuant to 201 KAR 9:175 only under the direct supervision of a supervising physician at the same practice location. The holder of this [a] temporary certificate shall take the first available approved examination after graduation. If the holder receives a passing score on this examination, the temporary certificate shall be effective until the board approves the holder for permanent certification. If the holder receives a failing score, or fails to take the first available approved examination after graduation, the temporary certificate shall automatically expire. This temporary certificate shall not be renewed or reissued subsequent to expiration or cancellation. The executive director may also issue a temporary certificate to an applicant who otherwise meets all requirements of 201 KAR 9:175, Section 2(1),

said temporary certificate remaining in effect until the board approves the holder for permanent certification. This temporary certificate shall allow the applicant to practice as a physician assistant pursuant to 201 KAR 9:175, Section 6. However, under no circumstances shall this temporary certificate remain in effect for longer than six (6) months and said temporary certificate shall not be renewable. Any temporary certificate may be cancelled at any time, without a hearing, for reasons deemed sufficient to the executive director, and who shall cancel it immediately upon direction by the board or the board's physician assistant advisory committee or upon the board's denial of the holder's application for permanent certification. When the executive director cancels a temporary certificate, he shall promptly notify, by certified United States mail, the holder of the temporary certificate, at his last known address as reflected by the files of the board, and the temporary certificate shall become terminated and of no further force and effect upon receipt of said notice.

(3) Physician assistants duly authorized to practice in other states and in good standing may apply for certification by endorsement from the state of their original certification if the endorsing state has standards substantially equivalent to those of the Commonwealth.

(4) Certification shall be renewed on or before July 1, 1989, and thereafter biennially according to the procedure established by the executive director. In conjunction with the renewal of his/her certification, the physician assistant shall provide evidence of having completed in the previous two (2) years a minimum of 100 hours of continuing education accepted by the National Commission on Certification of Physician Assistants or the American Medical Association. In addition to this, all physician assistants shall [must] recertify every six (6) years as required by the NCCPA, unless they are not eligible because they hold physician assistant certification approved by the board pursuant to 201 KAR 9:175, Section 6.

Section 3. Approved Examination. The following examinations are approved by the board:

(1) The examination of the National Commission on Certification of Physician Assistants.

(2) The official certification examination of any state if the board determines the examination to be an adequate measure of physician assistant competency.

(3) Any other formally administered examination if the board determines, upon review of proof provided by the applicant, that the examination is substantially equivalent to the examination of the National Commission on Certification of Physician Assistants.

Section 4. Approved Programs. (1) The following programs are approved by the board:

(a) Programs that are accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association (CAHEA) and that provide interdisciplinary training in at least the following areas: family medicine, internal medicine, surgery, pediatrics, psychiatry, and obstetrics/gynecology; and

(b) Any other training program if the board determines, upon review of proof submitted by the applicant, that the training received was substantially equivalent to that received in a program as described in paragraph (a) of this subsection.

(2) Programs specifically designed to train the individual to assist in the provision of general or regional anesthesia must be accredited by CAHEA.

(3) Trainees enrolled in approved programs shall be under the supervision of the program which shall be responsible for their services. Trainees shall be bound by the same practice limitations imposed upon physician assistants generally, but will not be considered to be practicing without authorization while enrolled in the program.

Section 5. Physician Assistant Scope of Practice. (1) A physician assistant may perform any and all medical services that are within the scope of training received in an approved program and which are also within the scope of the supervising physician's practice as designated by the specialty code in the most current revision of the Kentucky Medical Directory. The physician assistant shall not make a definitive diagnosis or prescribe or employ any treatment modality independent of the supervising physician. However, A physician assistant may, without specific approval, initiate evaluation and treatment in emergency situations.

(2) A physician assistant shall not administer or monitor general or regional anesthesia unless such individual satisfies the applicable requirements of Section 6 of this regulation.

(3) A physician assistant may render services in the offices or clinics of the supervising physician, or in hospitals and other licensed health care facilities. However, physician assistants shall not render services in these facilities without the express written permission of the respective facility's governing body. The facility may restrict the physician assistant's scope of practice within the facility as the facility deems appropriate.

(4) Neither the physician assistant nor the supervising physician shall require any individual or entity to perform any act relative to the provision of services by the physician assistant that the individual or entity is specifically forbidden to perform pursuant to duly promulgated law.

Section 6. Physician Assistants Practicing as Anesthesia (or Anesthesiology) Assistants. (1) Any physician assistant practicing as an anesthesia (or anesthesiology) assistant in Kentucky prior to July 15, 1986 may continue to so practice provided:

(a) That such individual has complied with all the practice requirements and conditions of Sections 2, 3, 4(2), and 5 of this regulation;

(b) That such individual is a graduate of a program specifically designed to train the individual to administer general or regional anesthesia which is accredited by CAHEA;

(c) That such individual is only employed by a supervising physician who has postgraduate training in anesthesiology from an anesthesiology program accredited by the Accreditation Council for Graduate Medical Education (ACGME); and

(d) Notwithstanding Section 9 of this

regulation, such individual shall not administer or monitor general or regional anesthesia unless his or her supervising physician is physically present in the operating room during induction, and thereafter physically present in the operating suite and not concurrently performing any other anesthesia procedure which would prevent the supervising physician's immediate physical presence in the operating room where the anesthesia procedure is being performed.

(2) Any physician assistant not already practicing as an anesthesia (or anesthesiology) assistant in Kentucky prior to July 15, 1986 must meet the following requirements:

(a) Such individual shall be a graduate of an approved program as defined in Section 4(1)(a) of this regulation which is of four (4) years duration, and, in addition to such training, be a graduate of a two (2) year program specifically designed to train the individual to assist in the provision of general and regional anesthesia, which consists of specialized academic and clinical training in anesthesia, and which is accredited by CAHEA;

(b) Such individual shall have complied with all of the practice requirements and conditions of Sections 2, 3, 4, and 5 of this regulation;

(c) Such individual shall only be employed by a supervising physician who is a board certified anesthesiologist; and

(d) Notwithstanding Section 9 of this regulation, such individual shall not administer or monitor general or regional anesthesia unless his or her supervising physician, who must be a board certified anesthesiologist, is physically present in the operating room during induction and emergence, and thereafter physically present in the operating suite and not concurrently performing any other clinical procedure.

Section 7. Approval of Supervising Physicians. (1) To seek approval by the board as a supervising physician, a physician must:

(a) Be currently licensed in good standing and primarily practicing in the Commonwealth;

(b) Submit a completed application with the required fee.

(2) In addition to other information the board's executive director may deem appropriate, the supervising physician shall, briefly, on the face of the application:

(a) Describe the nature of his/her practice;

(b) Describe the responsibilities the physician wishes the physician assistant to assume;

(c) Describe the means by which the physician will maintain a line of communication with the physician assistant when the two (2) are not in the same location; and

(d) Denote the name, address and area of practice of one (1) or more alternate physicians who agree in writing to accept the responsibility of supervising the physician assistant in the supervising physician's absence.

(3) A physician shall not supervise a physician assistant without being approved by the board. The board may impose restrictions on the scope of practice of a particular physician assistant or on the methods of supervision employed by the supervising physician as it deems appropriate. Physicians must obtain specific approval for each physician assistant they wish to supervise and the board will not approve any physician to supervise more than two (2) physician assistants at any one (1) time.

Section 8. Duties of Supervising Physicians. A supervising physician shall:

(1) Restrict the services provided by the physician assistant the physician supervises to those services within the limitations of the physician assistant's scope of practice as set forth in Section 5 of this regulation and, as applicable, Section 6 of this regulation, and as may be specifically limited by the board;

(2) Prohibit physician assistants from prescribing or dispensing controlled substances or other drugs;

(3) Inform all patients with whom the physician assistant comes in contact of the status of the physician assistant;

(4) Post a notice in all offices or clinics where the physician assistant may practice stating that a physician assistant practices on the premises;

(5) Require physician assistants to wear a name tag or other identification clearly stating that the person is a "physician assistant - certified";

(6) Prohibit the physician assistant from independently billing any patient or other payor for services rendered by the physician assistant;

(7) Negotiate with the medical staff and/or governing body of any hospital, long-term care facility or institution to establish and limit the scope of practice of the physician assistant;

(8) Not require a physician assistant to perform services or other acts that the physician assistant feels incapable of carrying out safely and properly;

(9) Survey critically and biennially the performance of the physician assistant under the physician's supervision as to reliability, accountability, fund of medical knowledge and recommend to the committee, approval or disapproval of other physician assistant's certification, including evidence of continuing certification by the National Commission on Certification of Physician Assistants. This critical survey process shall be performed by the supervising physician biennially on the date of the physician assistant's original certification in the Commonwealth of Kentucky;

(10) Submit in conjunction with the physician assistant's renewal of certification a statement evidencing the physician assistant's completion of a minimum of 100 hours of continuing education as set forth in Section 2(4) of this regulation;

(11) Maintain adequate, active and continuous supervision of the physician assistant's activities to assure the physician assistant is performing as directed and in compliance with these regulations. The supervising physician shall timely sign all records of services rendered by the physician assistant as certification that the physician assistant carried out the services as delegated;

(12) Notify the board within three (3) business days if the physician assistant ceases to be under the control or in the employ of the supervising physician; and

(13) Notify the board within twenty (20) days if the supervising physician believes in good faith that the physician assistant has violated any disciplinary rule set forth in this regulation.

Section 9. Supervision and Satellite Clinics. (1) The supervising physician need not be physically present at all times when the

physician assistant is providing services in the physician's office or clinic so long as the physician assistant has a reliable means of having direct communication with the supervising physician at all times. Except as may be provided by this regulation or the board, the supervising physician need not be present in a hospital or other licensed health care facility while the physician assistant is providing services so long as the physician assistant has a reliable means of having direct communication with the supervising physician at all times, and the facility has given specific approval for the provision of the given services by the physician assistant without the presence of the supervising physician.

(2) Any supervising physician utilizing the services of a physician assistant in an office or clinic separate and apart from the physician's primary office shall submit a specific written request to the board delineating the services to be provided by the physician assistant, the distance between the primary office and the setting in which the physician assistant is to practice and the mechanism by which the physician assistant shall have access to direct communication with the supervising physician at all times. The board may approve or disapprove such requests as it deems appropriate and may approve a request with specified limitations. Under no circumstances shall a physician assistant practice in such a setting without first having two (2) continuous years of experience in a nonsatellite setting.

Section 10. Discipline of Physician Assistants. The board may revoke, suspend, deny, decline to renew, limit or restrict the certificate of a physician assistant, or may reprimand or place a physician assistant on probation for no more than five (5) years under conditions the board deems appropriate, upon proof that the physician assistant has:

(1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other document in connection with an application for certification;

(2) Practiced, or aided or abetted in the practice, of fraud, forgery, deception, collusion or conspiracy in connection with an examination for certification;

(3) Been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be, a felony under the laws of the Commonwealth of Kentucky, or of the United States, or of any crime involving moral turpitude which is a misdemeanor under such laws;

(4) Become addicted to or an abuser of alcohol, drugs or any illegal substance;

(5) Developed such physical or mental disability or other condition that continued practice presents a danger to patients, the public or other health care personnel;

(6) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his/her profession;

(7) Practiced as a physician assistant outside the practice of the designated supervising physician;

(8) Aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any other healing art, including the practice of physician assistants;

(9) Willfully violated a confidential communication;

(10) Had a physician assistant certificate of any other state, territory, or foreign nation revoked, suspended, restricted, limited or subject to other disciplinary action;

(11) Performed the services of a physician assistant in an unprofessional, incompetent, grossly negligent or chronically negligent manner;

(12) Exceeded the authority delegated by the supervising physician;

(13) Exceeded the scope of practice duly established by the governing authority of any hospital or other licensed health care facility;

(14) Been removed, suspended, expelled or placed on probation by any health care facility or professional society for what was found to be unprofessional conduct, incompetence, negligence or violation of any provision of this regulation;

(15) Violated any applicable provision of regulations regarding physician assistant practice;

(16) Violated any term of probation or other discipline imposed by the board;

(17) Failed to complete the required number of hours of approved continuing education; or

(18) Performed any act as a physician assistant without having a designated supervising physician.

Section 11. Discipline of Supervising Physicians. Failure of a physician to obtain approval as a supervising physician, or failure of a supervising physician to observe applicable responsibilities established by regulations promulgated by the board regarding physician assistants, shall be considered unprofessional conduct and the physician may be proceeded against pursuant to the board's rules regarding physician discipline. In addition to other discipline, the board may revoke, suspend, restrict, or place on probation the supervising physician's right to supervise a physician assistant.

Section 12. Physician Assistant Advisory Committee. (1) The board shall establish a physician assistant advisory committee consisting of nine (9) members, four (4) of whom shall be physician assistants from (as practicable) different regions of the Commonwealth, two (2) supervising physicians, one (1) resident of the Commonwealth who is not associated with or financially interested in the health care business, one (1) advanced registered nurse practitioner who shall be selected from a list of three (3) nominees submitted by the Kentucky Board of Nursing and who shall be licensed in good standing in the Commonwealth, and one (1) member of the board. The members of the committee shall hold office for terms of three (3) years and until their successors are appointed and qualified, except that the terms of office of the members first appointed shall be as follows: two (2) members shall be appointed for one (1) year, four (4) members shall be appointed for two (2) years and three (3) members shall be appointed for three (3) years. The terms of all members of the committee shall expire on August 31st of the last year of their respective terms.

(2) The committee shall hold meetings at least semiannually and more often as necessary, to

review and make recommendations to the board regarding:
(a) Applications of physician assistants and supervising physicians;
(b) Statutes and regulations; and
(c) Any other matter relating to the practice of physician assistants.
(3) The committee shall review all grievances relating to physician assistants. The board's investigational powers relating to physicians shall apply equally to physician assistants. Upon review of any grievance, the committee shall make a recommendation to the appropriate inquiry panel. Disciplinary proceedings against physician assistants shall be conducted in the same manner as proceedings against physicians and physician assistants shall have the same right to judicial review enjoyed by physicians. The board may temporarily suspend or restrict a physician assistant's certification during the pendency of a proceeding and may order a physician assistant to undergo physical or mental examination in accordance with the procedures set forth in KRS 311.592 and KRS 311.599, respectively.

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: July 8, 1991
FILED WITH LRC: July 9, 1991 at 9 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(As Amended)

201 KAR 9:300. Athletic trainer restrictions [Interpretation of KRS 311.900(1)].

RELATES TO: KRS 311.908 [311.900(1)]
STATUTORY AUTHORITY: KRS 311.908(1) [Chapter 13A]
NECESSITY AND FUNCTION: KRS 311.908(1) authorizes the State Board of Medical Licensure to promulgate regulations relating to the certification and practice of athletic trainers. The purpose of this regulation is to specify when an athletic trainer may be employed in the private practice of a license physician. [empowers the State Board of Medical Licensure to adopt rules and regulations as necessary to fulfill their statutory duty and obligation to certify qualified athletic trainers to practice within the Commonwealth of Kentucky. The purpose of this regulation is to clearly delineate the circumstances when an athletic trainer can be employed in the private practice of a duly licensed physician. Nothing in this regulation shall prohibit the freedom of any individual to choose his own physician.]

Section 1. "Athlete" means participating athletes at:
(1) An education institution;
(2) A professional athletic organization; or
(3) Other bona fide athletic organization.
[No provision of KRS 311.900 to 311.928 shall be construed to limit or prevent athletic trainers certified by the board from treating athletes while working in a private practice as long as the athletic trainer has a written contract from a bona fide educational institution, professional athletic organization or other bona fide athletic organization and practices under the advice and consent of the athlete's team physician. The term athlete as used herein shall include only those individuals who are participating athletes at an educational institution, professional athletic organization or other bona fide athletic organization.]

Section 2. Athletic trainer certified by the board may treat athletes while working in a private practice if he:
(1) Has a written contract from a:
(a) Bona fide educational institution;
(b) Professional athletic organization; or
(c) Other bona fide organization; and
(2) Practices under the advice and consent of an athlete's team physician.

Section 3. The provisions of this regulation shall not be applied in a manner that restricts the right of an individual to choose his physician.

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: June 12, 1991
FILED WITH LRC: June 13, 1991 at 3 p.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(As Amended)

201 KAR 9:305. Continued certification of athletic trainers.

RELATES TO: KRS 311.900 to 311.928
STATUTORY AUTHORITY: KRS 311.908(1), (4) [Chapter 13A]
NECESSITY AND FUNCTION: KRS 311.908(1) empowers the State Board of Medical Licensure to adopt rules and regulations as necessary to fulfill their statutory duty and obligation to certify qualified athletic trainers to practice within the Commonwealth of Kentucky. The purpose of this regulation is to establish the criteria for the continued certification of athletic trainers.

Section 1. Definitions. "Continuing education unit (CEU)" means the completion of ten (10) hours of educational courses approved by the:
(1) Kentucky Board of Medical Licensure; or
(2) National Athletic Trainer Association (NATA). [As used in this regulation, "continuing education unit (CEU)" shall be defined as ten (10) contact hours of participation in an organized continued education experience under responsible sponsorship, capable direction and qualified instruction and must be approved by the National Athletic Trainer Association (NATA) or the Kentucky Board of Medical Licensure.]

Section 2. (1) An athletic trainer certified to practice in the Commonwealth of Kentucky shall complete six (6) CEU's:
(a) For the three (3) year period, July 1, 1991 - June 30, 1994; and
(b) For each three (3) year period thereafter.
(2) In each three (3) year period, the required CEU's shall include the human immunodeficiency virus and acquired immune deficiency syndrome educational course approved by the Cabinet for Human Resources in 902 KAR 2:150. [All athletic trainers certified to practice in the Commonwealth of Kentucky shall:]
[(1) Complete six (6) continuing education

units (CEU) in a three (3) year period beginning July 1, 1991, and ending July 1, 1994, and on a continuous three (3) year cycle thereafter; said CEU's to include human immunodeficiency virus education mandated by KRS 311.908(4) and 902 KAR 2:150; and]

[(2) Pay the required fees.]

ROYCE E. DAWSON, M.D., President
APPROVED BY AGENCY: June 12, 1991
FILED WITH LRC: June 13, 1991 at 3 p.m.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended)

201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization.

RELATES TO: KRS 314.011(6), 314.042, [314.131(1),] 314.161
STATUTORY AUTHORITY: KRS [Chapter 13A, Chapter] 314.131(1)
NECESSITY AND FUNCTION: KRS Chapter 314 [The Nurse Practice Act] provides for the registration of advanced registered nurse practitioner. It is necessary to assure that applicants meet qualifications as set forth by the board as necessary for safe practice.

Section 1. The application for registration as an advanced registered nurse practitioner in Kentucky required by the board is hereby incorporated by reference. A copy of the form may be obtained at the Board of Nursing office, 4010 Dupont Circle, Suite 430, Louisville, Kentucky between the hours of 8:30 a.m. and 5 p.m. [Eligibility Requirements. To be eligible for registration as advanced registered nurse practitioner, the applicant shall:]

[(1) Be currently licensed on an active status to practice as a registered nurse in Kentucky;]

[(2) Have completed an organized postbasic program of study and clinical experience acceptable to the board as defined in Section 2 of this regulation; "completed" shall mean that the applicant has completed all course requirements, including didactic, clinical and/or thesis components, and is eligible for receipt of a diploma or certificate as awarded by the school/program;]

[(3) Be currently/actively certified by one (1) of the following national organizations: American Nurses' Association as practitioner or clinical specialist, American College of Nurse Midwives as nurse midwife, Council on Certification/Recertification of Nurse Anesthetists (or their predecessor, American Association of Nurse Anesthetists) as nurse anesthetist, National Board of Pediatric Nurse Practitioners/Associates as practitioner, Nurses' Association of the American College of Obstetricians and Gynecologists as practitioner, or other national organizations designated by the board as defined in Section 3 of this regulation in collaboration with the Nurse Practice Council;]

[(4) Accurately complete and submit application form and necessary information for registration as advanced registered nurse practitioner;]

[(5) Submit a recent photograph (two (2) x three (3) inches) taken within the past six (6) months with the photograph signed by the applicant on the front under the facial features. Snapshots are not acceptable.]

[(6) Submit the current application fee for advanced registered nurse practitioner registration.]

Section 2. Postbasic Program of Study and Clinical Experience. An organized postbasic program of study and clinical experience shall conform to the following criteria in order to be acceptable to the board: [Program Requirements. To be acceptable to the board an organized postbasic program of study and clinical experience shall:]

(1) Be an established, ongoing and organized program offered on a routine basis to enrollees.

(2) Be accredited **or** [/] approved for the education of nurses by a recognized accreditation **or** [/] approval body, or the sponsoring organization holds such accreditation **or** [/] approval.

(3) Have a program design which prepares enrollees to function in a role consistent with the advanced registered nursing practice specialty designation.

(4) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students.

(5) Have a designated faculty responsible for planning, development, implementation, and evaluation of curriculum and students.

[(6) Extend over an enrollment period of no less than nine (9) months. See Section 3 of this regulation for exception.]

(6) [(7)] Include didactic components.

(7) [(8)] Include a supervised clinical experience.

(8) [(9)] Upon successful completion award a diploma or certificate.

(9) Extend over an enrollment period of not less than nine (9) months. An organized postbasic program of study and clinical experience with an enrollment period of less than nine (9) months shall be evaluated by the board on an individual basis to determine if the program is acceptable to the board by sufficiently preparing students for advanced registered nursing practice.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced nursing practice shall be recognized by the board if it meets the following criteria: [Program Requirements Exception. The only exception to the program requirements as stated in Section 2 of this regulation shall relate to Section 2(6) of this regulation. An organized postbasic program of study and clinical experience with an enrollment period of less than nine (9) months, completed by an applicant prior to January 1, 1986, shall be evaluated by the board on an individual basis to determine if the program is acceptable to the board.]

[Section 4. Recognition of a National Certifying Organization. A national certifying organization may be recognized by the board to grant certification to meet eligibility requirements for registration as advanced registered nursing practitioner when said

organization or agency meets the following criteria:]

(a) [(1)] Certifying body is an established national nursing organization or a subdivision thereof.

(b) [(2)] Full membership privileges are restricted to registered nurses.

(c) [(3)] Eligibility requirements for certification are delineated.

(d) [(4)] Valid and current registered nurse licensure is required for initial and continuing certification.

(e) [(5)] Certification is offered in speciality areas of clinical practice.

(f) [(6)] Scope and standards of practice statements are promulgated and include:

1. [(a)] Belief statement.

2. [(b)] Statement on scope of practice.

3. [(c)] Standards for specialty area clinical practice.

4. [(d)] Guidelines for development of practice protocols.

5. [(e)] Guidelines for the provision of comprehensive client care.

(g) [(7)] Mechanism for determining continuing competency is established.

(h) [(8)] Procedures are established for determining qualifications for initial or continuing certification for members having had disciplinary action taken on license by any jurisdiction.

(2) The board shall maintain a list of recognized national certifying organizations which is hereby incorporated by reference. A copy of the list may be obtained at the Board of Nursing office, 4010 Dupont Circle, Suite 430, Louisville, Kentucky between the hours of 8 a.m. and 5 p.m.

Section 4. Practice Pending Processing. (1) An applicant who meets all the requirements for practice as an advanced registered nurse practitioner except for certification by a national certifying organization may practice as an advanced registered nurse practitioner subject to the following conditions:

(a) The applicant shall apply for certification from a recognized national certifying organization for the first time.

(b) The applicant shall obtain an advanced registered nurse practitioner of the same specialty, or a licensed physician, to supervise the applicant.

(c) The applicant shall verify to the board that he has applied for certification and has obtained a supervisor.

(d) Practice pursuant to this provision shall extend only until the applicant has learned the results of the request for certification, but in no case longer than one (1) year from application.

(e) Applicants who have previously applied for and been denied certification by a recognized national certifying organization **shall be** [are] ineligible to practice as an advanced registered nurse practitioner until they have been certified.

(2) A registered nurse who meets all the requirements for practice as an advanced registered nurse practitioner and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:090 pending licensure by endorsement shall be authorized to practice as an advanced registered nurse practitioner for a period of time not to exceed the expiration date of the temporary work permit.

[Section 5. Applicant Pending Certification Examination Results. A nurse who meets the requirements of Section 1(1), (2), (4), (5), and (6) of this regulation and who is eligible for and has applied for initial certification by one (1) of the national organizations specified in Section 1(3) of this regulation may be authorized by the board to practice under the supervision of a certified advanced registered nurse practitioner of the same specialty or a licensed physician until results of the certification examination have been received or for a period not to exceed one (1) year beyond the practice requirement for certification. To be eligible for authorization to practice under supervision the applicant shall:

(1) Submit evidence of verification of the required supervision.

(2) Submit evidence that he/she has applied to take and has met the eligibility requirements to take an initial examination to attain certification as required in Section 1(3) of this regulation.]

[Section 6. Applicant Holding Temporary Work Permit Pending Registered Nurse Licensure by Endorsement. A nurse who meets the eligibility requirements of Section 1(2), (3), (4), (5) and (6) of this regulation, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:090 pending licensure by endorsement, may be authorized by the board to practice as an advanced registered nurse practitioner for a period of time not to exceed the expiration date of the temporary work permit or until the registered nurse license is issued or denied.]

Section 5. [7.] Registration Renewal. (1) The advanced registered nurse practitioner registration shall expire **or** [/] lapse at the time the registered nurse license expires **or** [/] lapses.

(2) To be eligible for renewal of registration as an advanced registered nurse practitioner, the applicant shall:

(a) Renew the registered nurse license on an active status.

(b) Submit a completed application form for renewal of registration as an advanced registered nurse practitioner;

(c) Submit current renewal application fee; and

(d) Maintain current certification by a recognized national certifying organization. [Meet requirements in Section 1(3) of this regulation.]

(3) An advanced registered nurse practitioner who fails to renew the registered nurse license or is issued a license on an inactive status may not practice as or use the title of advanced registered nurse practitioner until a current active license has been issued by the board and the advanced registered nurse practitioner registration has been reinstated.

Section 6. [8.] Registration Reinstatement. (1) If a nurse fails to renew the advanced registered nurse practitioner registration as prescribed by law and regulation, the registration shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of

advanced registered nurse practitioner registration, the applicant shall:

(a) Submit a completed application form;

(b) Submit current reinstatement application fee; **and**

(c) Maintain current certification by a recognized national certifying organization. [Meet requirements in Section 1(1), (3) of this regulation.]

Section 7. [9.] Certification **or** [/] Recertification. (1) An advanced registered nurse practitioner who has met requirements and has applied for recertification by one (1) of the national organizations recognized [specified] in Section 3 [1(3)] of this regulation may practice as an advanced registered nurse practitioner until the results of the recertification have been received.

(2) A nurse who fails to attain certification from one (1) of the national organizations recognized [specified] in Section 3 [1(3)] of this regulation **shall** [will] not be registered as an advanced registered nurse practitioner and may not practice or use the title of advanced registered nurse practitioner until the requirements of [Section 1 of] this regulation have been met.

[(3) An advanced registered nurse practitioner who fails to attain recertification as required by the appropriate national organization will be notified that his/her advanced registered nurse practitioner number is void and he/she may not practice as or use the title of advanced registered nurse practitioner until recertification has been achieved.]

(3) [(4)] An advanced registered nurse practitioner who is decertified by the appropriate national organization shall notify the board of that fact and he[/she] shall not practice as or use the title of advanced registered nurse practitioner during the period of decertification.

Section 8. [10.] An application is valid for a period of one (1) year from date of submission to board. After one (1) year from date of application, the applicant shall be required to reapply. [:]

[(1) Submit new application;]

[(2) Submit current fee;]

[(3) Meet requirements as stated in Section 1(1) through (3) of this regulation.]

Section 9. [11.] The requirements of this regulation **shall** [do] not prohibit the supervised practice of nurses enrolled in postbasic educational programs for preparation in advanced registered nursing practice or enrolled in advanced registered nurse practitioner refresher courses.

Section 10. [12.] Any registered nurse who holds himself out as a clinical specialist or is known as such, **shall be** [is] required to register as an advanced registered nurse practitioner if his practice includes the performance of advanced registered nursing procedures [according to an established protocol as defined in 201 KAR 20:057(2); such a nurse whose practice does not include the performance of procedures beyond the scope of registered nursing practice shall not be included under the requirements of this regulation].

Section 11. [13.] Any nurse practicing as an advanced registered nurse practitioner who is not registered as such by the board, [or] any advanced registered nurse practitioner whose practice is inconsistent with the specialty to which he[/she] has been designated, or any advanced registered nurse practitioner who does not recertify and continues to practice as an advanced registered nurse practitioner shall be subject to the disciplinary procedures set in KRS 314.091.

ANGELA LASLEY, President
APPROVED BY AGENCY: June 20, 1991
FILED WITH LRC: June 27, 1991 at 3 p.m.

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

401 KAR 31:110. Appendix on toxicity characteristic leaching procedure [EP toxicity test procedure].

RELATES TO: KRS 224.830 through 224.877, 40 CFR 261 Appendix II

STATUTORY AUTHORITY: KRS 13A.210, 224.017, 224.033, 224.864(3), 40 CFR 261 Appendix II

NECESSITY AND FUNCTION: KRS 224.864(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This regulation contains the appendix to this chapter concerning the toxicity characteristic leaching procedure [EP toxicity test procedure].

Section 1. Applicability. Method 1311 Toxicity Characteristic Leaching Procedure, which is contained in 40 CFR 261 Appendix II (1990), is hereby adopted without change. [This regulation contains the EP toxicity procedures.]

(1) The owner or operator of a surface impoundment, landfill, [or] land treatment facility, 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 **the effective date of this amendment** [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:]

$$\text{[Percent solids} = \frac{\text{(weight of pad + solid) - (tare weight of pad) X 100}}{\text{initial weight of sample]}}$$

[(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
(As Amended)

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 (November 1990), DEP 7037, and Annual Registration of Hazardous Waste Activity form (November 1990), 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 (August 1991), 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
FILED WITH LRC: August 9, 1991 at 11 a.m.

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

401 KAR 35:200. Surface impoundments (IS).

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.866, 224.867
NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. KRS 224.867 requires that corrective action shall [must] be initiated prior to permit issuance, renewal or amendment; groundwater monitoring and corrective action requirements applicable to new surface impoundments are applicable to interim status surface impoundments which continue to receive waste after July 26, 1982; additional requirements necessary to protect public health and the environment may be imposed at existing surface impoundments; and air emissions at surface impoundments may be regulated, monitored or controlled. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes minimum standards for surface impoundments.

Section 1. Applicability. The requirements in this regulation apply to owners and operators of sites or facilities that use surface impoundments to treat, store or dispose of hazardous waste, except as Section 1 of 401 KAR 35:010 provides otherwise.

Section 2. General Operating Requirements. A surface impoundment shall [must] maintain enough freeboard to prevent any overtopping of the dike by overfilling, wave action, or a storm. There shall [must] be at least sixty (60) centimeters (approximately two (2) feet) of freeboard.

Section 3. Containment System. All earthen dikes shall [must] have a protective cover, such as grass, shale or rock, to minimize wind and water erosion and to preserve their structural integrity.

Section 4. Waste Analysis and Trial Tests. In addition to the waste analyses required by Section 4 of 401 KAR 35:020, whenever a surface impoundment is to be used to:

(1) Chemically treat a hazardous waste which is substantially different from waste previously treated in that impoundment; or

(2) Chemically treat hazardous waste with a substantially different process than any previously used in that impoundment, the owner or operator shall [must], before treating the different waste or using the different process:

(a) Conduct waste analyses and trial treatment tests (e.g., bench scale or pilot scale tests); or

(b) Obtain written, documented information on similar treatment of similar waste under similar operating conditions, to show that this treatment shall [will] comply with Section 8(2) of 401 KAR 35:020.

Section 5. Inspections. The owner or operator shall [must] inspect:

(1) The freeboard level at least once each operating day to ensure compliance with Section 2 of this regulation; and

(2) The surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration or failures in the impoundment.

Section 6. Closure and Postclosure Care. (1) At closure, the owner or operator shall [must]:

(a) Remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless Section 3(4) of 401 KAR 31:010 applies; or

(b) Close the impoundment and provide postclosure care for a landfill under 401 KAR 35:070 and Section 4 of 401 KAR 35:230 including the following:

1. Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

2. Stabilize remaining wastes to a bearing capacity sufficient to support the final cover; and

3. Cover the surface impoundment with a final cover designed and constructed to:

a. Provide long-term minimization of the migration of liquids through the closed impoundment;

b. Function with minimum maintenance;

c. Promote drainage and minimize erosion or abrasion of the cover;

d. Accommodate settling and subsidence so that the cover's integrity is maintained; and

e. Have a permeability less than or equal to the permeability of any bottom liner system or

natural subsoils present.

(2) In addition to the requirements of 401 KAR 35:070 and Section 4 of 401 KAR 35:230 during the postclosure care period, the owner or operator of a surface impoundment in which wastes, waste residues, or contaminated materials remain after closure in accordance with the provisions of subsection (1)(b) of this section shall [must]:

(a) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events;

(b) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of 401 KAR 35:060; and

(c) Prevent run-on and run-off from eroding or otherwise damaging the final cover.

Section 7. Special Requirements for Ignitable or Reactive Waste. Ignitable or reactive waste shall [must] not be placed in a surface impoundment unless:

(1) The waste is treated, rendered or mixed before placement in the impoundment so that: the resulting waste mixture no longer meets the definition of ignitable or reactive waste under Section 2 or 4 of 401 KAR 31:030; or

(2) The surface impoundment is used solely for emergencies.

Section 8. Special Requirements for Incompatible Wastes. Incompatible wastes or incompatible wastes and materials (see 401 KAR 35:330 for examples) shall [must] not be placed in the same surface impoundment.

Section 9. Recordkeeping. The owner or operator shall [must] record the level of liquid in the surface impoundment every day with respect to a fixed reference elevation.

Section 10. Design Requirements. (1) The owner or operator of a surface impoundment shall [must] install two (2) or more liners and a leachate collection system in accordance with Section 2(3) of 401 KAR 34:200, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

(2) The owner or operator of each unit referred to in subsection (1) of this section shall [must] notify the cabinet at least sixty (60) days prior to receiving waste. The owner or operator of each facility submitting notice shall [must] file a Part B application within six (6) months of the receipt of such notice by the cabinet.

(3) Subsection (1) of this section shall [will] not apply if the owner or operator demonstrates to the cabinet and the cabinet finds for such surface impoundment, that alternative design and operating practices, together with location characteristics, shall [will] prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(4) The double liner requirement set forth in subsection (1) of this section may be waived by the cabinet for any monofill, if:

(a) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes **are considered hazardous only because they exhibit toxicity characteristics classifying them under** [do not contain constituents which would render the wastes hazardous for reasons other than the [EPA] toxicity characteristic in Section 5 of 401 KAR 31:030, with] **EPA hazardous waste numbers D004 through D017 (see Section 5 of 401 KAR 31:030)**; and

(b) The owner or operator demonstrates that:

1. The monofill:

a. Has at least one (1) liner for which there is no evidence that such liner is leaking. For the purposes of this regulation the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of subsection (1) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment the owner or operator shall [must] remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment shall [must] comply with appropriate postclosure requirements, including but not limited to ground water monitoring and corrective action;

b. Is located more than one-fourth (1/4) mile from an underground source of drinking water (as that term is defined in 401 KAR 30:010); and

c. Is in compliance with generally applicable ground water monitoring requirements for facilities with permits issued in accordance with 401 KAR Chapter 38; or

2. The monofill is located, designed and operated so as to assure that there shall [will] be no migration of any hazardous constituent into ground water or surface water at any future time.

3. In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of subsection (1) of this section and in good faith for compliance with subsection (1) of this section and with guidance documents governing liners and leachate collection systems under subsection (1) of this section, no liner or leachate collection system which is different from that which was so installed pursuant to subsection (1) of this section shall [will] be required for such unit by the cabinet when issuing the first permit to such facility, except that the cabinet not be precluded from requiring installation of a new liner when the cabinet has reason to believe that any liner installed pursuant to the requirements of subsection (1) of this section is leaking.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: June 13, 1991
FILED WITH LRC: June 14, 1991 at noon

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION
(As Amended)

415 KAR 1:020. General provisions for state financial responsibility.

RELATES TO: KRS 224.810, 224.814 through 224.825, **40 CFR 280 Subpart H**

STATUTORY AUTHORITY: KRS Chapter 13A, 224.815, 224.817, 224.819, **40 CFR 280 Subpart H**

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 **and 40 CFR 280 Subpart H**. 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 against the fund, and the procedures for appealing decisions and hearing complaints brought before the commission.

Section 1. General Eligibility Requirements. (1) Any petroleum storage tank owner or operator shall be eligible for participation in the fund if the owner or operator certifies that the following requirements for substantial compliance have been maintained for each petroleum storage tank on the Substantial Compliance and State Financial Responsibility Affidavit form incorporated by reference in subsection (2) of this section:

(a) The owner or operator has met the technical requirements effective at the time of the discovery of the release [of 401 KAR Chapter 42]; and, if [in the event of] a release has occurred, has made proper notification to the cabinet as required in 401 KAR Chapter 42;

(b) The owner or operator has maintained current annual registration with the cabinet for each petroleum storage tank;

(c) The owner or operator has paid the thirty (30) dollar annual tank fee required by KRS 224.823 to the cabinet for each petroleum storage tank; and

(d) The owner or operator has certified state financial responsibility to the commission using one (1) or any combination of the options listed in subparagraphs 1 through 6 of this paragraph. This certification shall be provided to the commission on the Substantial Compliance and State Financial Responsibility Affidavit form dated April 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. eastern time Monday through Friday.

1. Commercial or private insurance from a carrier with an A.M. Best rating of B+, or better, authorized to transact business in the Commonwealth of Kentucky.

2. A risk retention group qualified to do business in the Commonwealth and who shall furnish any financial reports as may be required by the commission.

3. A guarantor with a direct or indirect controlling interest in the owner or operator. The guarantor shall furnish proof as may be required by the commission in order to demonstrate state financial responsibility.

4. A surety bond from a surety company that is listed with the U.S. Treasury Department or the Kentucky Department of Insurance. Under the terms of the bond, the surety shall become liable under the bond when the owner or operator fails to perform.

5. An irrevocable standby letter of credit by an entity that has authority to issue letters of credit in Kentucky, and whose letter of credit operations are regulated and examined by a federal or a Kentucky agency. This letter of credit shall be drawn to cover "taking corrective action" and indemnification arising from owning or operating petroleum storage tanks.

6. The owner or operator may qualify as a self-insurer with prior approval by the commission if the owner or operator has certified to the commission the following upon request:

a. The owner's or operator's annual year-end financial statements; and

b. The owner's or operator's net worth is at least equal to the amount of coverage required for corrective action and the third party indemnification required in KRS 224.817(1)(a) and (d) [415 KAR 1:030, Section 2].

(2) Petroleum storage tank owners or operators shall maintain evidence of all state financial responsibility requirements used to demonstrate compliance with the requirements of this regulation until the owner or operator is released from the requirements of 401 KAR 42:090.

(3) Any change in eligibility requirements listed in this section shall be reported to the commission within ten (10) days of the occurrence.

(4) Loss of eligibility.

(a) If at any time the commission determines that an owner or operator has not maintained substantial compliance, the commission shall notify the owner or operator of the noncompliance. The owner or operator shall be deemed ineligible to receive reimbursement from the fund in the event of a release, until the noncomplying site is in substantial compliance.

(b) If [at the time of a discovery of a release,] the commission determines that an owner or operator has failed to certify eligibility or has not maintained substantial compliance, corrective action costs and third-party damages associated with a [that] release shall [are] not be eligible for reimbursement by the fund.

(c) If the commission determines that an owner or operator has submitted fraudulent information, the owner or operator shall be deemed ineligible to receive reimbursement from the fund, and **shall** [may] be required to pay back any monies falsely received.

(5) Restoration of eligibility. The owner or operator shall have thirty (30) days from the date of receipt of the notice of ineligibility to produce evidence of complying with all eligibility requirements.

Section 2. Criteria for Reviewing Certifications. (1) The applicant shall be in compliance with KRS Chapter 224 and 401 KAR Chapter 42.

(2) The Substantial Compliance and State Financial Responsibility Affidavit form shall be properly completed and executed.

Section 3. Notification of Eligibility. The petroleum storage tank owner or operator shall receive a written notification of eligibility from the commission that the fund may be used as a demonstration of financial responsibility in support of 401 KAR 42:090.

Section 4. Fund Balance. (1) Except as provided under KRS 224.820(2) and (4), the unobligated balance of the fund shall never be less than $1,500,000 to ensure a $1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the fund, and a $500,000 reserve balance for emergency abatement action by the cabinet resulting from a release from a petroleum storage tank. When funds are withdrawn for emergency abatement actions, the withdrawals shall be replaced immediately.

(2) When the unobligated balance of the fund is $1,500,000 or less, or the payment of a claim shall cause the unobligated balance of the fund to be less than $1,500,000, the commission shall immediately suspend the payment of claims until the unobligated balance is greater than $1,500,000. Claims approved for payment by the commission at the time of suspension shall be paid in accordance with the date of final approval of the claims when the suspension is lifted.

Section 5. Request for Review of Determination. Any person aggrieved by the actions of the commission may, by written notice, request that a hearing be conducted by the commission as set out in 415 KAR 1:030, Section 5.

WILLIAM C. EDDINS, Chairman
APPROVED BY AGENCY: July 9, 1991
FILED WITH LRC: July 9, 1991 at 2 p.m.

CORRECTIONS CABINET
(As Amended)

501 KAR 6:070. Kentucky Correctional Institution for Women.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures, [are] revised [on] July 15 [June 14], 1991 and are incorporated by reference and hereinafter shall be referred to as Kentucky Correctional Institution for Women Policies and Procedures, July 15, 1991. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel on weekdays between 8 a.m. to 4:30 p.m.

KCIW 01-06-01	Legal Assistance for Corrections Staff
KCIW 01-08-01	News Media Access
KCIW 02-01-01	Comprehensive Insurance Coverage
KCIW 02-02-01	Fiscal Management: Audits
KCIW 02-02-03	Fiscal Management: Checks
KCIW 02-02-04	Institution Purchasing Procedures
KCIW 02-03-01	Inventory Control of Nonexpendable Personal Property
KCIW 02-03-02	Inventory and Control of Stores
KCIW 02-04-01	Accounting Procedures
KCIW 02-05-01	Inmate Canteen and Staff Canteen [(Amended 6/14/91)]
KCIW 06-01-01	Inmate Records
KCIW 06-01-02	Transfers to Community Centers and the Minimum Security Unit
KCIW 06-01-03	Storage of Expunged Records
KCIW 10-01-01	Special Management Unit General Operation and Regulations
KCIW 10-01-02	Special Management Unit Programs, Placement and Review
KCIW 10-01-04	Special Security
KCIW 11-01-01	Food Service Operation Inspections (Amended 7/15/91)
KCIW 11-01-02	Budgeting, Accounting, and Purchasing Procedures for Food Products
KCIW 11-02-01	Menu Preparation/Special Diets
KCIW 11-03-01	General Guidelines for Food Service Workers
KCIW 11-03-02	General Guidelines for Food Service Workers
KCIW 11-04-01	Health Regulations and General Guidelines for the Food Service Area
KCIW 12-01-01	Control of Pests and Vermin
KCIW 12-02-01	Laundry and Clothing Issuance
KCIW 12-02-03	Donated Items [(Amended 6/14/91)]
KCIW 12-04-01	Sanitation and General Living Conditions
KCIW 12-04-02	Hair Care Services
KCIW 13-01-01	Provision of Medical and Dental Care (Amended 7/15/91)
KCIW 13-01-02	Preliminary Health Screening and Appraisal
KCIW 13-01-03	Use of Pharmaceutical Products (Amended 7/15/91)
KCIW 13-03-01	Emergency Care (Amended 7/15/91)
KCIW 13-03-02	Infirmary Care and Outside Services
[KCIW 13-03-03	Outside Hospital Security
KCIW 13-04-01	Medical Alert System
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KCIW 13-06-01	Informed Consent
KCIW 13-07-01	Detoxification and Alcohol or Chemical Dependency Guidelines
KCIW 13-08-01	Medical Examination for Employees [(Amended 6/14/91)]
KCIW 13-09-01	Suicide Prevention and Intervention Program
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KCIW 14-01-02	Inmate Rights
KCIW 14-02-01	Access to Attorneys and Designated Counsel Substitutes
KCIW 14-03-01	Inmates Are Not Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap, or Political Beliefs

KCIW 14-04-01	Inmate Grievance Procedure
KCIW 15-01-01	Offenses and Penalties
KCIW 15-01-02	Adjustment Committee Procedures and Programs
KCIW 15-03-01	Inmate Rule Book
KCIW 15-04-01	Honor Program
KCIW 15-06-01	Restriction Guidelines [(Amended 6/14/91)
KCIW 16-01-01	Inmate Correspondence
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KCIW 16-02-01	Inmate Access to Telephone
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KCIW 16-03-01	Inmate Visiting Regulations (Amended 7/15/91)
KCIW 16-03-02	Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages
KCIW 16-04-01	Inmate Indigent Fund [(Amended 6/14/91)]
KCIW 16-05-01	Inmate Packages
KCIW 17-01-01	Assessment Center Operation and Reception Programs
KCIW 17-01-02	Assessment/Classification Center Operations, Rules and Regulations
KCIW 17-01-03	Assessment and Classification Unit Property Guidelines
KCIW 17-02-01	Identification Department Admissions
KCIW 17-03-01	Notifying Inmates Families of Admission and Procedures for Mail and Visiting
KCIW 17-05-01	Inmate Personal Property Guidelines
KCIW 18-01-02	Institutional Housing Assignments
KCIW 18-02-01	Classification Procedures
KCIW 18-05-01	Special Needs Inmates
KCIW 18-06-01	Institutional Status Codes
KCIW 19-01-01	Inmate Work/Program Assignments
KCIW 19-03-01	Landscape and Maintenance Work Details
KCIW 20-01-01	Education [Center [Programs] (Amended 7/15/91)]
KCIW 20-01-03	Vocational Education: Curriculum Flexible Schedule, Upgrade Programs and Release Preparation Program [(Deleted 7/15/91)]
KCIW 20-01-04	Entry - Exit Vocational School [(Deleted 7/15/91)]
KCIW 20-01-05	Vocational Programs: Approved, Assessed and Contain Guidelines for Vocational Records [(Deleted 7/15/91)]
KCIW 20-01-06	Vocational Education: Staffing Patterns/Requirements [(Deleted 7/15/91)]
KCIW 20-01-07	Vocational Counselor [(Deleted 7/15/91)]
KCIW 20-01-08	Vocational Education: Community Resources and the Integration with Academic Progress [(Deleted 7/15/91)]
KCIW 20-01-09	Vocational Education: Support Equipment [(Deleted 7/15/91)]
KCIW 20-01-10	Control of Flammable, Hazardous, Toxic and Caustic Materials in the Vocational Area
KCIW 22-01-04	Inmate Club Activities
KCIW 23-01-01	Religious Services
KCIW 25-01-01	Preparole Progress Report
KCIW 25-02-01	Temporary Release/Community Center
KCIW 25-02-02	Furloughs
KCIW 25-03-01	Escorted Leave into the Community

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 15, 1991
FILED WITH LRC: July 15, 1991 at 11 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(As Amended)

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

RELATES TO: KRS 189A.400 through 189A.460
STATUTORY AUTHORITY: KRS 189A.460
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. (1) 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.

(2) If the orders, instructions or restrictions of the court are so extensive that they cannot be written in full on the court order from, the court shall note on the court order from that additional instructions are attached. The additional instructions shall be certified or attested and attached to the hardship driver's license in addition to the yellow copy of the court order form in order for the license to be considered complete or official.

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 which authorized the issuance of the hardship driver's license of the hardship license cancellation [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 which authorized the issuance of the hardship driver's license of the hardship license cancellation [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 11, 1991 at 11 a.m.

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

603 KAR 5:070. Motor vehicle dimension limits.

RELATES TO: KRS 189.222, 23 CFR Part 658
STATUTORY AUTHORITY: KRS 189.222(1), 23 CFR Part 658

NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for motor vehicles using the State Primary Road System. The State Primary Road System consists of those roads maintained by the Department of Highways. Further, 23 CFR Part 658 requires that a five (5) mile access on state-maintained highways and a one (1) mile access on locally controlled highways be included with the list of highways over which motor vehicles with increased dimensions are allowed to operate. The federal regulation also requires that vehicles with increased dimensions which are transporting household goods and truck tractors towing only one (1) semitrailer which does not exceed twenty-eight (28) feet be provided state-wide access unless a route is specifically excluded for safety reasons. This regulation is adopted to set the maximum motor vehicle dimensions for all classes of highways. However, bus dimension limits are set forth in 603 KAR 5:071.

Section 1. Except as provided in Section 2 of this regulation, the maximum dimensions for all motor vehicles except buses using all classes of highways shall be as follows:

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

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

(3) Length.

(a) Single unit motor vehicle, including any part of the body or load, not to exceed forty-five (45) feet. However, if the front or rear overhang exceeds five (5) feet, an overdimensional permit shall be obtained prior to the operation of the vehicle. However, single unit motor vehicles transporting utility poles or pipes in which the vehicle and load do not exceed forty-five (45) feet shall not be required to obtain an overdimensional permit.

(b) Motor vehicle and trailer or semitrailer combinations, including any part of the body or load, not to exceed fifty-five (55) feet, except for truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang of the transported vehicles or boats is excluded in the measurement of the fifty-five (55) feet.

(c) If the front or rear overhang of a motor vehicle and trailer or semitrailer combination exceeds five (5) feet, an overdimensional permit shall be obtained prior to the operation of the vehicle. In truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang of the transported vehicles or boats shall be excluded from this measurement.

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

Section 2. (1) Motor vehicles except buses with dimensions greater than those specified in Section 1 of this regulation but which do not exceed the dimensions set forth in subsection (2) of this section may be operated without an overdimensional permit only on the highways listed in Section 3(1) of this regulation, [and] on the five (5) mile [local] access authorized in Section 3(2) of this regulation and on the one (1) mile access authorized in Section 3(3) of this regulation.

(2) Motor vehicles shall not exceed, without an overdimensional permit, the following width and length dimensions when operating on those highways listed in Section 3(1) of this administrative regulation:

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

(b) Length.

1. Semitrailers - fifty-three (53) feet including body and load when operated in tractor semitrailer combination.

2. Trailers - twenty-eight (28) feet including body and load when operated in a tractor-semitrailer-trailer combination, not to exceed two (2) trailers per truck tractor. Twenty-eight (28) feet shall be the maximum length of a trailer including body and load when operated in a truck-trailer combination.

3. If the load overhangs the body of the trailer or semitrailer by more than five (5) feet an overdimensional permit shall be required regardless of the overall length of the unit, except in truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang of the transported vehicles or boats shall be excluded in the measurement.

4. There shall be no overall length limitation on motor vehicles operating on highways listed in Section 3(1) of this regulation or on the five (5) mile local access authorized in Section 3(2) of this regulation as long as the requirements set forth in this subsection are met.

5. In a tractor semitrailer-trailer combination vehicle in which the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semitrailer which allows for a fifth wheel connection point for the second semitrailer, the length of the extension shall be excluded from the measurement of semitrailer length; however, when there is no second semitrailer mounted to the fifth wheel, the length of the extension shall be included in the length measurement for the semitrailer.

(3) No dimension specified in this section shall be subject to any enforcement tolerances provided in any other section.

Section 3. (1) The following highways are designated to permit the operation of motor vehicles with increased dimensions but which do not exceed the limitations stated in Section 2(2) of this regulation:

The Interstate and National Defense Highway System.

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

Bluegrass Parkway - from I-65 in Elizabethtown to US 60 near Versailles.

Cumberland Parkway - from I-65 near Smiths Grove [at Warren County line] to US 27 west of Somerset.

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

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

[Jackson] Purchase Parkway - from Tennessee state line to I-24 in Marshall County.

Mountain Parkway and Extension - from I-64 at Winchester to US 460 at Salyersville.

Pennyrile Parkway - From US 41A in Hopkinsville to US 41 near Henderson.

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

KY 4 - The entire circle of Lexington.

KY 11 - from the junction with KY 32 in Fleming County to US 62-68 in Maysville.

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

KY 18 - from KY 338 at Burlington to KY 1017 in Florence.

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

US 23 - from KY 1426 south of Pikeville to the Ohio state line.

US 23 - from the Virginia state line to US 119 near Jenkins.

US 23 Spur - from US 23/60 in Ashland to the Ohio state line.

US 25 - from KY 461 in Rockcastle County to I-75 in Rockcastle County.

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

US 25 - from KY 418 southeast of Lexington to [Nandino Boulevard in Lexington (via] KY 4[)].

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

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

US 27 - from Tennessee state line to Ohio state line (via KY 4 in Lexington).
US 31E - from Tennessee state line to KY 90 at Glasgow (via the Scottsville Bypass and the Glasgow Bypass).
US 31W - from Tennessee state line to KY 73 north of Franklin.
US 31W - from the Green River Parkway to US 68 north of Bowling Green.
US 31W - from US 31W Bypass in Elizabethtown to I-264 in Shively.
US 31W Bypass - from Western Kentucky Parkway to US 31W in Elizabethtown.
KY 32 - from KY 11 in Fleming County to US 60 at Morehead.
KY 35 - from US 127 at Bromley to I-71 north of Sparta.
KY 36 - from I-64 south of Owingsville to US 60 at Owingsville.
KY 36 - from US 42 in Carrollton to KY 227.
US 41 - from US 68 (Main Street) in Hopkinsville to US 68 (McLean Avenue) in Hopkinsville.
US 41 - concurrent with Pennyrile Parkway from south of Nortonville to north of Madisonville.
US 41 - from Pennyrile Parkway at Henderson to Indiana state line.
US 41A - from Tennessee state line to Pennyrile Parkway at south city limits of Hopkinsville.
US 41A - from KY 112 in Earlington to KY 281 and KY 1751 in Madisonville.
US 42 - from I-264 northeast of Louisville to Oldham County line.
US 42 - from I-75 in Florence to US 25 in Florence.
US 42 - from KY 55 at Carrollton to KY 47 at Ghent.
US 45 - from the Jackson Purchase Parkway north of Mayfield to US 60 in Paducah.
US 45 Bypass - concurrent with the Jackson Purchase Parkway from southwest of Mayfield to US 45 north of Mayfield.
US 49 - Concurrent with KY 55 south of Lebanon to north of Lebanon.
US 51 - from Jackson Purchase Parkway in Fulton County to Illinois state line.
KY 52 - from KY 876 in Richmond to KY 499 at Irvine.
KY 55 - from Cumberland Parkway in Columbia to US 150 at Springfield, via US 68 and KY 49.
US 60 - from US 51 in Wickliffe to US 62 east of Paducah.
US 60 - from KY 109 at Sullivan in Union County to Young Street in Morganfield.
US 60 - from East O'Banion Avenue in Morganfield to KY 425, the Henderson Bypass.
US 60 - from US 60 Bypass west of Owensboro to KY 69 at Hawesville.
US 60 - from KY 144 in Meade County to US 31W at Tip Top.
US 60 - from I-264 east of Louisville to KY 1531 at Eastwood.
US 60 - from US 421/460 at Frankfort to I-75 near Lexington (via Versailles and KY 4 in Lexington).
US 60 - from junction of KY 180 near Cannonsburg to US 23 in Ashland.
US 60 Bypass - from US 60 west of Owensboro to US 60 east of Owensboro.
US 61 - from Tennessee state line to KY 90 at Burkesville.
US 62 - from US 60 east of Paducah to Western Kentucky Parkway east of Eddyville.
US 62 - from US 150 at Bardstown to KY 245 at Bardstown.
US 62 - from US 421 west of Midway to US 421 in Scott County, concurrent with US 421.
US 62 - from KY 353 southwest of Cynthiana to US 27 at Cynthiana.
US 62 - from US 68 at Washington to the Ohio state line at Maysville.
US 68 - from US 62 at Reidland to KY 284 in McCracken County.
US 68 - from I-24 in Trigg County to Green River Parkway at Bowling Green via US 41 in Hopkinsville.
US 68 - from KY 55 southwest of Campbellsville to KY 55 in Lebanon.
US 68 - from its east intersection with US 150 in Perryville to its west intersection with US 150 in Perryville.
US 68 - from US 127 south in Harrodsburg to US 127 north in Harrodsburg.
US 68 - from US 27 at Paris to US 62 at Washington (via Paris Bypass).
KY 69 - from US 60 at Hawesville to Indiana state line.
KY 70 - from I-65 west of Cave City to KY 90 southeast of Cave City.
KY 79 - from KY 1051 in Brandenburg to Indiana state line.
KY 80 - from KY 80B at Somerset to US 25 north of London.
KY 80 - from KY 15 at Hazard to US 23 at Watergap.
KY 80B - From US 27 at Somerset to KY 80 east of Somerset.
KY 90 - from KY 70 at Cave City to Cumberland Parkway at Glasgow.
KY 90 - from KY 61 at Burkesville to US 27 at Burnside.
KY 109 - from KY 670 in Webster County to US 60 in Union County.
KY 114 - from US 460 east of Salyersville to US 23/460 at Prestonsburg.
KY 118 - from US 421 and KY 80 northwest of Hyden to the Daniel Boone Parkway.
US 119 - from KY 15 at Whitesburg to US 23 at Jenkins.
US 119 - from US 25E south of Pineville to US 421 at Harlan.
US 119 - from US 23 at Pikeville to KY 1441 northeast of Pikeville.
KY 121 - from the Jackson Purchase Parkway at Mayfield to US 51 in Wickliffe.
US 127 - from KY 90 west to KY 90 east in Clinton County (concurrent with KY 90).
US 127 - from US 127 Bypass north of Danville to US 127 Bypass south of Lawrenceburg.
US 127 - from I-64 west of Frankfort to US 421 in Frankfort.
US 127 - from KY 22 in Owenton to KY 35 at Bromley.
US 127 Bypass - from US 127 south of Danville to US 127 north of Danville.
US 127 Bypass - from US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.
KY 144 - from KY 448 south of Brandenburg to US 60.
US 150 - from US 62 at Bardstown to US 27 at north city limits of Stanford (via the US 150 Bypass in Danville).
US 150B - from US 127 south of Danville to US 150 east of Danville.
KY 151 - from US 127 near Lawrenceburg to I-64 near Graefenburg.
KY 180 - from I-64 near Cannonsburg to US 60 at Cannonsburg.
KY 191 - from KY 205 north to KY 205 south in

Wolfe County, concurrent with KY 205.
KY 192 - from I-75 south of London to Daniel Boone Parkway east of London.
KY 205 - from Mountain Parkway at Helechawa to US 460 west in Morgan County, concurrent with KY 191.
KY 212 - from KY 20 to Greater Cincinnati Airport (Boone County).
KY 227 - from KY 355 near Worthville to KY 36 at Carrollton.
US 231 - from US 60 Bypass in Owensboro to Indiana state line.
US 231 - from I-65 east of Bowling Green to US 31W in Bowling Green.
KY 236 - from US 25 at Erlanger to KY 212 near the Greater Cincinnati Airport.
KY 237 - from KY 18 east of Burlington to I-275 in Boone County.
KY 245 - from I-65 south of Shepherdsville to US 62 at Bardstown.
KY 259 - from Western Kentucky Parkway to US 62 in Leitchfield.
KY 281 - from US 41A in Madisonville to the Pennyrile Parkway, concurrent with US 41.
KY 341 - from US 62/421 near Midway north to I-64.
KY 348 - from Jackson Purchase Parkway west of Benton to US 641 in Benton.
KY 418 - from US 25 south of Lexington to I-75.
US 421 - from 0.1 mile south of Harlan Appalachian Regional Hospital.
US 421 & KY 80 - from Daniel Boone Parkway to 2nd Street in Manchester.
US 421 - from KY 4 in Lexington to US 62 east in Scott County.
US 421 - from US 460 in Frankfort to US 127 north.
US 421 - from KY 55 in Henry County to I-71 in Henry County.
KY 425 - from US 60 at Henderson to the Pennyrile Parkway.
US 431 - from US 60 Bypass in Owensboro to US 60 (4th Street) in Owensboro.
KY 446 - from US 31W northeast of Bowling Green to I-65.
KY 448 - from KY 144 to KY 1051 at Brandenburg.
US 460 - from I-64 north of Mt. Sterling to KY 686.
US 460 - from Mountain Parkway Extension to US 23 near Paintsville.
KY 461 - from KY 80 in Pulaski County to US 25 in Rockcastle County.
KY 471 - from US 27 in Campbell County to the I-275/471 junction.
KY 546 - from I-275/KY 9 at Wilder to KY 59 south of Vanceburg [KY 19 in Bracken County to KY 11 south of Maysville in Mason County].
KY 555 - from US 150 at Springfield to Bluegrass Parkway.
US 641 - from Tennessee state line to US 641A south of Benton.
US 641A - from US 641 south of Benton to the Jackson Purchase Parkway.
KY 645 - from US 23 south of Ulysses to KY 40 west of Inez.
KY 676 - from US 127 in Frankfort to US 60.
KY 686 - from US 460 north of Mt. Sterling to KY 11 south of Mt. Sterling.
KY 841 - from I-71 in Jefferson County to US 42 northeast of Louisville.
KY 841 - from US 31W (Dixie Highway) in southwestern Jefferson County to I-65.
KY 859/KY 57 - from I-64 east of Lexington to Lexington - Bluegrass Army Depot.
KY 876 - from I-75 at Richmond to KY 52 east of Richmond.
KY 922 - from KY 4 in Lexington north to I-64 and I-75.
KY 1017 - from US 25 in Florence to I-75.
KY 1051 - from KY 79 to KY 448 south of Brandenburg.
KY 1682 - from US 68 west of Hopkinsville to Pennyrile Parkway.
KY 1958 - from KY 627 south of Winchester to I-64 at Winchester.
KY 1998 - from US 27 at Cold Springs to KY 8 at Silver Grove.

(2) Motor vehicles with the increased dimensions specified in Section 2 of this regulation shall be allowed five (5) driving miles on state maintained highways from the highway segments specified in Section 3(1) of this regulation for the purpose of attaining reasonable access to terminals; facilities for food, fuel, repairs and rest[; and points of loading and unloading for household goods carriers].

(3) Motor vehicles with the increased dimensions specified in Section 2 of this regulation shall be allowed one (1) driving mile on nonstate maintained public use highways from the highway segments specified in Section 3(1) for the purpose of attaining reasonable access to terminals, facilities for food, fuel, repairs and rest.

Section 4. (1) Household Goods Transporters. Motor vehicles with the increased dimensions specified in Section 2 of this regulation and which are used to transport household goods by a motor carrier certificated by either the Interstate Commerce Commission or the Kentucky Transportation Cabinet to transport household goods shall have access to any public roadway in the Commonwealth of Kentucky.

(2) Single unit semitrailers. Motor vehicles with the increased dimensions specified in Section 2 of this regulation and which consist of only a truck tractor and single semitrailer which does not exceed twenty-eight (28) feet shall have access to any public roadway in the Commonwealth of Kentucky.

JEROME L. LENTZ, Acting Commissioner
O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: June 21, 1991
FILED WITH LRC: June 26, 1991 at 1 p.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(As Amended)

704 KAR 7:090. Homeless children education program.

RELATES TO: KRS 156.031, 156.035, 42 USC Section 11432
STATUTORY AUTHORITY: KRS 156.035, 156.070
NECESSITY AND FUNCTION: In accordance with the Stewart B. McKinney Homeless Assistance Act Amendments of 1990 [1987], the Kentucky Department of Education, when applying to the U.S. Department of Education for participation in programs for homeless children under the Act, shall submit an approvable plan and satisfactory assurances that all requirements of the law set forth in 42 USC Section 11432 shall be met. This

regulation implements the State Board for Elementary and Secondary Education's KRS 156.031 and 156.035 duties to develop education policy, to implement acts of Congress appropriating and apportioning funds to the state and to provide for the proper implementation of federal law in accordance with the state's current plan. This regulation sets forth criteria regarding residency policies, the provision of a free, appropriate public education to homeless children, provides informal procedures for resolution of disputes regarding educational placement of homeless children, provides grants to local educational agencies for the enrollment, retention and educational success of homeless children and homeless youths, and provides for an annual count of homeless children and homeless youth. [Reconsideration and refiling of this regulation is required by KRS 156.031.]

Section 1. Definitions. (1) "Homeless child", "homeless children", "homeless youth", and "homeless student" means a child or children who are between the ages of five (5) and twenty-one (21) inclusive and who are:

(a) Living with their families in hotels, motels, public or private shelters[, parks or campgrounds,] or other temporary living arrangements due to the lack of a fixed, regular and adequate residence;

(b) Residing in special care homes such as runaway shelters or spouse abuse centers due to the lack of a fixed, regular and adequate residence;

(c) Placed by parents under the care of relatives or nonrelatives due to the homeless situation of the family or due to their impoverished condition which may cause[s] the family members to live [be living] separately from one another;

(d) Sleeping in a public or private place not ordinarily used as a regular sleeping accommodation for human beings; [or]

(e) Sick or abandoned children staying in hospitals, who would otherwise be released if they have a place to go; [Awaiting assistance from social service agencies in a hospital or a temporary placement facility due to being abandoned or forced out of the home by parents or other caretakers.]

(f) Living in campgrounds or similar temporary sites because they lack living accommodations that are fixed, regular and adequate. Those living in campgrounds on a long-term basis in adequate accommodations shall not be considered homeless; or

(g) Runaway or throwaway youth who have been "thrown out" of their home environment and who are living in a shelter, on the street, or who move from one friend's house to another in a cycle of transiency.

(2) Such homeless children shall not include any individual imprisoned or otherwise detained by act of Congress or a state law. Nor shall a child be classified as "homeless" to circumvent state law and regulations which:

(a) Prohibit the attempted enrollment of nonresident students for the express purposes of obtaining school accommodations and services without the payment of tuition to the nonresident school district or for the purpose of obtaining specific programs not available in the school of residence; or

(b) Regulate interschool athletic recruiting by the Kentucky High School Athletic Association.

(3) "Free, appropriate public education" means the educational programs and services that are provided the children of a resident of a state, and that are consistent with state school attendance laws. It includes educational services for which the child meets the eligibility criteria, such as compensatory education programs for the disadvantaged, and educational programs for the handicapped and for students with limited English proficiency; programs in vocational education; programs for the gifted and talented; [and] school meals programs; extended school programs; preschool programs; and programs developed by the family resource and youth services centers.

(4) "School of origin" shall mean the school that the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled.

Section 2. Criteria for Program Implementation. Homeless children or homeless youth who reside within the boundaries of a local school district shall be provided a free, appropriate public education. Programs for homeless children and youth shall be provided in a timely fashion and shall be ensured by the following actions:

(1) Each local district shall designate a person in the district to be a homeless child education coordinator and shall submit the name of the person to the Kentucky Department of Education. The coordinator's responsibilities shall be to:

(a) Obtain all necessary records, including birth certificates and immunization records, of each homeless student identified as living within the boundaries of the school district and, **as expeditiously as legally possible,** place the student in appropriate programs [within two (2) school days of the student's appearance in the district]. In cases where records are not readily available, the coordinator shall contact the school district(s) of last attendance for verbal confirmation of essential information. The coordinator shall assist the homeless student to obtain essential records which are not in existence in order that enrollment shall not be delayed or denied;

(b) Receive and resolve any requests for resolution of disputes related to the educational placement of homeless students within the district. The coordinator shall provide the necessary information to the Department of Education for final resolution whenever such a request is received and is not resolved;

(c) Assist the homeless student to obtain the appropriate program and services, including transportation and referrals to medical, dental, mental and other appropriate services; [and]

(d) Develop procedures to ensure that homeless student records are readily available upon request by a new receiving school district; and

(e) Develop a liaison with known homeless service providers and state agencies in the community to identify and enroll homeless students living there.

Section 3. Residency. The school district of residence is the district in which the homeless student physically resides with his or her parent or legal custodian, unless by reason of marriage, emancipation, or basic physical

necessity the child resides elsewhere. The school district of residence shall ensure that:

(1) The homeless student is enrolled in the school attendance area [district] in which he or she is physically located or that the homeless student's education is continued in the school [district] of origin for the remainder of the academic [school] year, or in any case in which the family becomes homeless between academic years, for the following academic year; or enroll the child or youth in any school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend, whichever is in the best interest of the homeless student.

(2) In determining the best interests of the child or youth for purposes of making a school assignment under Section 3(1) of this regulation, consideration shall be given to a request made by the parent regarding school selection.

(3) [(2)] A homeless student shall not be denied enrollment in the school district of residence due to the absence of a parent or a court-appointed guardian or custodian. Such a homeless student shall be enrolled and provided educational services until such time that the school district can substantiate that the enrollment is contrary to Section 1(2) of this regulation.

(4) [(3)] In the absence of a parent, and a court-appointed custodian or guardian, any medical, dental and other health services may be rendered to a homeless student who is a minor of any age when, in the judgment of the school principal or other professional that the risk to the minor's health is of such a nature that treatment should be given without delay and the requirements of consent would result in delay or denial of treatment as stated in KRS 214.185(3)(4).

(5) [(4)] No policy of the school district shall delay or deny the timely provision of educational placement and appropriate services to the homeless student, including policies related to guardianship issues.

Section 4. Resolution of Disputes. Disputes arising between or among the school district of residency; another school district; and the parent, homeless youth, or person in parental relationship to the homeless student regarding the school district in which the child shall attend school or the educational placement of the homeless student shall be resolved through the following procedures:

(1) The school district's homeless child education coordinator shall inform the representative of the homeless student of the right to an informal hearing with the school district(s) when a dispute arises about the placement of the homeless student. The coordinator shall assist the representative to complete a written request for the hearing which shall be based on a placement that was initiated, or declined to be initiated, by the school district not more than two (2) school weeks prior to the request.

(2) The informal hearing shall be scheduled within two (2) days of the written request and shall be convenient to the needs of the representative of the homeless student.

(3) During the hearing, the school district(s) shall discuss any considerations that led to the placement decision which may include the ability of the school district to provide continuity in educational programs, the need of the homeless student for special instructional programs, the amount of time and arrangements required to transport the student to the original school district, the age of the homeless student and the school placement of siblings, and the time remaining until the end of the semester or the end of the school year.

(4) In cases where an agreement cannot be reached among all involved parties, either party may request the assistance of the state homeless children education coordinator. Upon written request, the coordinator shall meet with the involved parties to discuss available alternatives and seek to resolve the dispute.

(5) In cases of such a request for the assistance of the state coordinator, the school district of residence shall inform the Kentucky Department of Education and shall provide sufficient information as required.

(6) The placement and services for the homeless student shall be continued pending the resolution of the dispute by the Department of Education.

Section 5. Annual Count. The Department of Education shall annually conduct a count of all homeless children and youth in the state as follows:

(1) Survey instruments shall be distributed to local school districts, related social agencies, and appropriate service providers no later than October 1 of each year [according to the required time lines set by the U.S. Department of Education].

(2) Local school districts, social agencies, and service providers shall take an unduplicated count of homeless children and youth and shall return the completed forms to the Department of Education according to the time lines provided.

(3) The Department of Education shall develop procedures as required to ensure that the homeless child count is accurate and verifiable.

Section 6. Local Educational Agency Grants for the Education of Homeless Children and Youth. The Kentucky Department of Education shall make grants to local educational agencies (LEA) when such funds become available in the following manner:

(1) For any year in which there is an increase in funds in relation to the previous year, all school districts in the state shall be eligible to apply for this money through a request for proposal (RFP) process. Districts which receive funds shall be given priority status for two (2) years, and shall receive continued funding contingent upon a positive evaluation and review of the project and continued need.

(2) For any year in which there is a decrease in funds in relation to the previous year, only those districts which received a grant in that previous year shall be eligible to submit an RFP for the present year. If a majority of these districts either decide not to reapply for refunding, or receive a negative evaluation or are found to no longer have a need for these funds, the amount of money which would have been awarded to them will be made available to all other districts through a RFP process. If the funding level remains at or below the previous year for two (2) years, on the second year of this cycle the grant money shall be made available to all districts through the RFP

process.

(3) Not less than fifty (50) percent of amounts provided under a grant to local districts shall be used to provide tutoring, remedial education services, or other education services to homeless children or homeless youths.

(4) Not less than thirty-five (35) nor more than fifty (50) percent of amounts provided to local districts shall be used for activities including expedited evaluations, professional development for school personnel, referrals for medical, dental, mental and other health services, transportation, before- and after-school care, and school supplies.

(5) A local district that desires to receive a grant shall submit an application to the Kentucky Department of Education. Each application shall include:

(a) The number of homeless children and youth enrolled in preschool, elementary and secondary school, the needs of such children and the ability of the district to meet these needs;

(b) A description of the services and programs for which assistance is sought and the problems sought to be addressed through the provision of such services and programs (i.e., enrollment, retention and educational success);

(c) An assurance that assistance under the grant shall supplement and not supplant funds used before the award of the grant for purposes of providing services to homeless children and homeless youths;

(d) A description of policies and procedures that the district shall implement to ensure that activities carried out by the district shall not isolate or stigmatize homeless children and homeless youth;

(e) A description of coordination with other local and state agencies that serve homeless children and homeless youths; and

(f) Other criteria the Kentucky Department of Education deems appropriate.

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 5, 1991
FILED WITH LRC: July 8, 1991 at 11 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(As Amended)

707 KAR 1:150. Preschool education program for children with disabilities.

RELATES TO: KRS 156.160, 157.226, 34 CFR Part 99, 20 USC 1400-1420

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. Definitions. (1) "Preschool education" means programs which:

(a) 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;

(b) Include appropriate student learning activities to assist the child with intrapersonal, interpersonal and socialization skills development; and

(c) Meet the unique needs of a child with disabilities.

(2) "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.

Section 2. [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 3. [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 4. [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 5. [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 6. [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 7. [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 8. [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 9. [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**, as set forth in 704 KAR 3:410**.

(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 10. [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 11. [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 12. [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
Governor's Commission on Literacy
(As Amended)

784 KAR 1:010. Adult literacy program fund.

RELATES TO: KRS 151B.140
STATUTORY AUTHORITY: KRS 13A.100, 151B.140
NECESSITY AND FUNCTION: As an agency of the Cabinet for Workforce Development, the Governor's Commission on Literacy is authorized by KRS 151B.140 to administer a statewide adult literacy program. This regulation is necessary to assure uniformity in the administration of literacy program grants under the statewide adult literacy program.

Section 1. Program Purpose and Announcements. (1) The goal for the use of the literacy program grants is to encourage and promote the development and implementation of local literacy programs, or the improvement or supplementation of existing programs, in each county. Except as special circumstances require and as recommended by the Governor's Commission on Literacy, hereinafter referred to as the commission, no more than one (1) grant per county shall be awarded each funding cycle.

(2) Funding cycle(s) during which applications will be received for the program shall be announced annually. Deadlines for receiving proposals shall be established and advertised in each county. More than one (1) funding cycle is anticipated annually, but this shall be dependent upon the level of funding available and number of applicants funded during the first funding cycle.

Section 2. Eligibility Requirements. (1) The following may apply for funding:

(a) State agencies and units of local government (including county, municipality, city, town, local public authority and special district agencies). This also includes such intrastate entities as districts, councils of governments and multicounty units, and other

state and local organizations and institutions.

(b) Profit or nonprofit public or private businesses.

(c) Community based organizations or subgroups of such organizations organized expressly for the purpose of providing adult literacy services and who are incorporated, or, are a legal entity, or who have an individual who accepts responsibility for appropriate use of the grant funds.

(2) To be eligible for funding, projects shall:

(a) Provide or coordinate direct adult literacy services or provide training or technical assistance to such programs.

(b) Provide services to individuals age sixteen (16) and above who read at or below a fifth grade level, unless the application demonstrates the need and method for providing services to different ages and reading abilities, and can demonstrate that this is not a duplication of services.

(c) Be conducted in and applicable to use in Kentucky.

(d) Not charge for services except material costs may be borne by program participants; however, charges shall be an exact rate paid by the program/service provider. In no instance shall services be denied to persons who cannot pay.

(e) Show evidence of cooperation and coordination with other literacy programs within the community.

(f) Comply with nondiscrimination requirements.

(g) Show documentation of cooperative referral between literacy and adult basic education programs.

(3) Proposals which are incomplete, subcontract for services, duplicate existing programs in the locality, or which request funds beyond the allowable maximum may be rejected.

(4) Project expenditures eligible for funding may include salaries, training, travel, operating expenses, books and materials, printing and duplicating, and equipment within limits set by the proposal guidelines. Construction expenditures shall not be eligible.

Section 3. Submission of Proposals. (1) Proposals shall be submitted on the Kentucky Literacy Commission Application for Literacy Program Funds dated March, 1991, which is incorporated herein by reference [application forms provided] and within the deadline established in each funding cycle. Proposal application forms may be obtained at the Office of the Governor's Commission on Literacy, 1100 U.S. 127 South, Building A, Suite 1, Frankfort, Kentucky 40601, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. A proposal submitted for consideration but not funded in any cycle may be resubmitted for consideration in any new funding cycle announced, providing signatures of responsible parties carry a current date.

(2) Proposals shall be signed by a person who has the authority to obligate the organization to the terms of the grant or who accepts personal liability.

(3) Each applicant shall be notified immediately by return postcard when a proposal is received by the commission.

Section 4. Evaluation of Proposals. (1) Project applications shall be reviewed by the commission's Grant Review Committee and one (1) individual involved in literacy programs in another state.

(2) After the application submittal deadline, applicants shall not initiate contact with anyone involved in the review and evaluation process or initiate changes in their proposal. Proposal changes or budgetary amendments may be requested by the Grant Review Committee or its designee.

(3) The proposal screening process consists of the following steps:

(a) The Grant Review committee will evaluate each proposal not eliminated in the prescreening process. During this evaluation, the applicant may be contacted for additional information or clarification on the project. Criteria which shall be utilized to evaluate the proposals shall include:

1. The documented need for an adult literacy program, considering both the number of adults who cannot read or read well (under the standard used in Section 2(2)(b) of this regulation) and the extent to which there are existing literacy programs in the county.

2. Qualifications and appropriateness of the applicant agency and agency staff to carry out adult literacy programs.

3. Quality of the implementation and operation plans, including clear objectives; methods for recruiting, training and managing volunteers; outreach plans, plans for standardized measures of student progress; and instructional design.

4. Ability to evaluate the effectiveness of the program.

5. Extent of cooperation and coordination with and support of other literacy programs.

6. Ability to keep required records.

7. Completeness and appropriateness of budget and cost effectiveness.

8. Strength of plans for continuation of projects.

(b) The Grant Review Committee reserves the right to recommend for funding any, all, or none of the proposals submitted in response to requests for proposals. The committee may also choose to negotiate with competing applicants from any county to encourage a joint program.

(c) Recommendations of the Grant Review Committee shall go to the full commission for consideration. The recommendations of the commission shall be forwarded to the Secretary of Workforce Development Cabinet who shall make the final decision regarding funding awards.

(d) Applicants selected for funding shall be notified by mail of the decision on their proposals no later than sixty (60) days after the deadline established for the funding cycle.

Section 5. Funding Terms and Conditions. (1) State funds appropriated for literacy programs shall be allocated by county, based on the percent of adults in that county as compared to the state total who have completed only the eighth grade or less. Funds not granted to that county during the first funding cycle each year shall subsequently be made available statewide.

(2) Grant fund awards shall be made as determined by the commission. If inappropriate or unapproved use of funds occurs, the remainder of the award may be suspended or revoked. Misused funds shall be recovered.

[(3) Funding of projects shall be established by a document of grant conditions to be finalized after grantees are notified. The document shall include requirements stipulated

in this regulation and in the application guidelines.]

(3) [(4)] To insure proper use of funds, grantees shall be held accountable for project expenses in a manner acceptable to the commission and the Secretary of the Workforce Development Cabinet. A separate bank account for each project requiring two (2) signatures on each check shall be required. All records shall be kept for three (3) years after the end of the funding cycle, or until any audits have been completed.

(4) [(5)] Grantees may invest grant funds and retain any interest earnings except that such earnings shall be deemed grant funds and be used only for express purposes of the grant and shall be reported in all documents recording project financing.

(5) [(6)] After completion of each project grantees shall return any unspent grant funds.

(6) [(7)] Equipment and material purchased with grant funds shall be owned by the grantee. If the grantee organization dissolves, the property shall be given to an organization serving a public purpose and meeting nondiscrimination requirements. This organization shall be selected by the commission.

Section 6. Reporting Requirements. (1) Grantees shall be required to submit to the commission quarterly reports on progress of projects and financial expenditures and encumbrances. The quarterly reports shall be due ten (10) working days after the end of the quarter. A final report shall be required within fifteen (15) working days of the completion of the project year. Reports shall be in a format designed by the commission and may include but not be limited to request for demographic data, copies of materials produced, test results, equipment inventory, and financial activities.

(2) Grantees shall be required to submit information in standardized summative form which reflects student progress in the adult literacy programs.

Section 7. Requirements for Public Access. (1) Individuals authorized by the commission may visit the project site at mutually agreed upon times to observe progress, provide guidance and analyze and publicize projects supported under this program.

(2) Sharing and distributing information and materials developed under this project shall be a major goal of this program. Therefore, except for confidential information clearly identified in the project proposal, the results of the projects shall be made a matter of public record and grantees shall make their projects available for public observation at mutually agreed upon times.

Section 8. Confidentiality of Information. (1) Data which is specifically identifiable to individual students shall be considered confidential and recipient of project awards shall develop a written policy concerning its protection.

(2) Summative information which outlines progress of students and demographic information shall not be considered confidential when no particular individual can be identified by the information.

(3) The commission reserves the right to use and disseminate information and data derived from the use of these project funds to the extent such information is not protected by any claim of confidentiality.

MARTIN BELL, Chairperson
APPROVED BY AGENCY: June 20, 1991
FILED WITH LRC: July 15, 1991 at 10 a.m.

WORKFORCE DEVELOPMENT CABINET
Governor's Commission on Literacy
(As Amended)

784 KAR 1:020. State adult literacy program plan.

RELATES TO: KRS 151B.135, 151B.140
STATUTORY AUTHORITY: KRS 13A.100, 151B.135, 151B.140
NECESSITY AND FUNCTION: The Governor's Commission on Literacy is authorized by KRS 151B.140 to administer a statewide adult literacy program. KRS 151B.135 authorizes the commission to review and evaluate literacy programs and report findings and recommendations to the Governor, the Legislative Research Commission, and appropriate cabinet and department heads. The function of this regulation is to assist in the evaluation of existing resources and to set planning goals and guidelines which will provide for optional utilization of all resources directed toward adult literacy programs.

[Section 1. Purpose. The purpose of this regulation is to establish the process by which the state adult literacy program plan is prepared, amended and revised. The state adult literacy program plan should serve as a major policy document which provides a coordinated approach for identifying statewide literacy program needs, addressing major adult literacy issues, and insuring the provision of adult literacy services for each county of the Commonwealth.]

Section 1. [2.] State Adult Literacy Program Plan Development. (1) The Governor's Commission on Literacy shall determine the statewide adult literacy program needs of the Commonwealth after providing reasonable opportunity for the submission of written recommendations from appropriate state agencies which provide such services and from other agencies as designated by the Governor for the purpose of making such recommendations.

(2) The commission shall prepare, review at least biennially, and revise as necessary a preliminary state adult literacy plan for the provision and coordination of adult literacy services.

(3) The commission shall invite appropriate state agencies to review the preliminary plan and shall receive comments in writing.

(4) The commission shall give written consideration to all comments received and specify what changes are being made in the plan in response to comments, and, if changes are not being made, specify the reasons for not changing the plan. A copy of the statements shall be available for public review and provided to those agencies which submitted comments on the plan.

(5) The commission shall submit the preliminary state adult literacy program plan to

the Secretary of the Cabinet for Workforce Development.

(6) After approval of the state adult literacy program plan by the secretary, the secretary shall submit the proposed plan to the Governor for approval or disapproval.

MARTIN BELL, Chairperson
APPROVED BY AGENCY: June 20, 1991
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PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Oil and Gas
(As Amended)

805 KAR 1:020. Protection of fresh water zones.

RELATES TO: KRS 353.520
STATUTORY AUTHORITY: KRS Chapter 13A [13A.100], 353.540, 353.550, 353.560
NECESSITY AND FUNCTION: KRS 353.540 authorizes the Department of Mines and Minerals to administer and enforce the provisions of KRS 353.500 to 353.720. The waste of oil and gas is prohibited by KRS 353.520[, which provides that such prohibited waste includes: (1) the unreasonable damage to underground, fresh or mineral water supply, workable coal seams, or other mineral deposits in the operations for the discovery, development, production, or handling of oil and gas, (2) the unnecessary or excessive surface loss or destruction of oil or gas or their constituents, and (3) the drowning with water of any stratum or part thereof capable of providing oil or gas in paying quantities, except for secondary recovery purposes, or in hydraulic fracturing or other completion practices]. It is the purpose of this regulation to protect fresh water zones from contamination associated with the production of oil and gas. KRS 353.550 provides that the department shall have the authority to set forth the requirements for casing, operation and plugging of wells to prevent escape of oil or gas, the detrimental intrusion of water, blowouts, cave-ins, seepages and fires.

Section 1. Definitions. The definitions contained in KRS 353.510 and the following additional definitions shall apply to this regulation:

(1) "Abnormal pressure" means a reservoir pressure that exceeds the hydrostatic pressure of fresh water extending from the reservoir to the surface.

(2) "Annulus" means the space between two (2) strings of casing or between a string of casing and the bore hole wall.

(3) "Casing (casing string)" means steel tubes or pipes installed in a well.

(4) "Surface casing" means the first and largest diameter casing installed in a well and its primary uses are to make the bore hole stand up and to protect the fresh water zones.

(5) "Intermediate casing" means one or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous.

(6) "Long casing string" means the last casing installed in a well to be used for production or injection purposes.

(7) "Zone" means a layer of strata capable of producing or receiving fluids.

Section 2. Protection of Fresh Water Zones for Drilling and/or Plugging Operations. (1) During drilling operations, one (1) of the following methods shall be used to protect fresh water zones:

(a) Method A. Casing shall be set on a casing shoulder and said casing shall have a shoe installed on the bottom of the bottom joint. Upon the completion of the drilling program, all the recoverable casing must be removed or cemented to the surface.

(b) Method B. Casing shall be set on a shoulder and cemented sufficiently to cover 100 feet including the shoe. Upon completion of the drilling, all of the recoverable casing must be removed or cemented to the surface.

(c) Method C. A top to bottom drilling mud system with a filtrate water loss of less than ten (10) cubic centimeters, as determined by American Petroleum Institute standards, in its publication "Standard Procedures for Field Testing Water Based Drilling Fluids" API RP 13B-1 ["Standard Procedure for Testing Drilling Fluids" API RP 13B], Sections 1, 2 and 3, June 1, 1990 [April, 1976], filed **and incorporated** herein by reference. Copies may be obtained from the Department of Mines and Minerals, P. O. Box 14090 [680], Lexington, Kentucky 40512-4090 [40586]. Certification of filtrate water loss must be made by the operator.

(2) In the event a well is to be plugged, then it shall be plugged in the manner prescribed by 805 KAR 1:060 or 805 KAR 1:070 [1:080].

Section 3. Protection of Fresh Water Zones. Any well drilled in the Commonwealth of Kentucky subject to the jurisdiction of the Department of Mines and Minerals subsequent to the effective date of this regulation shall be equipped with the following fresh water protection prior to production or injection.

(1) A protective string of casing, be it surface, intermediate, or long string, shall extend thirty (30) feet below the deepest known fresh water zone. Such protective string shall have cement circulated in the annular space outside said casing of a sufficient volume of cement, calculated using approved engineering methods, to assure the return of the cement to the surface. In the event cement does not return to the surface, every reasonable attempt will be made to fill the annular spaces by introducing cement from the surface. If the intermediate casing or long casing string is:

(a) Cemented to the surface; or

(b) Cemented thirty (30) feet into the next larger string of cemented casing in conformity with prescribed procedure, the string or combination of strings shall be considered as the fresh water protection.

(2) In areas where abnormal pressures are expected or encountered, the surface and/or intermediate casing string shall be anchored in sufficient cement, at a sufficient depth to contain said pressures, and blowout prevention valves and related equipment shall be installed.

Section 4. Wells Used for Injection of Fluids. (1) The injection of fluids shall be accomplished through a tubing and packer arrangement with the packer set immediately above the injection zone, and the annulus

between the tubing and casing shall be monitored by pressure sensitive devices. The injection pressure shall be regulated to minimize the possibility of fracturing the confining strata. Upon application, and after notice and hearing, a variance from this requirement may be granted by the director, upon a showing by an individual operator that alternate prudent engineering practices shall result in fresh water protection. The following are exempted from the requirements of this section:

(a) Injection of fluids for the purpose of well stimulation; and

(b) Injection of gas for the purpose of storage.

(2) Before injecting fluids into a well not previously permitted for injection purposes, the operator shall make application to the department for an injection permit for said well. The application for a permit to drill, deepen or convert a well for the purpose of injection of fluids shall include:

(a) A statement by the operator as to whether the well is to be used for pressure maintenance, secondary recovery, tertiary recovery, gas storage or for disposal purposes;

(b) The approximate depths of the known fresh water zones; and

(c) A plat showing:

1. The names of all lessees and lessors contiguous to the tract on which the injection shall occur;

2. The Carter Coordinate location and the elevation of the well site;

3. The geologic name and depth of the injection zone;

4. At least two (2) surface features, by bearing and distance from the proposed well site, which appear on the U.S.G.S. seven and one-half (7 1/2) minute topographic map of the area;

5. The name of said topographic map and county;

6. The location of all known fresh water wells within a radius of 1,000 feet of the proposed injection well site;

7. The location and completion and/or plugging record of all wells whether producing or plugged, within a radius of 1,000 feet of the proposed injection well site.

(3) Prior to injection into any well, the operator shall furnish the department with a certificate indicating that all requirements of this regulation have been met. The certificate shall include the following:

(a) The identification of said well by permit number, operator's name, lease name, well number, Carter Coordinate location, elevation and county;

(b) The entire casing and cementing record, any packers and other special down hole equipment, and cement bond logs, if run;

(c) The anticipated maximum bottom hole pressure (psi) and volume in barrels or cubic feet, per day;

(d) The identification of the injection zone by geological name and depth (top and bottom of zone), the number of perforations if applicable, or the interval of open hole; and

(e) Certification by the operator that the mechanical integrity of the well has been tested.

Section 5. Exemptions for Preexisting Wells. Any injection well in existence prior to the effective date of this regulation shall be exempt from the requirements of this regulation until such time as in the opinion of the department, said well is leaking fluids to other zones, or to the surface; provided, however, that this exemption shall not apply unless within one (1) year from the effective date of this regulation, the operator files an area plat, or plats, showing all of such operator's injection and associated production wells.

Section 6. Recordkeeping. The operator of an injection project shall monitor injection pressures and volumes at least monthly, and shall keep said records on file in his place of business for the life of the project; plus five (5) years. The director may require more frequent monitoring, if in his opinion, good reason therefor exists.

THEODORE T. COLLEY, Secretary
CARL ANKROM, Acting Commissioner
D. MICHAEL WALLEN, Director
APPROVED BY AGENCY: June 11, 1991
FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Oil and Gas
(As Amended)

805 KAR 1:120. Operating or deepening existing wells and drilling deeper than the permitted depth.

RELATES TO: KRS 353.520
STATUTORY AUTHORITY: KRS Chapter 13A, 353.540, 353.550, 353.560, 353.570, 353.590
NECESSITY AND FUNCTION: KRS 353.550 requires the Department of Mines and Minerals to regulate the drilling and operation of all wells, while KRS 353.590 requires it to regulate the drilling of a well past the permitted depth. This regulation establishes the requirements to operate a well and drill deeper than the permitted depth.

Section 1. Definitions. The definitions contained in KRS 353.510 and the following additional definitions shall apply to this regulation:

(1) "Deepening" means the drilling deeper of any existing well where new drilling is to proceed past the depth at which the initial drilling of the well ceased.

(2) "Operating a well" means to reenter, reopen, deepen, drill, inject into, produce, attempt to produce, or work over, any well.

Section 2. Permit Required. The operator shall obtain a permit to operate any well if the well is in violation of applicable standards and the department has forfeited the bond for noncompliance.

Section 3. Permit Not Required. An operator may operate an existing well if he submits an acceptable well transfer <u>on</u> form <u>ED-13</u> and bonding as required in KRS 353.590(5) [and] if the [following] conditions <u>in subsections (1) and (2) of this section apply. The well transfer form, ED-13, revised April 4, 1990, is filed and incorporated herein by reference. Copies may be obtained from the Department of Mines and Minerals, P.O. Box 14090, Lexington, Kentucky 40512-4090, Monday</u>

through Friday, 8 a.m. to 4:30 p.m. [apply:]
(1) The well is producing or capable of producing, not abandoned and not in violation of applicable standards; or
(2) The well has been abandoned by the previous operator, but the current operator's sole intent is to reenter the well for the purpose of properly plugging and abandoning it.

Section 4. Permit Required for Deepening. The operator shall obtain a new permit prior to deepening any well if the original permit is more than one (1) year old or the original well was drilled prior to the permitting requirements of the department, and shall not drill until the permit is issued.

Section 5. Permit Not Required for Deepening. The permitted operator may deepen an existing well if the permit is not more than one (1) year old and if the well has not been drilled past the permitted and bonded depth.

Section 6. Drilling Deeper Than the Permitted Depth. An operator may drill deeper than the permitted depth of the well provided that he brings his permit into compliance within the time and conditions set forth below:
(1) The operator shall notify division personnel that he has drilled deeper than the permitted depth the next official work day of the department.
(2) The operator shall, within ten (10) days of drilling deeper than the permitted depth, amend his permit to the depth to which he has drilled.
(3) The operator shall, within ten (10) days of drilling deeper than the permitted depth, submit additional bonding required to satisfy KRS 353.590(5).
(4) The operator shall not drill deeper than the permitted depth if such drilling causes the well to be in noncompliance with the well spacing standards set out in KRS 353.610.

Section 7. A directional or horizontal well or a deep well shall not be deepened without prior approval of the director or a permit therefor being issued.

Section 8. An operator in noncompliance with the requirements of this regulation is subject to penalties pursuant to KRS 353.991.

CARL ANKROM, Acting Commissioner
THEODORE T. COLLEY, Secretary
D. MICHAEL WALLEN, Director
APPROVED BY AGENCY: June 11, 1991
FILED WITH LRC: June 14, 1991 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Oil and Gas
(As Amended)

805 KAR 1:130. Deep well regulation relating to casing, cementing, plugging, gas detection and blow-out prevention.

RELATES TO: KRS 353.520
STATUTORY AUTHORITY: KRS Chapter 13A, 353.540, 353.550, 353.560
NECESSITY AND FUNCTION: KRS 353.550 requires the Department of Mines and Minerals to regulate the drilling and casing of all wells. This regulation establishes the requirements for the drilling and casing of a deep well.

Section 1. Definitions. The definitions in KRS 353.510 and the following additional definitions shall apply to this regulation: [, 805 KAR 1:020, Section 1, and 805 KAR 1:140 are applicable to this regulation.]
(1) "Abnormal pressure" means a reservoir pressure that exceeds the hydrostatic pressure of fresh water extending from the reservoir to the surface.
(2) "Annulus" means the space between two (2) strings of casing or between a string of casing and the bore hole wall.
(3) "Blow-out preventer (BOP)" means a device installed on the surface or intermediate casing to prevent the escape of pressure either in the annulus between casing and drill pipe or in the open hole without drill pipe and which is used during drilling operations.
(4) "Casing (casing string)" means steel tubes or pipes installed in a well.
(5) "Cement" means hydraulic cement properly mixed with water or with additives approved by the director, and which is used to fill the annulus of casing string(s) or to plug the well.
(6) "Deep well" means any well drilled and completed below the depth of 4,000 feet or, in the case of a well located east of longitude line eighty-four (84) degrees thirty (30) minutes, a well drilled and completed at a depth below 4,000 feet or below the base of the lowest member of the Devonian Brown Shale, whichever is deeper.
(7) "DES" means the state Disaster and Emergency Services Office under authority of the Department of Military Affairs in Frankfort, Kentucky with regional offices throughout the Commonwealth.
(8) "Intermediate casing" means one (1) or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous.
(9) "Long casing string" means the last casing installed in a well to be used for production or injection purposes.
(10) "Surface casing" means the first and largest diameter casing installed in a well and its primary uses are to make the bore hole stand up and to protect the fresh water zones.
(11) "Zone" means a layer of strata capable of producing receiving fluids.

Section 2. When an application for a deep well permit is submitted to the department, the operator shall prepare a detailed drilling and casing plan on Form ED-7 [forms provided by the director] for the review by and approval of the department. This casing and cementing form dated August 1, 1991 is filed and incorporated herein by reference. Copies of this form may be obtained from the Department of Mines and Minerals, P.O. Box 14090, Lexington, Kentucky 40512-4090, Monday through Friday, 8 a.m. to 4:30 p.m. This plan shall include the following:
(1) A drafted schematic showing the hole size and depth of each casing string. The freshwater string shall be set at least thirty (30) feet below the depth recommended by the department; if fresh water is encountered during drilling operations deeper than such recommended depth, the freshwater casing shall be set at least

thirty (30) feet below the actual freshwater depth. All freshwater casing strings shall be circulated when they are set before drilling commences.

(2) A description of the type, size and grade of casing to be used and the manner in which the annulus of the casing string and well bore will be cemented to protect all fresh water, coal, mineral, and oil and gas producing formation in the area proposed for drilling. The volume, class, additives and weight of the cement to be used shall also be described.

(3) If drilling fluid is used, it shall comply with 805 KAR 1:020, Section 2(1)(c).

Section 3. The operator shall install a blow-out prevention device capable of withstanding a working pressure of 1500 psi and a test pressure of 3000 psi. A description of this device and its installation shall be included with the drilling and casing plan required in Section 2 of this regulation. The BOP equipment shall be in place at such time as the well is drilled past the depth at which it becomes a deep well. A test shall be performed at regular intervals to ensure the BOP will operate at its rated capacity, and the results of such test(s) shall be kept at the drill site and made available to department personnel upon request.

Section 4. The director may waive the requirements for a BOP established in Section 3 of this regulation if the operator submits a written request for such a waiver that includes:

(1) The geologic formations to be drilled through; and

(2) A history of drilling in the vicinity of the proposed well with pressure measurements that show gas pressures were not encountered at such levels to require the BOP equipment; and

(3) The maximum anticipated gas pressure in the proposed well.

Section 5. The operator shall obtain written instructions from the department prior to plugging the well and the department shall approve the commencement of plugging operations. Upon the department's request, the operator shall submit a well log and completion report and any geophysical logs used for preparing plugging instructions.

Section 6. The department shall be notified verbally within forty-eight (48) hours of any mechanical failure or other difficulty which may jeopardize the plugging operation or mechanical integrity of the well encountered while conducting any operation or production of a deep well; provided, however, DES or the department shall be immediately notified whenever there are any well failures or blow-outs which pose the likelihood of imminent environmental damage or danger to the public. The operator shall correct any and all such difficulties with due diligence.

Section 7. An operator in noncompliance with the requirements of this regulation is subject to penalties pursuant to KRS 353.991.

THEODORE T. COLLEY, Secretary
CARL ANKROM, Acting Commissioner
D. MICHAEL WALLEN, Director
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PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Oil and Gas
(As Amended)

805 KAR 1:140. Directional and horizontal wells.

RELATES TO: KRS 353.520
STATUTORY AUTHORITY: KRS Chapter 13A, 353.540, 353.550
NECESSITY AND FUNCTION: KRS 353.550 requires the Department of Mines and Minerals to regulate the drilling and casing of all wells and filing of all downhole surveys. This regulation identifies the requirements for permitting directional and horizontal wells.

Section 1. Definitions. The definitions in KRS 353.510[, 805 KAR 1:020] and the following additional definitions shall apply to this regulation:

(1) "Abnormal pressure" means a reservoir pressure that exceeds the hydrostatic pressure of fresh water extending from the reservoir to the surface.

(2) "Annulus" means the space between two (2) strings of casing or between a string of casing and the bore hole wall.

(3) [(1)] "Blow-out preventer (BOP)" means a device installed on the surface or intermediate casing to prevent the escape of pressure either in the annulus between casing and drill pipe or in the open hole without drill pipe and which is used during drilling operations.

(4) "Casing (casing string)" means steel tubes or pipes installed in a well.

(5) [(2)] "Cement" means hydraulic cement properly mixed with water or with additives approved by the director, and which is used to fill the annulus of casing string(s) or to plug the well.

(6) [(3)] "Deep well" means any well drilled and completed below the depth of 4000 feet or, in the case of a well located east of longitude line eighty-four (84) degrees thirty (30) minutes, a well drilled and completed at a depth below 4000 feet or below the base of the lowest member of the Devonian Brown Shale, whichever is deeper.

(7) [(4)] "DES" means the State Disaster and Emergency Services Office under authority of the Department of Military Affairs in Frankfort, Kentucky, with regional offices throughout the Commonwealth.

(8) [(5)] "Directional and horizontal drilling" means the science of directing a well bore along a predetermined course to a "target" located a given distance from the vertical.

(9) [(6)] "Directional survey" means a survey taken while drilling using continuous measuring technology or a survey made through drill tools at such intervals to accurately determine the location of the deviated well bore.

(10) "Intermediate casing" means one (1) or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous.

(11) [(7)] "Intersection length" means the horizontal distance between the point at which the well penetrates the top of the intended formation and the end point within that formation.

(12) "Long casing string" means the last

casing installed in a well to be used for production or injection purposes.

(13) [(8)] "Measured depth" means the total depth measured in the well from the surface.

(14) "Surface casing" means the first and largest diameter casing installed in a well and its primary uses are to make the bore hold stand up and to protect the fresh water zones.

(15) [(9)] "True vertical depth" means the depth of the well from any point in the well being measured to the surface of the ground above the point being measured.

(16) "Zone" means a layer of strata capable of producing or receiving fluids.

Section 2. Prior to drilling a directional or horizontal well, the operator shall submit the following information [on forms approved by the director]:

(1) An application for a permit to drill the well, with a cover letter from the operator making a request for drilling the horizontal or directional well. **The application for permit form ED-1 revised March 3, 1990, is filed and incorporated herein by reference. Copies of this form may be obtained from the Department of Mines and Minerals, P.O. Box 14090, Lexington, Kentucky 40512-4090, Monday through Friday, 8 a.m. to 4:30 p.m.** A bond as required in KRS 353.590(5) and an application fee of $100 shall be submitted with the application.

(2) Three (3) copies of a location plat satisfying the requirements of 805 KAR 1:030 (plan view), in addition to the following requirements:

(a) The surface location and proposed target formation with their respective "Carter Coordinates".

(b) The proposed course of the well.

(c) The identification of the intersection length of the proposed well and the proposed producing formation(s). To avoid any conflicts with the spacing requirements, a dashed line shall be drawn around the intersection length with regard to the spacing requirements in KRS 353.610 or, for deep wells, 805 KAR 1:100 and KRS 353.651 and 353.652. This distance shall be clearly shown in feet.

(3) In addition to the plan view required in this section, the operator shall submit three (3) copies of a plat which shows a vertical cross-section view of the area to be drilled by the well. This cross-section shall be prepared from the proposed "predrill hole" directional survey compiled by the contractor responsible for the directional control mechanism and certified as required by 805 KAR 1:030, Sections 2 and 6(11). The cross-section shall include the area from the well site to the target made through the proposed course of the well. The surface shall be located as zero in reference to the depth and the lateral distance from the well site and true vertical depths shall be shown for all of the following:

(a) The kick-off point or selected depth at which the deviation is started.

(b) The known coal seams to be intersected.

(c) The producing interval(s).

(d) The proposed producing formation(s).

(e) The proposed target.

(4) When the permit is issued, the operator shall provide verbal or written notice to the department field inspector at least forty-eight (48) hours in advance of the commencement of drilling operations.

(5) Once the well has been drilled and completed, the following shall be submitted within ten (10) days from the date of completion.

(a) Three (3) copies of an amended plan view of the well location plat required in subsection (2)(a), (b), and (c) of this section, with the actual course drilled, the kick-off point and the actual target superimposed on the proposed well location plat. A correction in the target Carter Coordinates, if necessary, shall then be issued by the department; and

(b) Three (3) copies of the side or cross-sectional view plat required in subsection (3)(a) through (e) of this section shall be amended for the actual path of the well, showing the actual formation(s), coal seams, target, kick-off point; and

(c) Copies of all directional surveys certified by the operator and the contractor responsible for the directional survey. This survey shall be submitted for the entire well bore, and the operator shall be able to identify the path or depth of the well bore at any given time during and after the drilling of the directional or horizontal well. The survey points shall be made at each tool joint or at any intervals more frequent; and

(d) **On Form ED-8** [On a form provided by the director], the operator shall record the lateral offset from the well in feet and the true vertical depth for the producing interval and formation and the coal seam intersections and their true vertical depth. **The operator certification of formation offset and vertical depth Form ED-8, dated August 1, 1991, is filed and incorporated herein by reference. Copies of this form may be obtained from the Department of Mines and Minerals, P.O. Box 14090, Lexington, Kentucky 40512-4090, Monday through Friday, 8 a.m. to 4:30 p.m.**

(6) The operator shall satisfy spacing requirements of offset mineral boundary lines and between wells for the actual drilled course of the well and its end point and the intersection of the well bore and the producing formations.

(7) All coal operators or owners affected by the drilling of a directional or a horizontal well shall be provided a copy of the predrill plat and cross-section plat described in subsections (2) and (3) of this section as required by KRS 353.050 and 353.060. Within ten (10) days after the well is drilled, the operator shall submit to the coal operator or owner the revised plats and deviation survey log required in subsection (5) of this section.

(8) The requirements for a deep directional or horizontal well shall satisfy those requirements set out in 805 KAR 1:100 and KRS 353.651 and 353.652 regarding the application process and spacing units. Prior to the deep directional or horizontal well being drilled, a hearing shall be held before the Kentucky Oil and Gas Conservation Commission.

Section 3. When an application for a directional or horizontal permit is submitted to the department, the operator shall prepare a detailed drilling and casing plan on **Form ED-7** [forms provided by the director] for the review by and the approval of the department. **This casing and cementing Form Ed-7 dated August 1, 1991 is filed and incorporated herein by reference. Copies of this form may be obtained from the Department of Mines and**

Minerals, P.O. Box 14090, Lexington, Kentucky 40512-4090, Monday through Friday, 8 a.m. to 4:30 p.m. The items requested in 805 KAR 1:130, Section 2(1), (2) and (3) shall be submitted with this plan.

Section 4. The operator shall install a blow-out prevention device capable of withstanding a working pressure of 1500 psi and a test pressure of 3000 psi. A description of this device and its installation shall be included with the drilling and casing plan required in Section 3 of this regulation. This BOP equipment shall be tested at intervals necessary to maintain its ability to operate at rated capacity. The results of these tests shall be kept at the drill site and made available to department personnel at their request.

Section 5. The requirements of 805 KAR 1:130, Sections 4, 5 and 6 shall also apply to this regulation.

Section 6. An operator in noncompliance with the requirements of this regulation is subject to penalties pursuant to KRS 353.991.

THEODORE T. COLLEY, Secretary
CARL ANKROM, Acting Commissioner
D. MICHAEL WALLEN, Director
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PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(As Amended)

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.310(2)
NECESSITY AND FUNCTION: KRS 278.310(2) provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission. This regulation prescribes requirements with respect to formal and informal proceedings before the commission.

Section 1. General Offices and Hearings. (1) The commission will be in continuous session for the performance of administrative duties.

(2) Meetings of the commission for the consideration of all matters requiring formal hearings will be held on such days, at such hours and at such places as the commission may designate.

(3) Notice of hearing will be given by the secretary to parties to proceedings before the commission, except when a hearing is not concluded on the day appointed therefor and verbal announcement is made by the presiding commissioner or hearing examiner of an adjourned date. Verbal announcements so made shall be deemed due notice of continued hearing.

Section 2. Secretary to Furnish Information. (1) Upon request, the secretary will advise any party as to the form of a petition, complaint, answer, application or other paper desired to be filed; and he will make available from the commission's files, upon request, any document or record pertinent to any matter before the commission.

(2) The secretary may reject for filing any document which on its face does not comply with the rules and regulations of the commission.

Section 3. General Matters Pertaining to all Formal Proceedings. (1) Address of the commission. All communications should be addressed to "Public Service Commission, Frankfort, Kentucky."

(2) Case numbers and styles. Each matter coming formally before the commission will be known as a case and will receive a number and style, descriptive of the subject matter. Such number and style shall be placed on all subsequent papers in such case.

(3) Form of papers filed. All pleadings and applications filed with the commission in formal proceedings shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double spaced.

(4) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by affidavit.

(5) Amendment. At its discretion, the commission may allow any complaint, application, answer or other paper to be amended or corrected or any omission supplied therein.

(6) Witnesses and subpoenas.

(a) Upon the application of any party to a proceeding, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, papers or records (unless directed to issue by the commission on its own authority) will be issued only at the discretion of the commission, or any commissioner, upon application in writing, stating as nearly as possible the books, accounts, papers or records desired to be produced.

(7) Service of process. When any party has appeared by attorney, service upon such attorney will be deemed proper service upon the party.

(8) Intervention and parties. In any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by timely motion request that he be granted leave to intervene. Such motion shall include his name and address and the name and address of any party he represents and in what capacity he is employed by such party.

Each person granted leave to intervene shall be considered as making a limited intervention unless he submits to the secretary a written request for full intervention. A person making only a limited intervention shall be entitled to the full rights of a party at the hearing in which he appears and shall be served with the commission's order, but he shall not be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties. A person making a limited appearance will not be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review.

If a person granted leave to intervene desires to be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties, and to be certified as a party for the purposes of

receiving service of any petition for rehearing or petition for judicial review, he shall submit in writing to the secretary a request for full intervention, which shall specify his interest in the proceeding. If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

Section 4. Hearings and Rehearings. (1) When hearings will be granted. Except as otherwise determined in specific cases, the commission will grant a hearing in the following classes of cases:

(a) When an order to satisfy a complaint or to make answer thereto has been made and the corporation or person complained of has not satisfied the complaint to the satisfaction of the commission.

(b) When application has been made in a formal proceeding.

(2) Publication of notice. Upon the filing of any application the commission may, in its discretion, give all other corporations or persons who may be affected thereby an opportunity to be heard by service upon them of a copy of the petition or by publication of the substance thereof, at the expense of the applicant, for such length of time and in such newspaper or newspapers as the commission may designate. In such cases the form of notice will be prepared by the secretary, and a proof of the publication thereof must be filed at or before the hearing.

(3) Investigation on commission's own motion. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by the public utility, which the commission may believe is in violation of any provision of law or of any order or regulation of the commission. It may also through its own experts or employees, or otherwise, obtain such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. In order to provide opportunity for **settlement of** [parties to discuss any of the issues in] [settlement of] a proceeding **or any of the issues therein** [or any of the issues therein], an informal conference with the commission staff may be arranged through the **secretary** [executive director] [secretary] of the commission either prior to, or during the course of hearings in any proceeding, at the request of any party. [The commission on its own initiative may also convene an informal conference.]

(5) Conduct of hearings. Hearings will be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing, filed with the secretary, the parties to any proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission will be given under oath or affirmation.

(8) Objections and exceptions. When objections are made to the admission or exclusion of evidence before the commission, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and will not be taken to rulings therein.

(9) Transcript of evidence. The commission will cause to be made a stenographic record of all public hearings, and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of the fees fixed therefor.

(10) Briefs and petitions for rehearing. All briefs and petitions for rehearing in any proceeding must be accompanied with notice, showing service upon all other parties or their attorneys, and, in addition to the filed original, ten (10) copies of each such document shall be furnished for the use of the commission.

(11) Filing of briefs. All briefs must be filed within the time fixed, and the commission may refuse to consider any brief filed thereafter. Applications for extensions of time to file briefs must be made to the commission in writing.

(12) Form of briefs. All briefs filed with the commission shall be in the form prescribed by the commission.

Section 5. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed may, in its discretion, accept certified, or otherwise authenticated, copies of such documents or such portions of the same as may be relevant, or may require such evidence to be transcribed as a part of the record.

(2) Where relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant the party must plainly designate the matter so offered. If such immaterial matter unnecessarily encumbers the record, such book, paper or document will not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of such matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine such book, paper or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.

(3) Whenever practicable the sheets of each exhibit and the lines of each sheet shall be numbered and if the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Wherever practicable, rate comparisons and other such evidence shall be condensed into tables.

(4) Except as may be expressly permitted in particular instances, the commission will not

receive in evidence or consider as a part of the record any book, paper or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of any party to a proceeding, any case in the commission's files or any document on file with the commission, at the discretion of the commission may be made a part of the record by "reference only." By reference only, the case or document made a part of the record will not be physically incorporated into the record. Upon action in the Franklin Circuit Court, excerpts from any case or part of any document may be made a part of the record before such court, at the instance of any party.

Section 6. Financial Exhibit. Whenever in these rules it is provided that a financial exhibit shall be annexed to the application, the said exhibit shall cover operations for a twelve (12) month period, said period ending not more than ninety (90) days prior to the date the application is filed. The said exhibit shall disclose the following information in the order indicated below:

(1) Amount and kinds of stock authorized.

(2) Amount and kinds of stock issued and outstanding.

(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise.

(4) Brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of indebtedness actually secured, together with any sinking fund provisions.

(5) Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.

(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.

(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year.

(9) Detailed income statement and balance sheet.

Section 7. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential as provided herein. [Confidential information not publicly available. All material and information that is filed with, served upon, or otherwise made available to the Commission shall be available for examination by the public unless a written request has been made to designate material or information as proprietary, confidential or otherwise privileged, according to the procedure set forth in subsection (2) of this section.]

(2) Procedure for determining [petition for] confidentiality.

(a) Any person requesting confidential treatment of any material shall file a petition which:

1. Sets forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential; and

2. Attaches one (1) copy of the material which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless deleted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification. [wishing to protect material or information filed with, served upon or otherwise made available to the commission shall file with the commission a formal written petition identifying the material or information sought to be protected and setting forth the specific facts, reasons, or other grounds upon which the commission should classify that material or information as proprietary, confidential or otherwise privileged, with particular attention to the appropriate factors listed in subsection (7) of this section. Material for which confidential treatment is sought shall be identified by underscoring or by highlighting with transparent ink, or other reasonable means, only those words, numbers, lines of text and data elements on magnetic files which, unless deleted, would cause the disclosure of confidential information. Text, pages or portions thereof which do not contain confidential information are not to be included in this identification.]

(b) The petition, one (1) copy of the material which is identified by underscoring or highlighting, and ten (10) copies of the material with those portions obscured for which confidentiality is sought, shall be filed with the commission. [person requesting confidential treatment of material or information shall also serve a copy of its petition upon all parties, if the material or information is being filed in the record of a formal proceeding.]

(c) The petition and a copy of the material, with only those portions for which confidentiality is sought obscured, shall be served on all parties. The petition shall contain a certificate of service on all parties.

(d) The burden of proof to show that the material falls within the exclusions from disclosure requirements enumerated in KRS 61.870 et seq., shall be upon the person requesting confidential treatment.

(e) Any person may respond to the petition for confidential treatment within ten (10) days after it is filed with the commission. [service thereof.]

(3) [(d)] Pending commission action on the [a written] petition, the material [or information] specifically identified shall be temporarily accorded confidential treatment.

(4) If the commission denies the petition for confidential treatment of material, the material shall not be placed in the public record for twenty (20) [ten (10)] days to allow the petitioner to seek any remedy afforded by law.

(5) Procedure for any party to request access

to confidential material filed in any proceeding.

(a) No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then any party may petition the commission requesting access to the material on the grounds that it is essential to a meaningful participation in the proceeding. The petition shall include a description of efforts to enter into a protective agreement and any unwillingness to enter into a protective agreement shall be fully explained. Any party may respond to the petition within ten (10) days after it is filed with the commission. The commission shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

[(e) In the event material or information which has been accorded confidential treatment by the commission later becomes publicly available or is treated or viewed by the source of the material or information as no longer warranting confidential treatment, the source of the information shall so advise the commission in writing. The commission will then make this material a part of the public record of the case.]

[(3) Burden of proof and standard of review.]

[(a) The burden of proof to show by a preponderance of the evidence that any or all of the contents of material or information require confidential treatment shall rest upon the source of the material or information.]

[(b) Upon a ruling that portions of material or information contain confidential information, the source of the information shall file an edited copy with confidential material obscured for inclusion in the public record with copies to all parties of record.]

[(4) Discovery.]

[(a) The fact that the object of discovery may contain confidential information does not preclude discovery per se, but it may justify such limitations as are deemed necessary under the circumstances to protect the confidentiality of the material or information.]

[(b) All parties to formal proceedings are urged to seek mutual agreement regarding discovery of such material before raising the controversy with the commission.]

[(c) A utility may not object to discovery by the commission or its staff on the grounds of confidentiality; rather it shall file full and timely responses to discovery requests. Parties to the formal proceeding shall receive timely responses to discovery with only those portions for which confidential treatment is sought deleted in accordance with Section 2 of this regulation. Confidential material or information in the possession of the commission, its staff or consultants is not discoverable by a request to the commission, but may be the subject of a request for access pursuant to Section 5 of this regulation.]

(6) Requests for access to records pursuant to KRS 61.870-884. No time period prescribed in this section shall limit the right of any person to request access to commission records pursuant to KRS 61.870-884. Upon a request filed pursuant to KRS 61.870-884, the commission shall respond in accordance with the procedure prescribed in KRS 61.880.

(7) [(6)] [(5)] Procedure for request for access to [.]

[(a) Any person requesting access to information deemed confidential by the commission may obtain this information only upon order of a court of competent jurisdiction as provided in KRS 61.878.]

[(b) The sources of the] confidential material. Any person denied access to **records requested pursuant to KRS 61.870-884 or to** material deemed confidential by the commission **in accordance with the procedures set out in this section,** may obtain this information only pursuant to KRS 61.870-884 [et seq.], and other applicable law. [or information shall be served with a copy of the request for access by the commission secretary, and the source shall file any response to the request within ten (10) days after service. Thereafter, the commission will rule forthwith on whether access shall be granted to the moving party.]

[(c) Notwithstanding any prior determination of confidentiality, a source may consent, in writing, to grant access to any person. Such consent shall not constitute waiver of confidentiality and only those persons specified in the consent may have access.]

(7) [(6)] Use of confidential material [or information] during formal proceedings. Any material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the following procedure:

(a) The person seeking to address the confidential material shall advise the commission prior to the use of such material.

(b) All persons other than commission employees not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

(c) The court reporter shall produce a sealed transcript of that portion of the record directly related to the confidential material.

(8) Material granted confidentiality which later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) The petitioner who sought confidential protection shall inform the commission in writing at any time when any material granted confidentiality becomes publicly available.

(b) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the petitioner who sought confidential protection, giving ten (10) days to respond. **If the commission finds that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, such information shall not be deemed or considered to be publicly available and shall not be placed in the public record.**

(c) The material shall not be placed in the public record for **twenty (20)** [ten (10)] days following any order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law. [The commission may rely upon confidential material during a formal proceeding and such material, if otherwise admissible, will be received in evidence. In such event, reasonable precautions will be taken to segregate confidential material in the record and otherwise protect its integrity.]

[(7) Guidelines for evaluating petitions for confidential treatment.]

[(a) In the instance where a petition is filed seeking confidential treatment of material or information claimed to be a trade secret, the commission may consider the following factors in determining whether the material for which confidentiality is requested meets the criteria set forth in KRS 61.878(1):]

[1. The extent to which the information is known outside of the claimant's business.]

[2. The extent to which it is known by employees and others involved in the claimant's business.]

[3. The extent of measures taken by the claimant to guard the secrecy of the information.]

[4. The value of the information to the claimant and to competitors.]

[5. The amount of effort or money expended by the claimant in developing the information.]

[6. The ease or difficulty with which the information could be properly acquired and duplicated by others.]

[(b) In the instance where a petition is filed seeking confidential treatment of material or information claimed to be confidential commercial information, the commission may consider the following factors in determining whether the material for which confidentiality is requested meets the criteria set forth in KRS 61.878(1):]

[1. Evidence revealing actual competition and the likelihood of substantial competitive injury.]

[2. The extent to which data of the sort in dispute is customarily disclosed to the public.]

[3. A balancing of the private competitive interests versus the public interest in disclosure.]

[(c) If the commission denies the request for confidential treatment of material submitted to it, the material will not be placed in the public record for five (5) working days in order to allow the source of the information time to seek court action on the matter or request the return of the information in its entirety.]

[(8) Return or retention of confidential material or information. Within sixty (60) days following the entry of a final order in a formal proceeding in which no court appeal is taken, the commission shall return confidential material or information to its source, unless the commission determines in its discretion that the confidential material or information should be retained. If retained, the commission shall continue to accord confidential treatment to the material or information.]

Section 8. Applications. (1) Contents of application. All applications must be by petition in writing. The petition must set forth the full name and post office address of the applicant, and must contain fully the facts on which the application is based, with a request for the order, authorization, permission or certificate desired and a reference to the particular provision of law requiring or providing for same.

(2) Number of copies. At the time the original application is filed, ten (10) additional copies must also be filed, and where parties interested in the subject matter of the application are named therein, there shall be filed an additional copy for each named party and such other additional copies as may be required by the secretary.

(3) Articles of incorporation. If the applicant is a corporation, a certified copy of its articles of incorporation, and all amendments thereto, if any, shall be annexed to the application. If applicant's articles of incorporation and amendments thereto, if any, have already been filed with the commission in some prior proceeding, it will be sufficient if this fact is stated in the application and reference is made to the style and case number of the prior proceeding.

Section 9. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing applicant to bid on a franchise, license or permit offered by any governmental agency, the applicant shall submit with its application, the following:

(a) A copy of its articles of incorporation (see Section 8(3) of this regulation).

(b) The name of the governmental agency offering the franchise.

(c) The type of franchise offered.

(d) A statement showing the need and demand for service. Should the applicant be successful in acquiring said franchise, license or permit, it shall file a copy thereof with the commission.

(2) New construction or extension. When application is made by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property or facility, the applicant, in addition to complying with Section 8 of this regulation, shall submit the following data, either in the application or as exhibits attached thereto:

(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity.

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission.

(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete.

(d) Three (3) maps to suitable scale (preferably not more than two (2) miles per inch) showing the location or route of the proposed new construction or extension, as well as the location to scale of any like facilities

owned by others located anywhere within the map area with adequate identification as to the ownership of such other facilities.

(e) The manner in detail in which it is proposed to finance the new construction or extension.

(f) An estimated cost of operation after the proposed facilities are completed.

(g) All other information necessary to afford the commission a complete understanding of the situation.

(3) Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. Insofar as procedure is concerned, applications for a renewal of a certificate of convenience and necessity will be treated as an original application.

Section 10. Application or Notice for Authority to Adjust Rates. (1) When the utility seeks to adjust any rate, toll, charge, or rental, so as to alter any classification, contract, practice, rule or regulation as to result in any change in any rate, toll, charge, or rental, the applicant, in addition to complying with the provisions of Section 8 of this regulation, shall submit the following data either in the application or attached thereto as exhibits:

(a) Financial exhibit (see Section 6 of this regulation).

(b) A schedule of the present rates, tolls, charges, or rentals, in effect, and the changes which it is desired to make, shown in comparative form.

(c) A description of applicant's property, including a statement of the net original cost of the property (estimated if not known) and the cost thereof to applicant.

(d) A statement in full of the reason why the adjustment is required.

(e) A statement setting forth estimates of the effect that the new rate or rates will have upon the revenues of the utility, the total amount of money resulting from the increase or decrease, the percentage of increase or decrease, and the effect upon average consumer bills.

(f) A statement certifying that the utility's annual reports, including the report for the most recent calendar year, are on file with the commission in accordance with 807 KAR 5:006, Section 3(1).

(2) In all cases involving a general increase in rates, in addition to the information required in subsection (1) of this section, complete financial data for the twelve (12) months corresponding to the test period used by the utility in its case shall be submitted at the hearing or prior thereto unless such information is contained in reports on file with the commission. Such data shall include:

(a) Total amount of interest charged to construction.

(b) An analysis of customer's bills in such detail that the revenues from the present and proposed rates can be readily determined.

(c) Details of any apportionment used.

(d) Monthly revenues and operating expenses.

Section 11. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by the utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, said application, in addition to complying with the requirements of Section 8 of this regulation, shall contain:

(a) A general description of applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant, if it is impossible to state the original cost, the facts creating such impossibility shall be stated.

(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest and whether and how to be secured.

(c) The use to be made of the proceeds of the issue of such securities, notes, bonds, stocks or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service and the discharge or refunding of obligations.

(d) The property in detail which is to be acquired, constructed, improved or extended with its cost, a detailed description of the contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the disposition of any of the securities, notes, bonds, stocks or other evidence of indebtedness which it proposes to issue or the proceeds thereof and if any contracts have been made, copies thereof shall be annexed to the petition.

(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of such obligations including their par value, the amount for which they were actually sold, the expenses associated therewith, and the application of the proceeds from such sales. If notes are to be refunded, the petition must show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended.

(f) Such other facts as may be pertinent to the application.

(2) The following exhibits must be filed with the application:

(a) Financial exhibit (see Section 6 of this regulation).

(b) Copies of trust deeds or mortgages, if any, unless they have already been filed with the commission, in which case reference should be made, by style and case number, to the proceeding in which the trust deeds or mortgages have been filed.

(c) Maps and plans of the proposed property and constructions together with detailed estimates in such form that they can be checked over by the commission's engineering division. Estimates must be arranged according to the uniform system of accounts prescribed by the commission for the various classes of utilities.

Section 12. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of the defendant, and shall state:

(a) The full name and post office address of the complainant.

(b) The full name and post office address of the defendant.

(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired (see Section 15(1) of this regulation).

(2) Signature. The complaint shall be signed by the complainant or his attorney, if any, and if signed by such attorney, shall show his post office address. Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address. No oral or unsigned complaints will be entertained or acted upon by the commission.

(3) Number of copies required. At the time the complainant files his original complaint, he must also file copies thereof equal in number to ten (10) more than the number of persons or corporations to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of such complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this regulation, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.

(b) If the commission is of the opinion that such complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this regulation, the commission will serve an order upon such corporations or persons complained of under the hand of its secretary and attested by its seal, accompanied by a copy of said complaint, directed to such corporation or person and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of such order, provided that the commission may, in particular cases, require the answer to be filed within a shorter time.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which he is willing to give. Upon the acceptance of this offer by the complainant and the approval of the commission, no further proceedings need be taken.

(6) Answer to complaint. If satisfaction be not made as aforesaid, the corporation or person complained of must file an answer to the complaint, with certificate of service on other parties endorsed thereon, within the time specified in the order or such extension thereof as the commission, for good cause shown, may grant. The answer must contain a specific denial of such material allegations of the complaint as controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground (see Section 15(2) of this regulation).

Section 13. Informal Complaints. (1) Informal complaints must be made in writing. Matters thus presented are, if their nature warrants, taken up by correspondence with the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

(2) No form of informal complaint is prescribed, but in substance it must contain the essential elements of a complaint, including the name and address of complainant, the correct name and post office address of the utility against whom complaint is made, a clear and concise statement of the facts involved, and the relief requested.

(3) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding is held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings will be discontinued.

Section 14. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 15. Forms. (1) In all practice before the commission the following forms shall be followed insofar as practicable:

(a) Formal complaint.
(b) Answer.
(c) Application.
(d) Notice of adjustment of rates.

(2) Forms of formal complaint.

Before the Public Service Commission

(Insert name of complainant)	)	
COMPLAINANT	)	
	)	No._____
vs.	)	(To be inserted
	)	by the secretary)
	)	

(Insert name of each defendant))
DEFENDANT)

COMPLAINT

The complaint of (here insert full name of each complainant) respectfully shows:
(a) That (here state name, occupation and post office address of each complainant).
(b) That (here insert full name, occupation and post office address of each defendant).
(c) That (here insert fully and clearly the specific act or thing complained of, such facts as are necessary to give a full understanding of the situation, and the law, order, or rule, and the section or sections thereof, of which a violation is claimed).

WHEREFORE, complainant asks (here state specifically the relief desired).

Dated at _____, Kentucky, this _____ day of _____,19_____.

_____
(Name of each complainant)

_____
(Name and address of attorney, if any)

(3) Form of answer to formal complaint.

Before the Public Service Commission

(Insert name of complainant))
COMPLAINANT)
) No._____
vs.) (To be inserted
) by the secretary)
)
(Insert name of each defendant))
DEFENDANT)

ANSWER

The above-named defendant, for answer to the complaint in the proceeding, respectfully states:

That (here follow specific denials of such material, allegations as are controverted by the defendant and also a statement of any new matter constituting a defense. Continue lettering each succeeding paragraph).

WHEREFORE, the defendant prays that the complaint be dismissed (or other appropriate prayer).

_____
(Name of defendant)

_____
(Name and address of attorney, if any)

(4) Form of application.

Before the Public Service Commission

In the matter of the application of (here insert name of each applicant) for (here insert desired order, authorization, permission or certificate, thus: "Order authorizing issue of stocks and bonds")) No._____ (To be inserted by the secretary)

APPLICATION

The petition of (here insert name of each applicant) respectfully shows:

(a) That applicant is engaged in the business of (here insert nature of business and territorial extent thereof).
(b) That the post office address of each applicant is _____.
(c) That (here state fully and clearly the facts required by these rules, and any additional facts which applicant desires to state).

WHEREFORE, applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order authorizing applicant to (here state specifically the action which the applicant desires the commission to take).

Dated at _____, Kentucky, this _____ day of _____,19___.

_____
(Name of applicant)

_____
(Name and address of attorney, if any)

(5) Form of notice to the commission of adjustment of rates.

Before the Public Service Commission

In the matter of adjustment of rates of the (state name of corporation).) No. _____ (To be inserted by the secretary)

The (here insert name of company) informs the commission that it is engaged in the business of (set out character of business) in (set out place of operation) and does hereby propose to adjust its rates, effective the _____ day of _____,19_____, in conformity with the attached schedule.

(See Section 9 of this regulation for required information.)

_____
(Name and address of company)

_____
(Name and address of attorney)

GEORGE EDWARD OVERBEY, JR., Chairman
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: June 12, 1991
FILED WITH LRC: June 13, 1991 at 10 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal
(As Amended)

815 KAR 15:020. Administrative procedures; requirements.

RELATES TO: KRS Chapter 236
STATUTORY AUTHORITY: KRS 236.030, 236.120
NECESSITY AND FUNCTION: KRS 236.030 and 236.120 requires the commissioner, upon advisement of the Board of Boiler Rules, to fix reasonable fees and standards for the safe construction, installation, inspection and repair of boilers and pressure piping. This regulation specifies administrative procedures, fees and requirements of the boiler inspection section. This amendment is necessary to specify the circumstances under which safety valves may be repaired and to identify the form used by special inspectors and insurance companies. [This amendment is necessary to clarify the type of form needed by the department's data processing section and prevent misunderstanding of necessary information.]

Section 1. Definitions. (1) "ASME" as defined in KRS 236.010(5).
(2) "ANSI" means the American National Standards Institute.

Section 2. Administration. (1) Manufacturers data report to be filed:
(a) **A** manufacturer's data report on all boilers of steel construction and all pressure vessels prior to operation in this state, unless exempted by KRS 236.060, shall be filed with the National Board of Boiler and Pressure Vessel Inspectors.
(b) Details of boilers and pressure vessels of special design (not fully complying with ASME Boiler and Pressure Vessel Code) shall be submitted to the boiler **inspection** section **of the State Fire Marshal's Office** and approval secured before construction or field erection shall be started.
(2) **If** [When] boilers or pressure vessels are designed and fabricated according to the requirements of the applicable sections of the ASME Boiler and Pressure Vessel Code, but are not stamped with the ASME Boiler and Pressure Vessel Code symbol stamp, individual handling shall be required for their installation. The prospective owner or user who desires approval of the boiler installation shall pursue the following procedure in each individual case:
(a) Prior to construction of the boiler or pressure vessel the proposed owner, user, or his authorized agent shall make written application for permission to install the boiler or pressure vessel in the State of Kentucky. The application shall be by letter or application permit form of the jurisdiction and shall be directed to the Chief Boiler Inspector, Office of the State Fire Marshal, Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky 40601.
(b) He shall submit with the application letter or application permit the following data, material and information to establish ASME Boiler and Pressure Vessel Code equivalency:
1. Detailed shop drawings and welding details of the proposed construction. All materials shall be in the English language and United States units of measurements as used in the ASME Boiler and Pressure Vessel Codes.
2. Design calculation and supporting data which include pressure (psi), temperature (degrees Fahrenheit), use and other service conditions.
3. Specifications for all material to be used in construction. These shall conform to the applicable ASME Boiler and Pressure Vessel Codes standards or their suitable equivalent. If reference is made to a standard or specification of a country other than the United States, **a copy shall be attached to** [please attach a copy and] indicate how the material is considered equivalent.
4. Copies of: all welding procedures to be used, welding qualification test reports for each welding operator or welder to be used. The procedures and tests required in this paragraph shall be made in accordance with the ASME Boiler and Pressure Vessel Code, Section IX, "Welding Qualifications."
5. Where the design exceeds ASME Boiler and Pressure Vessel Code limitation, recognized engineering practices shall be used and identified in the submittal.
6. Design drawings and calculations shall be certified by a professional engineer holding a license acceptable to the boiler inspection section.
7. The manufacturer of the vessel shall identify the inspection agency whose personnel will make the shop inspections and sign the manufacturer's data reports for the proposed vessel.
8. The shop inspection agency shall furnish the qualifications and experience of the individual inspector or inspectors assigned to make the shop inspections and shall give his jurisdiction commission number.
(c) All details mentioned in paragraphs (a) and (b) of this subsection shall be approved by the Boiler Inspection Section, Department of Housing, Buildings and Construction.
(d) When the boiler or pressure vessel is completed, a manufacturers' data report signed by the manufacturer and shop inspector shall be submitted to the jurisdictional authorities containing the equivalent type data required by the ASME Boiler and Pressure Vessel Code. ([Do not use] ASME Boiler and Pressure Vessel Code data report forms **shall not be used**.)
(e) The vessel shall be inspected **upon arrival in the state of Kentucky before installation** by a qualified boiler and pressure vessel inspector in the employ of the department [upon arrival in the State of Kentucky and before installation] to make certain the above provisions have been complied with and that the vessel is properly marked and stamped for identification.
(3) Installation inspection and stamping.
(a) All power boilers shall be inspected annually as required by KRS 236.110.
(b) All low pressure heating boilers shall be inspected biennially as required by KRS 236.110(b).
(c) A grace period for paragraphs (a) and (b) of this subsection may elapse between inspections as allowed by KRS 236.110(d).
(d) Power boilers, operated in a manner that experience indicates internal corrosion or deposits would not be anticipated, shall have the internal inspection period extended by the boiler inspection section if requested in

writing by the owner or user and if circumstances warrant as permitted by KRS 236.110(1)(e).

(4) Installation inspection or first inspection and stamping of boilers and pressure vessels.

(a) Upon completion of installation or at the time of first inspection, a Commonwealth of Kentucky serial number shall be assigned to the boiler or pressure vessel, applied as follows:

1. Steel boilers shall be stamped with the letters, "KY" followed by the state serial number assigned. Pressure vessels shall be stamped with the letters "KY" followed by the numeral "0" and the remainder of the state serial number assigned. Stamping shall be applied in the immediate area of code stamping on the boiler or pressure vessel and shall be in letters and figures not less than five-sixteenths (5/16) inch in height. A metal tag may additionally be used showing identical lettering and serial number as used in the stamping, this tag shall [to] be securely affixed in the area of manufacturer's name plate or data plate.

2. Cast iron boilers shall have securely attached to the boiler (preferably adjacent to the manufacturer's data plate or in the most conspicuous area) a metal tag not less than one (1) inch in height which shall have the letters "KY" and the state serial number stamped thereon.

3. Hot water supply boilers shall have securely attached to the heater (preferably adjacent to the manufacturer's data plate or in the most conspicuous area) a metal tag not less than one (1) inch in height which shall have the letters "KY" and the state serial number stamped thereon.

(b) New installations are subject to inspection as set forth in KRS Chapter 236. Installations shall be inspected for conformance with applicable ASME Boiler and Pressure Vessel Codes, this regulation, and [these rules and regulations and additionally] shall be subject to inspection of pressure piping carrying steam, vapor or water pressures emanating from the boiler, as follows:

1. Power boiler piping shall be inspected in all segments of the system carrying substantially the same pressures and temperatures encountered in the boiler itself. Inspection shall be to the extent necessary to assure compliance with engineering design, material specifications, fabrication, assembly and test requirements of the boiler and first (or second) stop valve and requirements of Section 1, ASME Boiler and Pressure Vessel Code, for that piping between the boiler and the first (or second) stop valve and requirements of The National Standard Code For Pressure Piping ANSI B31.1 (and subsequent revisions) for pressure piping beyond Section 1, Power Boiler ASME Code Limits. ANSI B31.1 also covers air and hydraulic system piping.

2. If welded assembly has been used, the installing contractor [, where welded assembly has been used,] shall [be able to] present for the inspector's review, his welding procedures and proof of qualification of his welding operators. The contractor shall be responsible for the quality of the welding done by his organization.

3. Visual inspection of welding performed by qualified welders shall be deemed sufficient unless codes or engineering specifications state otherwise, or unless the inspector wishes to augment this visual inspection with other nondestructive tests including radiography. All tests or retests required by the inspector shall be at the owner's or contractor's expense.

4. The inspector shall accept signed certification of the contractor regarding satisfactory hydrostatic tests performed on piping or he shall witness these tests himself. He may also, if he deems it expedient, require these tests to be performed in his presence.

5. Heating boiler piping shall be inspected in all segments of the system carrying substantially the same pressure and temperature as the boiler itself. Inspection shall be to the extent necessary to assure good fit-up, assembly, tightness and support of the system. Welded joints shall be installed by qualified welders in accordance with ASME Section IX and shall be visually inspected for complete and full root penetration, soundness of the weld and freedom from undercutting, cracking and other surface imperfections, and in conformance with subparagraph 3 of this paragraph.

6. Hot water supply boiler installations shall be inspected for conformance with Section IV, ASME Boiler and Pressure Vessel Code.

(5) Notification of inspection. The owner or user shall prepare each boiler for internal inspection and shall prepare for and apply a hydrostatic pressure test if [whenever] necessary, on the date specified by the inspector, which date shall not be less than seven (7) days after the date of notification.

(6) Examinations for commission.

[(a)] Examinations for commission as an inspector shall be given as required by KRS 236.090. Qualifications shall be as set forth in KRS 236.070 and 236.090 [and 815 KAR 15:010, Section 1(8)].

[(b) Application for employment as an inspector shall be in writing, upon a form to be furnished by the commissioner, stating the school education of the applicant, a list of his employers, his period of employment and position held with each employer. Applications containing willful falsification or untruthful statements shall be rejected. If the applicant's history and experience meet with the approval of the Board of Boiler Rules, he shall be given a written examination, prepared by the National Board of Boiler and Pressure Vessel Inspectors in accordance with their bylaws, Article IV, dealing with the construction, installation, operation, maintenance, and repair of boilers and their appurtenances. The applicant shall have passed the examination before he shall be eligible for permanent status as a boiler inspector.]

(7) Examination fees. A fee of twenty (20) dollars shall be charged to each applicant who sits for the National Board examination. This fee shall be payable directly to the Treasurer of the Commonwealth of Kentucky, and shall accompany the application.

(8) Commission. The department shall issue special boiler inspector commissions to insurance company employees in accordance with KRS 236.080.

[(a) Upon the request of a boiler insurance company authorized to do business in this Commonwealth, a commission as a special boiler inspector and an identifying commission card shall be issued by the department to an inspector in the employ of any insurance company

provided the inspector has successfully passed the written examination as set forth in subsection (6) of this section, or holds a commission as outlined in subsection (9) of this section.]

[(b) The commission and the identifying commission card shall be returned to the department when the inspector to whom the commission was issued is no longer in its employ, or at the request of the department.]

[(c) The commission issued to any boiler inspector may be suspended or revoked as set forth in KRS 236.100.]

(9) **Suspension or revocation of commissions. Commissions issued by the department may be suspended or revoked as provided in KRS 236.100.** [Reciprocal commissions].

[(a) Upon the request of a boiler insurance company authorized to do business in this Commonwealth, a commission and identifying commission card as special boiler inspector shall be issued by the department to an inspector in the employ of the insurance company provided the inspector has the experience prescribed in subsection (6) of this section, and holds either:]

[1. A certificate of competency; or]

[2. A commission issued by a state which has adopted the ASME Boiler and Pressure Code; or]

[3. A commission issued by the National Board of Boiler and Pressure Vessel Inspectors.]

[(b) Application for a reciprocal commission shall be made on a form to be furnished by the department and shall be accompanied by a photostatic copy of the applicant's state or national board commission or certificate of competency and a fee of twenty (20) dollars.]

[(c) The commission issued to an inspector may be suspended or revoked upon ten (10) days notice to the inspector and to the employer of the inspector for incompetency or untrustworthiness; for willful falsification of his application or in the report of an inspection; but the holder of the commission shall be entitled to a hearing before any final action shall be taken.]

(10) Inspection reports. Special inspectors shall submit to the Boiler Inspection Section of the State Fire Marshal's Office inspection reports on the following form: [as required by KRS 236.080(4) on National Board Inspection Code forms.]

COMMONWEALTH OF KENTUCKY
DEPT. OF HOUSING, BUILDINGS AND CONSTRUCTION
OFFICE OF STATE FIRE MARSHAL
BOILER OR PRESSURE VESSEL INSPECTION

( ) ADD
( ) CHANGE
( ) REINSPECTION

HBC-B1-220
INSURANCE NO.

1	INSP DT:	EXP DT:	YR 1 ( ) 2 ( ) TYPE:	STATUS	ST OWN ( )	STATE NO.: KY	NAT BOARD NUMBER:
2	OWNER:				ADDRESS:		
	ADDRESS:				CITY:	ST:	ZIP:
3	USER: ( )				ADDRESS:		
	ADDRESS:				CITY:	ST:	ZIP:
4	USER PHONE:		NATURE OF BUSINESS:		COUNTY:	SPECIFIC LOCATION IN PLANT:	
5	TYPE: CIS ( ) FT ( ) OTH ( ) HFB ( ) HSM ( ) WT ( )		YR BLT:		MANUFACTURER:		
6	USER: POWER ( ) PROCESS ( ) STEAM HTG ( ) HWH ( ) HWS ( ) UNFIRED ( )				FUEL:	INSP TYPE: INT ( ) EXT ( )	CERT INSP: YES ( ) NO ( )
7	PRESSURE ALLOWED: THIS INSP PREV INSP		SAF RELIEF VALVE: SET AT:		SAF VALVE CAP:		MIM SAF VALVE CAP:
8	HYDRO TEST PSI:		TEST DATE:				

VIOLATIONS TO BE CORRECTED ARE BELOW

CODE

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____
7 _____

FEE
Insp.___ Comp. Date:___ KY COMM _____
Cert.___ _____ Contact Person
TOTAL___
_____
Inspector Signature
CO. NO.
_____

_____ CHECK BOX IF ADDITIONAL
_____ REMARKS ARE ON BACK

(11) Insurance companies shall notify the Boiler Inspection Section of new, cancelled, or suspended risks. All insurance companies shall notify the Boiler Inspection Section within thirty (30) days of all boiler or pressure vessel risks written, cancelled, not renewed, or suspended because of unsafe conditions. [All reports shall be reported on the form of the department attached hereto as Appendix A.]

(12) Insurance companies to notify the Boiler Inspection Section of defective boilers or pressure vessels. If a special boiler inspector, upon the first inspection of a boiler or pressure vessel, finds the boiler or pressure vessel or any of the appurtenances in a condition causing his company to refuse insurance, the company shall immediately notify the Boiler Inspection Section and submit a report of the defects.

(13) Defective conditions disclosed at time of external inspections. If, upon an external inspection, there is evidence of a leak or crack, enough of the covering of the boiler or pressure vessel shall be removed to satisfy the inspector in order that he may determine its safety; or, if the covering cannot be removed at that time, he shall order the operation stopped until the covering may be removed and proper examination made.

(14) Owner, user or insurer to notify the Boiler Inspection Section in case of accident. When an accident or malfunction which affects the strength of the boiler, occurs, the owner, user, or insurer shall immediately notify the Boiler Inspection Section, and submit a detailed report of the accident. In case of serious accident, such as explosion, notice shall be given immediately by telephone, telegraph, or messenger and neither the boiler, pressure vessel nor any of the parts thereof shall be removed or disturbed before an inspection has been made by an inspector, except for the purpose of saving a human life.

(15) Inspection certificate fees.

(a) Each boiler complying with the rules of the department shall be issued a certificate as required by KRS 236.120(1).

(b) If the owner or user of each boiler or pressure vessel required to be inspected refuses to allow an inspection to be made or refuses to pay the above fee, the inspection certificate shall be suspended by the commissioner until the owner or user complies with the requirements.

(c) The owner or user who causes a boiler or pressure vessel to be operated without possessing a valid certificate of inspection shall be subject to the penalties provided for in KRS 236.990.

(d) Certificates shall be located as required by KRS 236.120(1).

(16) Validity of inspection certificates. An inspection certificate, issued in accordance with KRS 236.120, shall be valid until expiration unless some defect or condition affecting the safety of the boiler or pressure vessel is disclosed. A certificate issued for a boiler or pressure vessel inspected by a special boiler inspector shall be valid only if the boiler for which it was issued continues to be insured by a duly authorized insurance company.

(17) Suspension of certificate of operations. Certificates may be suspended as required by KRS 236.120.

(18) Condemned boilers.

(a) Any boiler or pressure vessel having been inspected and declared unsafe by the chief boiler inspector or boiler inspector shall be stamped with the letters "XX" and the letters "KY," as shown by the following facsimile which shall designate a condemned boiler or pressure vessel: XX KY 12345 XX.

(b) Any person, firm, partnership, or corporation using or offering for sale a condemned boiler or pressure vessel for operation within this Commonwealth shall be subject to the penalties in KRS 236.990.

(19) Nonstandard boilers and pressure vessels.

(a) Shipment of nonstandard boilers or pressure vessels, or hot water supply boilers into this Commonwealth for use shall be prohibited, provided they are not exempt under KRS Chapter 236.

(b) **After** a nonstandard boiler, pressure vessel, or hot water supply boiler now in use in this Commonwealth, **is** [if] removed from the Commonwealth, **it** shall not be brought **back for reinstallation** [into and reinstalled].

(20) **Used** [Secondhand] boilers and pressure vessels. Before a **previously used** [secondhand] boiler or pressure vessel shall be shipped into this Commonwealth, an inspection shall be made by a boiler inspector, or a special boiler inspector holding a national board commission, and the data submitted by him shall be filed by the owner or user of the boiler or pressure vessel with the Boiler Inspection Section for approval.

(21) Reinstalled boilers or pressure vessels. In any case where a boiler or pressure vessel within the Commonwealth is moved and reinstalled, the fittings and appliances shall comply with the ASME Boiler and Pressure Vessel Code and the regulations adopted in Title 815, Chapter 15 of the Kentucky Administrative Regulations.

(22) Factors of safety for existing installations. The inspector shall be authorized to increase factors of safety if the condition of the boiler warrants it. If the owner or user does not concur with the inspector's decision, he may appeal to the commissioner who may request a joint inspection by the chief inspector and the boiler inspector or special boiler inspector. Each inspector shall render his report to the commissioner, who shall render the final decision, based upon the data contained in all the inspector's reports.

(23) Major repairs. Major repairs shall

require prior approval of an inspector and permits as required by KRS 236.250.

(24) Repairs [by welding]. Repairs to any safety valve, safety relief valve, relief valve or liquid relief valve shall be stamped upon completion of the repair by a firm in possession of the National Board Certificate of Authorization for use of the Valve Repair (VR) Stamp. Boiler and pressure vessel [Welding] repairs shall be performed in accordance with the rules recommended by the National Board of Boiler and Pressure Vessel Inspectors Inspection Code available from the 1979 Edition, (or most recent edition).

(25) Riveted patches. Riveted patches shall be designed and installed in accordance with the rules recommended by the National Board of Boiler and Pressure Vessel Inspectors Inspection Code.

(26) Removal of safety appliances. No person, except under the direction of an inspector, shall attempt to remove or shall do any work, upon any safety appliance, while a boiler is in operation. If any of these appliances **are** [is] repaired during an outage of a boiler or pressure vessel, they shall be reinstalled and in proper working order before the object shall be again placed in service.

(27) Inspection fees. The installing contractor, owner or user of any boiler or pressure vessel or pressure piping not exempted under KRS Chapter 236 and required to be inspected by a boiler or pressure vessel inspector, shall pay to the department following inspection of the boiler, fees in accordance with this section. The fees for all new installations of boilers, pressure vessels or pressure piping and fees for repairs shall be in accordance with the fees listed in paragraph (d)2 of this subsection.

(a) Shop inspections made by boiler inspectors for purposes of inspecting the fabrication of the vessels themselves at the request of a boiler manufacturer, installer, engineering contractor, or owner shall be charged at the following rates:

1. $150 for one-half (1/2) day of four (4) hours or less.
2. $200 for one (1) day of over four (4) hours.
3. $240 for eight (8) hours or any part thereof on Saturdays, Sundays, or public holidays.
4. Thirty (30) dollars per hour for overtime in excess of eight (8) hours in any one (1) day. Plus itemized expenses to include mileage, lodging, meals and incidentals. These charges shall not void regular fees for inspection and certificate when the boilers or pressure vessels are completed.

(b) Charges for inspection of secondhand equipment shall be at the rates specified above plus charges for mileage, lodging, meals, and incidentals. These charges shall not void regular fees for inspection and certificate when the boilers or pressure vessels are installed.

(c) ASME and National Board inspections. Inspections of the manufacturing facility itself, at the request of the manufacturer, for the issuance of ASME or National Board certificates of authorization shall be charged as follows:

1. Initial inspection for ASME certificates - $1,000.
2. Reviews for renewal of ASME Certificates - $750.
3. Initial inspections and renewals for National Board R or VR certificate - $200.

(d) Inspection of new installations of pressure piping, boilers and pressure vessels:

1. Under normal circumstances, pressure piping inspection shall be a "once only" inspection as specified under KRS Chapter 236 and shall be conducted generally as set forth under subsection (4)(b) of this section.
2. The fees **charged** [chargeable] for inspection of each boiler and pressure vessel and all pressure piping carrying substantially the same pressures and temperatures as encountered in the boiler shall be based upon the total dollar value covering the combined boiler/pressure vessel and piping installation, either actual or estimated. It shall be the obligation of the installing contractor to supply this value which shall include both labor and material costs. No exact figure need be quoted or divulged to the boiler inspector or department; only a designation that the true value lies within certain limits as set forth in the table below. The fees for all new installations of boiler, pressure vessels or pressure piping and fees for repairs are then found in the table's right hand column.

Amount In Dollars	Fee
$ 2,000 or less	$ 60
$ 2,001 to $10,000	$ 90
$ 10,001 to $25,000	$120
$ 25,001 to $50,000	$150
$ 50,001 to $75,000	$200
$ 75,001 to $100,000	$300
$100,001 to $150,000	$400
$150,001 to $200,000	$500
$200,001 to $250,000	$600
$250,001 to $300,000	$700
$300,001 to $400,000	$800
$400,001 to $500,000	$1,000
$500,001 and over	$1,200

3. The installing contractor, owner or user shall request inspection of boilers and pressure piping at least seven (7) days in advance. If the inspection is not made within this time limit, the installation may proceed. Request for inspection shall be made by letter or phone call to the department.

(e) Inspection of nuclear installations: Nuclear installation inspections shall be charged as set forth under paragraph (a) of this subsection or as determined by contracts between the installer and the department.

(f) Hydrostatic tests: When it is necessary to make a special trip to witness the application of a hydrostatic test, an additional fee based on the scale of fees set forth under paragraph (a) of this subsection shall be charged.

(g) Fees for reinspection of boilers and pressure vessels:

1. Fees for reinspection of power boilers shall be in accordance with the following tables:

INTERNAL INSPECTIONS OF POWER BOILERS

Height Surface (Square Feet)	Fee
100 or less	$20
101 to 1,000	$40
1,001 to 4,000	$70
4,001 to 10,000	$100
10,001 and over	$160

EXTERNAL INSPECTIONS OF POWER BOILERS

Height Surface (Square Feet)	Fee
100 or less	$16
101 and over	$20

2. Fees for reinspection of heating boilers shall be as follows:

HEATING BOILERS

Boilers with man way where internal inspection required	$40
Other heating boilers	$20
Hot water supply boilers	$10
Miniature boilers	$10

3. The initial installation inspection fee for pressure vessels shall be twenty (20) dollars.

(h) Plan review of boiler and unfired pressure vessel installations: Prior to the construction and installation of any boiler or unfired pressure vessel, the plans for the installation shall be submitted to the chief boiler inspector of this department for review and release for construction. Fees for this service shall be provided in accordance with the following table:

Heating Surface (Square Feet)	Fee
100 and under	$20
101 to 1,000	$30
1,001 to 4,000	$50
4,001 to 10,000	$70
10,001 and over	$100
Unfired Pressure Vessels	$20

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: July 3, 1991
FILED WITH LRC: July 8, 1991 at 2 p.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal
(As Amended)

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

RELATES TO: KRS 224.814, 224.820
STATUTORY AUTHORITY: KRS 224.820(5), 227.300
NECESSITY AND FUNCTION: KRS 224.820(5) requires the State Fire Marshal to promulgate regulations requiring any person or organization who installs, repairs, closes or removes an underground petroleum storage tank for an owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance and technical competency and proficiency. This regulation is necessary to set the minimum requirements for determining technical competency and proficiency of companies who are responsible for the installation of these systems by qualifying individuals and to determine financial capability through proof of insurance. This amendment is necessary to delete OSHA requirements for medical training, etc., is inappropriate at the certification stage, and to reduce the experience requirements and to provide appropriate review of competency.

Section 1. Definitions. Definitions in this section shall apply to this regulation.

(1) "Certified contractor" means any individual or organization certified by the State Fire Marshal as qualified to engage in the business of installing, repairing, removing, closing, and supervising of other employees in the installation, performance of repairs on site for closure or removal of UPST systems. A person or organization may be qualified pursuant to this regulation to engage in the business of removal and closure, only, but the certification shall be limited to closure and removal, only.

(2) "Close or closure" means permanently taking an underground storage tank out of service without removing it from the ground.

(3) "Repair" means the restoration of a tank or an underground storage tank or any of its components that has caused a release of a product from the system or the modification of the tank or a system component. "Repair" **shall** [does] not include routine maintenance or cathodic protection applied to existing installations.

(4) "Remove or removal" means permanently taking an underground storage tank or any of its components out of service by removing it from the ground.

(5) "Supervise" means being physically on site and having the authority and responsibility for the direction of other employees engaged in carrying out the installation of, making repairs on site to, closure, or removal of UPST systems as well as having the authority to exercise independent judgment regarding the recommendation of activities to other employees acting under his direction.

(6) "Underground storage tank" means as defined by KRS 224.810.

(7) "UPST system" means an underground storage tank defined by KRS 224.810 and used solely for the storage of petroleum and petroleum products.

Section 2. Effective April 1, 1991. (1) **A** [No] permit for the installation of any UPST system shall **not** be issued by the State Fire Marshal unless the applicant for the permit is a certified contractor, and the applicant assures the State Fire Marshal's Office, in writing, that the installation shall comply with all applicable requirements of the Natural Resources and Environmental Protection Cabinet promulgated in 401 KAR Chapter 42.

(2) **An** [No] individual or company shall **not** install, remove, repair or close any UPST system unless the installation, removal, repair or closure is made by a certified contractor and unless the installation, removal, repair or closure of the system complies with applicable regulations of the Natural Resources and Environmental Protection Cabinet, set forth in 401 KAR Chapter 42.

(3) A company may be the certified contractor and may engage in the activities regulated by this regulation if it has in its employ at least one (1) person who has passed the examination and demonstrated the experience to obtain qualification for the company as a certified contractor and that person supervises the activities described by Section 3 of this regulation.

Section 3. Supervision Requirements. (1) A certified contractor shall be present on site for each of the following activities:

(a) Preparation of the excavation immediately prior to receiving backfill or any component of the UPST system;
(b) Setting of the UPST system, including placement of any anchoring devices, backfilling to the level of the UPST system and strapping, if any;
(c) Final inspection of an installation after components of the piping have been connected, field coated and cathodically protected;
(d) Final pressure testing of any component of the tank or piping components of the UPST system;
(e) Completion of the backfilling and filling of the excavation.
(2) Repairs to a UPST system shall require a certified contractor to be present on site for each of the following activities:
(a) The actual excavation of existing UPST systems;
(b) The actual performance of repairs to the UPST system;
(c) Any time during the repair project in which components of the piping are connected;
(d) Any time during the repair project in which the UPST or its associated piping is pressure tested;
(e) The replacement of piping valves, fill pipes, vents, leak detection devices, or spill and overfill protection devices;
(f) The addition of leak detection devices or spill and overfill devices.
(3) Preparation for closing a UPST system shall require a certified contractor to be present on site for each of the following activities:
(a) The cleaning and purging of a UPST system;
(b) The filling of a UPST system with an inert solid material;
(c) All testing associated with the cleaning and purging processes;
(d) Any time during the closing in which components of the UPST system are disconnected or capped.
(4) Removal of a UPST system shall require a certified contractor to be present on site during each of the following activities:
(a) The cleaning and purging of the UPST system;
(b) The actual excavation and removal of the UPST system or any of its components;
(c) All testing associated with the cleaning and purging processes;
(d) Any time during the removal in which components of the UPST system are disconnected or capped.

Section 4. Certificate Availability. Each certified contractor shall have a copy of the current certificate issued by the State Fire Marshal at the location where he is supervising work. Upon request of a fire official or agent of the Natural Resources and Environmental Protection Cabinet, a certified contractor shall make the current certificate available for inspection.

Section 5. Application for Certification Requirements. Each applicant for certified contractor shall meet all of the following application requirements:
(1) The applicant shall submit an application to the State Fire Marshal, on the form furnished by the State Fire Marshal and outlined in Section 10 of this regulation, accompanied by a nonrefundable fee of $150; and
(2) The applicant shall be an individual, and shall be at least eighteen (18) years of age; and
(3) The individual shall verify to the State Fire Marshal the individual's experience in the installation of, performance of repairs on site, closure and removal of UPST systems, as required by Section 6 of this regulation; and
(4) The individual shall complete the examination requirements of Section 7 of this regulation; and
(5) The individual shall provide proof of financial capability by submitting certificates of general liability insurance in the minimum amount of $500,000 and pollution liability insurance in the minimum amount of $25,000 per occurrence for taking corrective action **and for compensating third parties for bodily injury and property damage** [as described by KRS 224.817]; and
(6) If the individual wishes the certificate to be issued with a company name, the company name shall be indicated on the application form and the company shall provide the insurance certificates required by subsection (5) of this section and otherwise be subject to this regulation.
[(7) EPA health and safety training.]
[(a) The application shall affirm, in writing, compliance with OSHA 29 CFR 120 including forty (40) hours of safety training and eight (8) hours annual refresher course for working at hazardous waste sites.]
[(b) The application shall affirm, in writing, compliance with requirements for enrollment in medical baseline and monitoring program in accordance with appropriate categories listed in Appendices I and II of EPA Field Health and Safety Manual (1987).]

Section 6. Experience Requirements. (1) The person making application shall demonstrate that within five (5) years immediately prior to making application, the person's participation in the installation of, performance of repairs on site to, closure of, or removal of a minimum of six (6) [twelve (12)] underground storage tanks. Of the participations, a minimum of three (3) [six (6)] shall have involved the installation of UPST systems; or
(2) Technical training of the type provided and documented by the manufacturer of the underground storage tanks and approved by the State Fire Marshal shall eliminate [reduce] the experience requirements [of subsection (1) of this section by one-half (1/2)].
(3) A BS degree in engineering with a concentration in the area of underground containment systems or a Kentucky license to practice engineering shall reduce the experience requirements of subsection (1) by two-thirds (2/3).
(4) An applicant requesting contractor certification pursuant to this regulation for the limited function of removal and closure shall demonstrate experience in removal and closure of six (6) underground storage tanks.

Section 7. Examination Requirements. Each applicant for certified contractor shall take and pass a written examination administered by the State Fire Marshal in compliance with this section.
(1) The applicant shall submit payment of a twenty-five (25) dollar nonrefundable fee at least ten (10) days prior to the date of

examination.

(2) The examination for full certification shall be a written multiple choice examination covering all aspects of the installation, repair, closure, and removal of underground petroleum storage tank systems. The examination shall test the applicant's knowledge of codes, standards, laws and regulations and of current technological and industry recommended practices with respect to the proper installation, repair, closure, and removal of UPST systems.

(3) An applicant who requests to be a certified contractor for the limited purpose of removing and permanently closing UPST systems shall be tested on knowledge of closure and removal only.

(4) An applicant may request permission to take the examination orally, upon good cause shown.

(5) To satisfactorily pass the written examination, the applicant shall obtain a minimum score of seventy-five (75) percent on the examination.

(6) Any applicant who fails the examination may request reexamination upon payment of a nonrefundable twenty-five (25) dollar fee. An application shall remain pending for that purpose for a period of one (1) year after the date the application was submitted. If the applicant has not requested reexamination within the one (1) year period, the applicant shall file a new application for certification with the State Fire Marshal.

(7) Examinations shall be given monthly in the State Fire Marshal's Office located at 1047 U.S. 127 South, Frankfort, Kentucky.

(8) All examinations shall be graded and the applicants notified on the day of the examination. Examination papers shall not be returned to the applicant, but may be reviewed by the applicant on the day of the examination.

(9) When the application is filed, the State Fire Marshal shall furnish the applicant with a set of instructions and sample examination questions. Instruction sheets shall refer the applicant to appropriate laws, regulations and industry publications.

Section 8. Certification and Renewal Procedures. (1) Effective April 1, 1991, the State Fire Marshal shall issue a certificate to each individual or company as set forth in Sections 5 through 7 of this regulation. The certificate shall be renewed annually for a fee of fifty (50) dollars.

(2) The application or renewal for a certified contractor shall be denied by the State Fire Marshal if any of the following occur:

(a) The applicant failed to provide the information required by the application form prescribed by the State Fire Marshal and outlined in Section 10 of this regulation; or

(b) The applicant failed to provide the insurance certificates or the fee required for application and examination; or

(c) The applicant failed to comply with the experience and education requirements of this regulation; or

(d) The applicant did not successfully pass the examination required by this regulation; or

(e) The applicant made a misrepresentation or submitted false statements with the application.

Section 9. Revocation or Suspension of Certification. A certificate issued pursuant to this regulation may be suspended or revoked by the State Fire Marshal for any of the following reasons:

(1) The certified contractor negligently, incompetently, recklessly or intentionally violated any provision of this regulation or any required code relating to installation, repair, closure or removal; or

(2) The certified contractor recklessly or intentionally caused or permitted a person under the contractor's supervision to install, perform a repair on site to, close, or remove a UPST system in violation of the Kentucky Standards of Safety (815 KAR 10:040); or

(3) The certified contractor obtained the certification through fraud or misrepresentation.

(4) The individual who took the examination, provided the experience requirements and requested the certificate to be issued with a company's name and proof of insurance, is no longer employed by the company in whose name the certificate was issued.

Section 10. Application Form for Certification of Underground Petroleum Storage Tank Contractors.

APPLICATION FOR CERTIFICATION OF UNDERGROUND PETROLEUM STORAGE TANK CONTRACTORS

TYPE: ___Full ___Remover
Application Fee: $150
Examination: $25 __Yes __No
(Remit by check or money order only. Payable to: Kentucky State Treasurer)

FOR OFFICE USE ONLY
Rec'd (Date)_____
Money Rec'd_____
Application #_____
Certification #_____

PLEASE PRINT OR TYPE AND SIGN

1. Full Name **of Qualifying Person** _____
2. Permanent Residence _____
   Street/Box Office Number
   _____
   City County State Zip
3. Telephone: _____ _____
   Residence Business
4. Birthdate _____ 5. Social Security #_____
6. Place of Birth _____
   City County State
7. **Company Name** _____
   Company [Business] Address _____
   Street/Box Office Number
   _____
   City County State Zip
8. Certificate **to be** issued in
   Company Name _____
   [Individual Name]
9. Send Mail to: _____
   Business Address/#7
   _____
   Permanent Residence/#2
10. List any schools or training seminars concerning tank installations which you have attended:

Title	Presented By	Date(s)

11. With whom did you most recently apprentice as a tank installer?
    Business name: _____

Address:_____
Street City State Zip
Person who supervised you:_____
Period of apprenticeship:
From _____ To _____
Month Yr Month Yr

12A. Number of years experience as a tank installer: _____

12B. Number of years experience as a tank remover: _____

13. Approximate # of tank installations you have:

	Supervised?	Participated in?
Bare/asphalt coated steel	_____	_____
Fiberglass	_____	_____
Fiberglass coated steel	_____	_____
Cathodically protected steel (STI-P3)	_____	_____
Dual containment (excavation liner)	_____	_____
Dual containment (double wall tank)	_____	_____
TOTALS	_____	_____

14A. Approximate number of piping installations you have:

	Supervised?	Participated in?
Black iron/ galvanized	_____	_____
Copper	_____	_____
Fiberglass	_____	_____
Cathodically protected steel	_____	_____
Dual wall	_____	_____
TOTALS	_____	_____

14B. Approximate number of tank removals you have: Supervised _____ Participated in _____

15. List the names and addresses of at least 3 people (e.g., employer, supervisors) familiar with your work as a tank installer/remover.

Name	Ü	Address	Ü	Telephone #
1.	Ü		Ü	
2.	Ü		Ü	
3.	Ü		Ü	

[16.Compliance with health and worker safety? Yes ___ No ___
40 hour safety training? Yes ___ No ___
8 hour annual refresher? Yes ___ No ___]

[17.Compliance with baseline medical and monitoring program? Yes ___ No ___]

16. [18.]
Attach proof of general liability insurance.

17. [19.]
Attach proof of pollution liability insurance.

18. [20.]
Attach experience, listing of jobs (i.e., name of project, company name, dates, city, county, state, size and number of tanks, etc.) **for qualifying individual**.

I, _____, hereby certify that the information contained on this application and attached Experience Data Sheets is true and correct to the best of my knowledge.

_____
Signature of Applicant **for Company**

_____
Date

NOTARIZED BY:
State of_____
County of_____
Subscribed and sworn to before me this _____ day of _____, 19____

_____
Notary Public
My Commission expires_____

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: June 27, 1991
FILED WITH LRC: July 8, 1991 at 2 p.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal
(As Amended)

815 KAR 46:010. Aid to fire departments.

RELATES TO: KRS 17.210, 136.392
STATUTORY AUTHORITY: KRS 17.250
NECESSITY AND FUNCTION: KRS 17.250 requires the State Fire Marshal to allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment. This proposed regulation sets out standards and procedures for determining the amount or use of volunteer fire department aid. This amendment is necessary because the period of time for fire departments to report spending of allotted funds needs to be extended.

Section 1. Definitions. (1) "Certified firefighter" means [. For the purpose of these regulations shall be] one who has received at least 150 hours of certified fire training as recognized by the Commission on Fire Protection Personnel Standards and Education and receives at least twenty (20) hours certified training annually thereafter.

(2) "Certified training" [. For the purpose of these regulations] means firefighter training given or verified by a certified instructor and approved and recorded by the commission.

(3) "Commission" [. For the purpose of these regulations] means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.

(4) "Fire apparatus" [. For the purpose of these regulations] means a motorized vehicle specifically designed to perform firefighting operations, equipped with a pump having a minimum capacity of pumping 250 gallons per minute and with sufficient space to carry hose and other fire suppression equipment.

(5) "Full-time paid firefighter" [. For the purpose of these regulations] means an individual who works for a minimum salary of $8,000 annually and works a minimum of 2,080 hours per year as an employee of a fire department or fire protection district that is recognized by the State Fire Marshal's Office.

(6) "Volunteer fire department" [. For the purpose of these regulations] means a fire department recognized by the State Fire Marshal's Office which has a membership consisting of less than fifty (50) percent of its members being full-time paid firefighters and the remaining number being volunteer

firefighters.

(7) "Newly formed department" [. For the purpose of these regulations] means a department which has organized to the point of having at least twelve (12) members and a chief, having either in their possession or on order an operational fire apparatus. They shall also have funds, equipment, land and buildings of [such] sufficient value made available to the newly formed fire unit from any source [whatever] for the year in which the allotment is to be made to match or exceed the amount of the aid allotment.

Section 2. Eligibility. (1) The State Fire Marshal shall allot on an annual basis (August 1 through September 30) an equal share of the funds accruing to and appropriated for volunteer fire department aid to all eligible departments.

(2) To qualify to receive aid under the Volunteer Fire Department Aid Law, volunteer fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized volunteer fire departments operated and maintained on a nonprofit basis in the interest of the health, safety, prosperity and security of the inhabitants of the Commonwealth shall [must] maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus.

(3) Any fire department or entity eligible for and receiving funding pursuant to these regulations shall have a minimum of fifty (50) percent of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

(4) Each fire department shall furnish the Office of State Fire Marshal an update list of active firefighting members of the fire department by the 31st of July each year so that the fifty (50) percent certification requirement can be checked.

(5) To be eligible to receive funds, a newly formed fire department shall [must] have at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus or one (1) on order. They **shall** [must] have fifty (50) percent of their membership with at least one-half (1/2) of their training hours toward certification by July 31 within their first year of existence and plans to receive the balance of the required hours for certification within the second year of their existence. Each year thereafter, they shall meet the requirements of the commission to retain certification.

Section 3. Participation Requirement. (1) It shall be the responsibility of the Chief Officer or his appointed representative of each department to furnish any information required by the Fire Department Aid Coordinator for determination of eligibility.

(2) Any volunteer fire department seeking aid pursuant to the authority of KRS 17.250 shall file an application on blanks which may be obtained from the Office of the State Fire Marshal.

(3) The [Such] applications shall be executed in duplicate, one (1) copy to be retained by the applicant and the original to be forwarded to the State Fire Marshal.

Section 4. Verification and Inspection. (1) The application for aid shall contain or have attached thereto a detailed statement of the equipment to be purchased, repairs to be made, or other purposes for which the allotment is to be expended and [such] other information as the State Fire Marshal may require to give proper consideration to the request.

(2) Where a new department is being established, there shall be furnished with the application additional information as to the territory to be served and plans and specifications for the establishment of the department.

(3) The Fire Department Aid Coordinator shall, upon receipt of the application, advise the State Fire Marshal as to the validity of the qualifications and approval for grant-in-aid.

(4) The State Fire Marshal or the Fire Department Aid Coordinator or their representative may make an inspection of the applicant's department to determine comparative needs within the department before allotment is made.

Section 5. Processing Applications for and Expenditure of Aid. (1) An [No] allotment shall **not** [may] be expended for any purpose other than that for which it is approved without the approval of the Fire Department Aid Coordinator.

(2) If approved allotment is insufficient to cover cost of equipment or other approved purpose, funds granted for any fiscal year may be deposited in any bank legally authorized by applicant, to be held for a period not to exceed five (5) years from the initial request. If additional time beyond the five (5) years is needed, a written request shall be made to the Fire Department Aid Coordinator giving reasons why additional time is needed. This shall be held in a special and separate bank account marked Fire Department Aid.

(3) If an allotment is granted to a department and is not to be used for purchase of equipment for which it was granted, the chief of the department shall:

(a) Contact the Fire Department Coordinator [directly] giving the reason why he wishes to make a change in the original equipment list; or

(b) Resubmit a new equipment list which shall [is to] be approved by the State Fire Marshal; or

(c) Refund the grant-in-aid allotment.

(4) Amounts expended for expenses of firemen in attending fire related school or classes shall not exceed $200 for any one (1) department. This shall be an item entered on **the department's** [your] regular equipment list.

(5) When expenditure is made of any allotted funds, copies of receipted bills shall be forwarded (by the 15th of March [31st of December] of the current fiscal year) to the Fire Department Aid Coordinator and after his approval shall be forwarded to the State Fire Marshal. If grant is to be used toward the retirement of a preexisting debt for purchase of land, buildings or equipment, proof of the [such] expenditure in the form of an affidavit or cancelled note shall be furnished the State Fire Marshal. Any false statements made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

RODNEY RABY, State Fire Marshal
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: June 28, 1991
FILED WITH LRC: July 8, 1991 at 2 p.m.

CABINET FOR HUMAN RESOURCES
Office of the Secretary
Family Resource & Youth Services Centers
(As Amended)

900 KAR 4:010. [Criteria for awarding grants for] Family resource and youth services centers.

RELATES TO: KRS 156.497, 158.360, 160.345
STATUTORY AUTHORITY: KRS 156.497(6), 194.050
NECESSITY AND FUNCTION: KRS 156.497 requires that the Cabinet for Human Resources issue an administrative regulation to establish criteria for the awarding of family resource and youth services centers grants. [The grant program shall be established to provide qualifying public schools in school districts with financial assistance to implement family resource and youth services centers. Grants shall be awarded through a financial agreement between the cabinet and a local public school district on an annual basis.] All qualifying public schools within a school district shall have established and implemented a family resource, youth services, or combination family resource and youth services center by the close of state fiscal year (FY) 95 [or June 30, 1995]. This **administrative** regulation implements the provisions of KRS 156.497 **for the Cabinet for Human Resources to establish procedures to be followed in awarding grants for family resource and youth services centers** [to establish an interagency task force on family resource and youth services centers to review grant applications, monitor centers, and oversee the implementation process until December 31, 1995].

Section 1. Definitions. The following definitions shall be applicable to this regulation unless the specific context dictates otherwise:

(1) [A] "Core component" means **one (1) of the activities or services provided for children and their families required by KRS 156.497(3)(a) through (f) and KRS 156.497(4)(a) through (e) to be implemented as part of a family resource and youth services center.** [an activity or service provided for children or their families required to be implemented as part of a family resource or youth services center. For a family resource center, there shall be six (6) core components as set forth by KRS 156.497(3)(a) through (f). For a youth services center, there shall be five (5) core components as set forth by KRS 156.497(4)(a) through (e).]

[(2) "Economically disadvantaged" means any child enrolled in a school program who is eligible to receive free school meals or a member of the eligible child's immediate family.]

[(3) "Family resource center" means an entity with a unique blend of components and approaches designed to promote the flow of human resources and support to preschool and elementary school children and their families to strengthen their functioning and to enhance the growth and development of the individual members and the family unit.]

[(4) "Human resources and support" means activities or services provided for children and families through a center which shall include, but is not limited to, the core components specified in subsection (1) of this section and any other optional components determined through a needs analysis to be conducted as part of the application process.]

[(5) "Local advisory body" means a membership body as defined in subsection (6) of this section. This body shall provide initial and ongoing representation of the views and opinions of major sectors of the community.]

[(6) "Membership of a local advisory body" means that at least one-third (1/3) of the members shall be parents of students in the eligible school or schools who should represent the socioeconomic and racial composition of the community and the cultural diversity of each school's student body. In addition, for a youth services center, defined in subsection (10) of this section, at least two (2) youth representatives who represent the socioeconomic and racial composition of the community and the cultural diversity of each school's student body, shall serve as members. Additional members of a local advisory body shall be representative of, but not limited to, school staff, and individuals from the community, human resource agencies and organizations, the private sector, churches, and civic organizations.]

(2) [(7)] "Optional component" means **one (1) of the activities or services** [an activity or service] provided for children or their families **as part of the implementation of a family resource or youth services center in addition to those required** [which is in addition to those components specified] by KRS 156.497(3)(a) through (f) and KRS 156.497(4)(a) through (e) and designed to satisfy unique community needs. **An optional component may be established by a family resource or youth services center to meet a need that is unique to its particular community, but not required by KRS 156.497. Examples of optional components include, but are not limited to, recreational and leisure time activities, volunteer transportation services, and a parent twenty-four (24) hotline.**

[(8) "Qualifying school" means any local public school within the Commonwealth in which twenty (20) percent or more of its student body is eligible to receive free school meals.]

[(9) "School consortium" means a group of two (2) or more **qualifying** public schools within the same community, geographical area, or school district which decide to join together to apply for a grant for one (1) common family resource center, youth services center, or a combined family resource and youth services center which is accessible to the children, youth, and families from each school.]

[(10) "Youth services center" means any entity with a unique blend of components and approaches designed to promote the flow of human resources and support to middle school, junior high school, and high school students and their families to strengthen their functioning and enhance the growth and development of the individual members and the family unit.]

Section 2. Family Resource and Youth **Services** Centers Grant Program. [(1) The Cabinet for Human Resources through promulgation of this regulation shall establish criteria for the selection of each individual school or school consortium to be awarded grants for

family resource and youth services centers.]

[(2) The interagency task force on family resource and youth services centers, appointed by the Governor, shall be responsible for approving the selection criteria promulgated in this regulation, reviewing grant applications, monitoring progress of the centers, and overseeing their implementation.]

[(3) Annually, upon review of the grant applications, the interagency task force on family resource and youth services centers shall make its recommendations for centers to be funded to the Secretary of the Cabinet for Human Resources.]

(1) Each fiscal year (FY), beginning with FY 92, [(4)] grants shall be awarded to implement family resource and youth service centers [annually] on a competitive or a continuation basis through FY 95. [All qualifying schools shall have submitted applications and implemented centers by the close of FY 95 or June 30, 1995.] Centers which have been implemented in a prior year of funding shall continue to make application for successive years of funding on a continuation [, but not on a competitive] basis.

(2) [(5)] Grant proposal instructions as specified in subsection (6) of this section shall be developed by the Cabinet for Human Resources and reviewed [approved] by the interagency task force on family resource and youth services centers.

(3) [(6)] The grant proposal instructions shall be contained in a grant application package and submitted to each local public school district in which there are qualifying schools to be used as a guide in making application for family resource and youth services centers grants. [require each school or school consortium applying for a grant to address the following elements:]

[(a) A statement of need which shall identify the services and activities which are deficient in the community for the families and children to be served through the center;]

[(b) Proposed goals which shall indicate in broad and general terms, planned outcomes to be achieved by the center;]

[(c) Planning and implementation activities which shall describe the functions and types of steps to be taken to prepare the center to become operational;]

[(d) A description of the existing service delivery system which shall identify the types of services currently available in the community, any barriers to receiving those services, any gaps in services, and any services that are not available;]

[(e) The level of community involvement which shall describe how the center plans to access services and activities that can be provided from existing community resource agencies and other entities in the community, and how it shall develop written agreements of collaboration with these service providers;]

[(f) A description of the role, functions, and representation on the local advisory body which shall provide an overview of the governance and decision-making responsibilities for the center;]

[(g) Information dissemination which shall describe the strategies to be developed for marketing the center to the people in the community;]

[(h) A training plan which shall indicate how the various individuals to be involved with the center shall be trained on its functions, goals, and activities;]

[(i) A description of a plan for minimizing stigma at the center which shall discuss planned efforts to make the center a comfortable, pleasant, and nonthreatening environment which is available for all members of the community;]

[(j) Parental consent and confidentiality rights which shall describe the procedures developed to obtain parental permission for the provision of services and for the sharing of confidential information among the various agencies providing services;]

[(k) The major program components to be provided by the center which shall address the service and activities, both core and optional, to meet the needs of the families and children to be served;]

[(l) Staffing for the center which shall describe the hiring procedures, staff qualifications, and duties and responsibilities of those employed at the center;]

[(m) The program and services site which shall indicate the location of the center, where various services and activities are to be provided, their accessibility to children and families, and a tentative schedule of the hours of operation;]

[(n) A work plan which shall be a complete form or forms, entitled "Work Plan Format", indicating a needs statement, goal, objective or objectives, tasks, timelines, and outcomes for each core and optional component to be provided through the center;]

[(o) A financial strategy and budget which shall include an outline of the agencies and organizations providing target services, outside funding sources and amounts, the number of children and families served on an annual basis, and an estimate of the unmet financial need. A form, the "Component Budget Description", shall be completed indicating a budget description for each core and optional component. A form, the "Center Operating Budget", shall be completed for the total center operating budget;]

[(p) A program evaluation plan which shall provide a description of how all projected outcomes included in the work plan shall be evaluated at the end of the contract year as well as a description of quarterly progress reports to be submitted;]

[(q) Endorsements or letters of commitment for the center which shall be included as attachments to the proposal from key members of the community and from agencies and organizations which intend to provide services or assistance at the center;]

[(r) An application cover sheet, a form entitled "Kentucky Family Resource and Youth Services Center FY 92 Application Cover Sheet", which shall be attached to the proposal and provides specific information about the proposed center;]

[(s) An application committee or advisory council membership list, a form entitled "Application/Advisory Council", which shall be included with the center proposal;]

[(t) An assurances page, a form entitled "Assurances and Certification", which shall be attached to the proposal and assures compliance with all federal, state, and local policies and guidelines; and]

[(u) A program abstract which shall be included and contains a summarization of the

major components of the proposal.]

(4) The grant proposal instructions shall contain the application review criteria and the application rating form which shall be used for rating and scoring each qualifying school or school consortium proposal for a grant.

[(7) Application review teams comprised of three (3) members each shall review proposals and score each application according to its ability to address each of the elements required in the proposal instructions, including the core and optional components.]

[(a) Each element shall be assigned a weight from one (1) to three (3) according to its degree of importance in implementing the center proposal;]

[(b) A rating scale of zero to four (4) shall be used to score each element according to its ability to address what is requested in the proposal instructions;]

[(c) The rating of zero to four (4) multiplied by the weight assigned to each element shall give the total points awarded for each element; and]

[(d) Bonus points shall be given to applications based on the adoption of school-based decision-making councils and the percentage of children eligible to receive free school meals.]

(5) Proposal review teams comprised of three (3) members each shall review proposals and score each application according to its ability to address each of the elements required, including the core and optional components.

(a) Each element to be scored shall be assigned a weight from one (1) to three (3) according to its degree of importance in implementing the proposed center. Each of the elements along with its assigned weight shall be contained on the application rating form developed by the Cabinet for Human Resources.

(b) A rating scale of zero to four (4) shall be used to score each element according to the proposal's ability to address what is required by the grant proposal instructions.

(c) The rating of zero to four (4) multiplied by the weight assigned to each element shall give the total points awarded for each element.

[(8) Criteria for the selection of centers shall be on the basis of the total scores achieved and documented on an application rating form developed by the Cabinet for Human Resources.]

(6) Proposal reviewers shall score each proposal submitted by a qualifying school or school consortium using the application rating form with assigned weights and the rating scale of zero to four (4).

[(9) Selection criteria shall also take into consideration the following factors:]

[(a) The percentage of children eligible to receive free school meals for each school to be served by the center;]

[(b) The existence of a school-based decision-making council;]

[(c) The size of the center in terms of the number of children eligible for free school meals. Consideration shall be given to large, medium-sized, and small center applications;]

[(d) A demonstrated collaborative effort on the part of existing human services and education systems;]

[(e) Evidence of local initiatives to encourage delivery of human services currently unavailable in the center's area;]

[(f) The local contribution of the community in terms of additional funds, space, transportation;]

[(g) Geographical distribution around the state;]

[(h) Representation from urban, rural, and suburban settings; and]

[(i) A reasonable balance between the numbers of family resource and youth services centers.]

(7) The application rating form, as contained in the grant proposal instructions, shall require each qualifying school or school consortium applying for a grant to address the following elements:

(a) A statement of need for the services/activities to be provided by the center (weight - two (2) points);

(b) Proposed goals which shall indicate in broad and general terms, the planned outcomes to be achieved by the center (weight - two (2) points);

(c) A description of the actual services/activities to be provided by the center and how they shall be provided (weight - two (2) points);

(d) A description of how those most in need shall be served by the center (weight - two (2) points);

(e) The inclusion of written local agreements with other agencies/organizations which shall demonstrate collaborative community interest and involvement with the center (weight - two (2) points);

(f) A description of the local advisory council which shall entail its development, composition and role (weight - two (2) points);

(g) The strategies which shall be developed to disseminate information and to provide awareness of the center to people in the community (weight - two (2) points);

(h) A training plan which shall indicate how the various individuals to be involved with the center shall be trained on its functions, goals, and activities (weight - two (2) points);

(i) A description of the procedures to be followed to obtain parental permission for the provision of services and for the sharing of confidential information among the various agencies providing services (weight - two (2) points). Except for the services specified in this paragraph, parental consent shall be obtained before the provision of services. Exempt services shall be provided as required by applicable statutes.

1. Mandated services such as abuse and neglect referrals to the Department for Social Services and/or the police (KRS Chapter 620) and Juvenile Justice services (KRS Chapter 635);

2. Advice, diagnosis, and/or treatment by a physician for minors (no age limit given) regarding sexually transmitted diseases, pregnancy, contraceptives, and substance abuse or addiction (Section 1, KRS 214.185);

3. Outpatient mental health counseling by a physician for individuals sixteen (16) years or older (Section 2, KRS 214.185);

4. Medical, dental, and other health services for a youngster of any age when, in the professional's judgment, the risk to the minor's health or life is such that treatment should be given without delay (Section 4, KRS 214.185);

5. Outpatient mental health counseling for anyone sixteen (16) years or older who is seeking that counseling as the result of abuse

by a parent or legal guardian (KRS 210.410);

6. Other substance abuse treatment (no age limit given) (KRS 222.440);

7. Voluntary admission to a hospital by an individual who is sixteen (16) years or older for observation, diagnosis and/or treatment for mental illness or symptoms of mental illness (KRS 645.030);

8. Nonexempt AFDC recipients are required to participate in the Job Opportunity and Basic Skills Program (JOBS) (45 CFR 250.30). Parental consent is not required for a nonexempt dependent child to participate in JOBS;

9. Employment counseling, training, application, summer/part-time job development, vocational exploration, and development of job readiness skills do not require parental consent as there are no laws that address age limits or parental consent for these specific services. Please note, however, that intake and eligibility for JTPA do require parental consent;

10. Employment of individuals fourteen (14) to seventeen (17) years of age as governed by U.S. and Kentucky Child Labor Law (information sheet on Kentucky Child Labor Law and summary of Child Labor Provisions of the U.S. Department of Labor);

(j) A description of the plan for ways to minimize stigma at the center so that the center is perceived as a comfortable, pleasant, and nonthreatening place to be by all members of the community (weight - one (1) point);

(k) A description of the provision of each of the core components required for the center as specified in the grant proposal instructions (weight - three (3) points);

(l) A description of any other optional components to be provided by the center (weight - two (2) points);

(m) A description of the role of staff for the center and their ability to perform responsibilities consistent with the application (weight - two (2) points);

(n) A description of where the center shall be located, and if not at the school, how accessible it shall be to the school (weight - two (2) points);

(o) A description of what services/activities shall be provided on site at the center and how transportation to services/activities shall be provided, if necessary (weight - one (1) point);

(p) A description of the hours of operation for the center and how it shall be open on days and times which are convenient to parents, children, and families (weight - one (1) point);

(q) A work plan which shall be a completed form or forms, entitled "Work Plan Format", indicating a needs statement, goal, objectives, tasks, timelines and outcomes for each core and optional component to be provided through the center (weight - three (3) points);

(r) A financial strategy and budget which shall include an outline of contributions and expenses of the agencies and organizations providing core and optional component services and activities, outside funding sources and amounts, the number of children and families being served on an annual basis, and an estimate of the unmet financial need. A form, the "Component Budget Description", shall be completed indicating a budget description for each core and optional component. A form, the "Center Operating Budget", shall be completed for the total center operating budget (weight - two (2) points);

(s) A description of existing funding sources to be used for services and activities at the center and potential funding sources to be contacted to raise funds for the center (weight - one (1) point);

(t) A program evaluation plan which shall provide a description of how all projected outcomes included in the work plan shall be evaluated at the end of the contract year (weight - two (2) points);

(u) A description of the quarterly reports of progress to be submitted as required in the grant proposal instructions (weight - one (1) points);

(v) The inclusion of letters of endorsement from influential members of the community (weight - one (1) point); and

(w) The inclusion of letters from community human resource organizations/agencies indicating their commitment and responsibilities to the center (weight - two (2) points).

[(10) A minimum acceptable score shall be established by the interagency task force on family resource and youth services centers which shall be the lowest score any application can receive in order to be recommended for funding.]

(8) Bonus points shall be given to applications based on the adoption of school-based decision-making councils and the percentage of children eligible to receive free school meals.

(a) A total of ten (10) bonus points shall be awarded to an application in which the school or all the schools in the case of a school consortium have provided documentation to the Cabinet for Human Resources of a school-based decision-making council.

(b) Bonus points shall be awarded for the percentage of children eligible to receive free school meals based on the following formula:

% of Economically Disadvantaged Children	Points Awarded
20-29.99%	1
30-39.99%	2
40-49.99%	3
50-59.99%	4
60-69.99%	5
70-79.99%	6
80-89.99%	7
90-99.99%	8

[(11) Proposal reviewers shall be selected by the Secretary of the Cabinet for Human Resources based on recommendations received from the interagency task force on family resource and youth services centers and other key education and human resource agencies and organizations.]

(9) Criteria for the selection of centers to receive grants shall be on the basis of total scores achieved and documented on the application rating form developed by the Cabinet for Human Resources.

[(12) Each member of a proposal review team shall be trained on the application review and scoring criteria prior to evaluating an application.]

(10) A minimum acceptable score, as specified in the grant application review criteria, shall be established by the Cabinet for Human Resources before the grant application package is distributed to applicants. The minimum

acceptable score shall be the lowest score any application can receive in order to be recommended for funding.

[(13) In the event of fifteen (15) percent or more variance of at least one (1) reviewer's score from the median score, the proposal shall be reevaluated by another review team.]

(11) Proposal reviewers shall be selected by the Secretary of the Cabinet for Human Resources and approved by the Interagency Task Force on Family Resource and Youth Services Centers. Names of proposal reviewers shall be recommended to the secretary by members of the Task Force and by other key education and human resource agencies and organizations.

[(14) Upon individual review of each application assigned for evaluation, an average score will be determined for each application.]

(12) Each member of a proposal review team shall be trained by staff from the Cabinet for Human Resources assigned to the Interagency Task Force on Family Resource and Youth Services Centers on the application review and scoring criteria prior to evaluating an application.

[(15) In the case of applications which receive average scores, priority in ranking shall be given to those that have a higher percentage of students eligible for free school meals.]

(13) In the event of more than fifteen (15) percent variance of at least one (1) reviewer's score from the median score, the proposal shall be rereviewed by another review team.

[(16) Once average scores are tabulated for all applications submitted, the applications shall be ranked according to the average score received and presented to the interagency task force on family resource and youth services centers for approval.]

(14) After review by each proposal reviewer on a team for each application assigned for evaluation, an average score for the team shall be determined for each application.

[(17) Written notification shall be provided to each school district making an application providing notice of funding or nonfunding for each center proposed.]

(15) In the case of applications which receive equal scores, priority in ranking shall be given to those applications that have a higher percentage of students eligible for free school meals.

(16) Once average scores are tabulated for all applications submitted, the applications shall be ranked according to the average score received.

(17) The Interagency Task Force on Family Resource and Youth Services Centers shall conduct a meeting to review the applications and to make recommendations for grant awards to the Secretary of the Cabinet for Human Resources. The Cabinet for Human Resources shall prepare a ranking of applications for proposed centers based on the total average scores received to be presented to the Interagency Task Force on Family Resource and Youth Services Centers.

(18) Staff from the Cabinet for Human Resources assigned to the Interagency Task Force on Family Resource and Youth Services Centers shall make available upon request, any information needed by this body prior to its recommendation to the Secretary of the Cabinet for Human Resources for centers to be funded.

(19) Written notification shall be provided by the Secretary of the Cabinet for Human Resources to each school district making application providing notice of the secretary's final decision of funding or nonfunding for each center proposed. This notice shall be provided within ten (10) days (excluding weekends and holidays) after recommendations are received from the Interagency Task Force on Family Resource and Youth Services Centers.

[Section 3. Provisions contained in this regulation shall be enforced as of May 13, 1991.]

Section 3. [4.] Material Incorporated by Reference. (1) The Kentucky Family Resource and Youth Services Centers Grant Application Package, February 11, 1991, which includes the grant proposal instructions, the Application Rating Form and scoring criteria, the Work Plan Format form, the Component Budget Description form, the Center Operating Budget form, as well as guidelines [Forms] necessary for submission of family resource and youth services centers grant application and the Interagency Task Force State Implementation Plan, January 1, 1991, which contains information on the five (5) year implementation plan are incorporated by reference [effective May 13, 1991].

(2) The Kentucky Family Resource and Youth Services Centers Grant Application Package and the Interagency Task Force State Implementation Plan [These forms] may be inspected and copied at the Cabinet for Human Resources, Family Resource and Youth Services Centers, 275 East Main Street, Fourth Floor - West, Frankfort, Kentucky, 40621, from 8 a.m. to 4:30 p.m., Monday through Friday.

Section 4. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

RONNIE DUNN, Project Coordinator
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 4, 1991
FILED WITH LRC: June 5, 1991 at 10 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(As Amended)

904 KAR 2:006. Technical requirements; AFDC.

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

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

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC) [in accordance with Title IV-A of the Social Security Act]. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with 42 USC 602 [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 **and complies with the requirements to receive** 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 **and comply with the requirements to receive** 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: June 20, 1991 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department For Medicaid Services
(As Amended)

907 KAR 1:515. 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
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 **the same as the definition contained in KRS 210.005(3).** [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 3, 1991 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department For Medicaid Services
(As Amended)

907 KAR 1:525. Targeted case management services for severely emotionally disturbed children.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d, n
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)1. Meets one (1) of the conditions shown in KRS 200.503(2)(a), (b), or (c); or [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]

2. [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 3, 1991 at 11 a.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Amended After Hearing)

11 KAR 4:040. Educational institution participation requirements.

RELATES TO: KRS 164.740, 164.748(6), (13), 34 CFR Part 668 subparts A, B, D, E, F

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority ("authority") administers programs of student financial assistance. The authority is empowered by KRS 164.748(6) and (13) to enter contracts with eligible educational institutions to provide for the administration of student financial assistance programs, and approve, disapprove, limit, suspend, or terminate the participation of such institutions. This regulation sets forth the conditions under which the authority will execute a contract with an educational institution for participation in any or all of the authority's programs. The amendment specifies documentation and standards that are a precondition to execution of an administrative agreement.

Section 1. Definitions. (1) The definition of "authority" is governed by KRS 164.740. [Action by the authority shall refer to action on behalf of the authority by the executive director or his designee, appointed pursuant to KRS 164.746(6).]

(2) The definition of "business school" is governed by KRS 164.740.

(3) The definition of "college" is governed by KRS 164.740.

(4) "Eligible course of study" means, for purposes of Sections 7 and 8 of this regulation, a program offered by an educational institution which:

(a) Is of at least two (2) academic years duration; and

(b) Leads to a degree in a field other than theology, divinity or religious education at the institution at which the student is enrolled.

(5) "Eligible program of study" means, for purposes of Section 10 of this regulation, an undergraduate or graduate program of study which is preparatory to initial teacher certification or recertification, and which does not lead to a certificate, diploma, or degree in theology, divinity, or religious education.

(6) [(4)] The definition of "federal act" is governed by KRS 164.740.

(7) [(5)] "Fiscal year default rate" means, for any fiscal year in which thirty (30) or more current and former students at the institution enter repayment on GSL or SLS program loans received for attendance at the institution, the percentage, determined by the secretary, of those current and former students who enter repayment on GSL or SLS program loans received for attendance at that institution in that fiscal year who default before the end of the following fiscal year. For any fiscal year in which less than thirty (30) of the institution's current and former students enter repayment, the term "fiscal year default rate" means the average, determined by the secretary, of the rate calculated under the preceding sentence for the three (3) most recent fiscal years. In the case of a student who has attended and borrowed at more than one (1) school, the student (and his or her subsequent repayment or default) is attributed to each school for attendance at which the student received a loan that entered repayment in the fiscal year. A loan on which a payment is made by the school, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower is considered as in default for purposes of this definition.

(8) [(6)] "Fiscal year" means the period from and including October 1 of the calendar year through and including September 30 of the following calendar year.

(9) [(7)] "GSL or SLS program loans" means loans reinsured by the secretary pursuant to sections 428 or 428A of the federal act (20 USC §1078 or 1078-1).

(10) [(8)] The definition of "insured student loan" is governed by KRS 164.740.

(11) [(9)] The definition of "school of nursing" is governed by KRS 164.740.

(12) [(10)] The definition of "secretary" is governed by KRS 164.740.

(13) [(11)] The definition of "vocational school" is governed by KRS 164.740.

Section 2. [1.] General Rule. The authority shall [will] execute an administrative agreement with any educational institution which meets the eligibility criteria established by KRS 164.740 et seq., KRS 164.780 et seq., and (as applicable to a particular authority program) the federal act [Higher Education Act of 1965 (20 United States Code 1070 et seq.), as amended], and which is approved for participation by the authority and (as applicable) the [United States] secretary [of Education ("Secretary")]. The authority shall [will] approve for participation in any authority program an educational institution which:

(1) Demonstrates to the satisfaction of the authority, in accordance with standards set forth in Section 5 of this regulation [34 Code of Federal Regulations part 668], financial responsibility and administrative capability to administer authority programs of student financial assistance;

(2) Is not presently suspended or terminated from participation in student financial assistance programs by either the authority, and organization authorized to insure loans under the federal act, or the secretary;

(3) Holds all licenses, in full force and effect, necessary to transact business in the Commonwealth of Kentucky;

(4) Meets the criteria set forth in Sections 4 through 13 [3, 4, 5 and/or 6] of this regulation, as applicable to the particular authority program(s) in which the educational institution seeks participation; and

(5) Has been in continuous operation for at least two (2) years, unless otherwise required by the federal act.

Section 3. [2.] Maintenance of Participation. An administrative agreement executed pursuant to Section 2 [1] of this regulation shall remain in force, in accordance with its terms, for so long as the educational institution conforms to the criteria set forth in Section 2 [1] of this

regulation, except [provided] that the agreement may, at the discretion of the authority, remain in force for one or more programs, as circumstances warrant, notwithstanding Section 2 [1](2) of this regulation. The authority may periodically reevaluate the financial and administrative capability of an institution and compliance with the criteria established in this regulation. [A reevaluation may also be initiated at any time based upon a change of ownership or control of the institution, the establishment or acquisition of a new campus or branch of the institution, a substantial increase in student financial assistance volume or no insured student loan volume for a period of twelve (12) months (if the institution participates in that program), a pattern of complaints from students, parents of students or others who have a business or educational relationship with the institution, persistent student financial aid processing errors, or a fiscal year default rate sufficiently high to invoke additional requirements under applicable federal regulations.]

Section 4. Documentation of Federal Eligibility, Financial Responsibility, and Administrative Capability. (1) The institution shall demonstrate to the authority that it is approved by the secretary to participate, and and holds all necessary licenses to offer academic programs by submitting to the authority a true and complete copy of the most recent:

(a) Federal application for institutional eligibility, eligibility letter, and program participation agreement executed by the secretary;

(b) Letter of accreditation from each organization accrediting the institution and its programs and copies of any letters denying, limiting or suspending accreditation of the institution; and

(c) License from each governmental organization responsible for licensing the institution or its programs.

(2) The institution shall provide evidence of its financial responsibility by submitting to the authority:

(a) A **complete** copy of audited financial statements **and auditors notes and management letter** (including any audit of student financial assistance programs), prepared by a certified public accountant in accordance with generally accepted accounting standards, for the preceding two (2) **complete fiscal** years, **except that an institution already participating may submit an unaudited profit and loss statement and balance sheet (based on the same basis of accounting used by the institution for financial reporting) for the current and one (1) of the preceding two (2) complete fiscal years and audited financial statements not older than two (2) years;**

(b) Information indicating the type of organizational ownership and the names of all current owners and corporate officers; and

(c) A list of the three (3) student loan lenders and guarantors providing the highest dollar volume of student loans to the institution's students during the preceding twenty-four (24) months.

(3) The institution shall provide evidence of its capability to administer the student financial assistance programs and provide the services publicized to students by submitting to the authority:

(a) A current copy of the consumer information required by federal and state law to be made available to students and prospective students, including the institution's catalog, enrollment contract, brochures and printed advertisements; and (unless contained in the foregoing materials) a current description of the financial assistance programs available, cost of attendance, programs of study, facilities, the experience of the instructional and administrative staff, and average starting salaries of graduates **(if such starting salary information is otherwise distributed)**;

(b) A current statement of the institution's policies on recruitment and admission, attendance, refund and repayment of student financial assistance, and the ability to benefit and satisfactory academic progress standards;

(c) Information for the preceding two (2) years on total annual enrollment, fiscal year default rates, accreditation and student financial assistance program review reports, and any sanctions imposed on the institution by the secretary or a student loan guarantee agency;

(d) All materials currently used or proposed to be used in student financial assistance counseling involving entrance and exit interviews, student loan debt management, student financial assistance authorizations and disbursement forms, and standardized student budgets;

(e) A current analysis of information and a current plan of remedial measures required pursuant to 34 CFR Section 668.15(b)(2), (c), (d), and (e), if the secretary requires those materials to be prepared by the institution.

(4) The authority may disapprove, limit, suspend, or terminate the participation of an institution upon failure to submit the required documentation within forty-five (45) days following request by the authority, **except that audited financial statements required under subsection (2) of this section shall be submitted within ninety (90) days following request.**

(5) The authority in its sole discretion may waive all or any part of the documentation requirements in this section if the institution's fiscal year default rate is twenty (20) percent or less or upon a showing by the institution that submission of required documentation would impose an undue hardship, provided that the authority is satisfied from documentation that is provided or available from other sources that the institution can reasonably be presumed to meet the requirements of this regulation. If the institution advises the authority that any documentation required under this section has been submitted to a third party and so requests, the authority shall seek the documentation from the third party, and shall consult with other governmental agencies responsible for making contemporaneous determinations on financial responsibility.

Section 5. Standards of Financial Responsibility and Administrative Capability. The authority may conduct an on-site review of the institution to determine compliance with the following standards prior to execution of an administrative agreement. An eligible institution demonstrates that it is financially responsible and administratively capable if it:

(1) Provides the services described in its

official publications and statements;

(2) Provides the administrative resources necessary to comply with the requirements of this regulation;

(3) Meets all of its financial obligations, including, but not limited to:

(a) Refunds of institutional charges; and

(b) Repayments to the authority for liabilities and debts incurred in programs administered by the authority;

(4) Has not:

(a) Had operating losses during its two (2) most recent fiscal years; or

(b) Had, for its most recent fiscal year, a deficit net worth, in which its liabilities exceed its assets; or

(c) Under a fund accounting system, sustained material deficits over at least its two (2) most recent fiscal years in its unrestricted operating funds;

(5) Has a ratio of current assets to current liabilities of at least 1:1 under an accrual basis of accounting at the end of its most recent fiscal year;

(6) Designates an individual competent and responsible for administering all of the student financial assistance programs in which it participates and coordinating the authority's programs with the institution's other programs of student financial assistance, and communicates to that individual all information received by any institutional office that affects a student's eligibility for student financial assistance;

(7) Uses an adequate number of persons competent to administer the student financial assistance programs in which it participates, taking into account the number of students aided, the number and types of programs in which the institution participates, the number of applications evaluated, the amount of funds administered, and the financial aid delivery system used by the institution;

(8)(a) Administers authority programs with checks and balances in its system of internal controls; and

(b) Divides the functions of authorizing payments and disbursing funds so that no office has responsibility for both functions with respect to any particular student aided under the programs;

(9) Establishes, publishes, and applies reasonable standards for measuring whether a student is maintaining satisfactory academic progress in a program of study, which standards shall:

(a) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has those standards;

(b) Be, for a student enrolled in an eligible program who is to receive assistance under an authority program, the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under an authority program;

(c) Include grades, work projects completed, or comparable factors that are measurable against a norm;

(d) Include a maximum time frame determined by the institution in which the student must complete his or her educational objective (degree, diploma or certificate), based on the student's enrollment status and increments no longer than one (1) academic year;

(e) Include a schedule established by the institution, designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment in order to complete the educational objective, degree, or certificate within the maximum time frame;

(f) Include a determination at the end of each increment by the institution whether the student has successfully completed the appropriate percentage or amount of work according to the established schedule;

(g) Be consistently applied to all students within categories of students (i.e., full-time, part-time undergraduate, etc.) and programs established by the institution;

(h) Specifically define the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses upon satisfactory academic progress and student charges;

(i) Specify the procedures under which a student may appeal a determination that the student is not making satisfactory progress, and the procedures for reinstatement of satisfactory academic standing and eligibility for student financial assistance;

(10) Develops and applies an adequate system to identify and resolve discrepancies in the information it receives from different sources with respect to a student's application for student financial assistance, and refers to United States Department of Education's Office of Inspector General or other appropriate law enforcement agencies any information indicating that an applicant or employee or agents of the institution may have engaged in fraud or other criminal misconduct;

(11) Provides adequate counseling to student financial assistance applicants regarding the source and amount of each type of aid offered, the method by which awards are determined and disbursed, the rights and responsibilities of the student, and the policies of the institution affecting the student's receipt of financial assistance;

(12) Complies with institutional policies and procedures, including any remedial measures required by the secretary pursuant to 34 CFR Part 668, in all applicable requirements of the institution's accrediting and licensing agencies.

Section 6. Insured [3. Guaranteed] Student Loan [and PLUS] Program Participation. In order to participate in the authority's insured student loan [GSLP or PLUS] program[s], the educational institution shall [must]:

(1) Qualify as [Be] a "public or private, nonprofit institution of higher education" or a "vocational school" pursuant to [as defined in] the federal act [Higher Education Act of 1965, as amended];

(2) Be certified by the secretary to participate and have in force, if required by the secretary, a participation agreement with the secretary; and

(3) Execute an administrative agreement with the authority, provided that the authority may permit an educational institution, otherwise approved, to participate without an agreement if the institution's fiscal year default rate is twenty (20) percent or less [until the annual, original principal amount of loans insured by

the authority for students to attend the institution is $50,000].

Section 7. [4.] State Student Incentive Grant Program Participation. In order to participate in the authority's SSIG program, an educational institution shall [must]:
(1) Qualify as [Be] a "public or private, nonprofit institution of higher education," a "proprietary institution of higher education," or a "postsecondary vocational institution" pursuant to the federal act [defined in the Higher Education Act of 1965, as amended];
(2) Qualify as [Be] a "business school," "college," "school of nursing," or "vocational school" [as defined in KRS 164.740];
(3) Be located within the Commonwealth of Kentucky;
(4) Offer an "eligible course of study," as defined in 11 KAR 5:020, which is not comprised solely of sectarian instruction; and
(5) Execute an administrative agreement with the authority.

Section 8. [5.] Kentucky Tuition Grant Program Participation. In order to participate in the authority's KTG program, an educational institution shall [must]:
(1) Qualify as [Be] a private, nonprofit "college" [as defined in KRS 164.740];
(2) Be located within the Commonwealth of Kentucky;
(3) Offer an "eligible course of study," as defined in 11 KAR 5:020, which is not comprised solely of sectarian instruction; and
(4) Execute an administrative agreement with the authority.

Section 9. KHEAA [6. Commonwealth] Work Study Program Participation. In order to participate in the authority's KHEAA work study [CWS] program, an educational institution shall [must]:
(1) Qualify as [Be] a "business school," "college," "school of nursing," or "vocational school" [as defined in KRS 164.740];
(2) Be located within the Commonwealth of Kentucky;
(3) Offer a program of study not comprised solely of sectarian instruction; and
(4) Execute an administrative agreement with the authority.

Section 10. Teacher Scholarship Participation. In order to participate in the authority's teacher scholarship program, an educational institution shall:
(1) Qualify as a "business school", "college", "school of nursing", or "vocational school";
(2) Be located within the Commonwealth of Kentucky; and
(3) Offer an "eligible program" of study.

Section 11. College Access Program Participation. In order to participate in the authority's college access program, an educational institution shall:
(1) Qualify as a public or private, nonprofit college; and
(2) Be located within the Commonwealth of Kentucky.

Section 12. [7.] The authority will execute an administrative agreement with an educational institution which may include nonmain campuses of the institution that are not separately incorporated.

Section 13. Notwithstanding any other section of this regulation, the authority shall not execute an administrative agreement with an eligible institution, except as provided in subsection (4) of this section, if:
(1) The institution, its owner, or its chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of student financial assistance funds, or has been judicially determined to have committed fraud involving student financial assistance funds;
(2) The institution employs an individual in a capacity that involves the administration of programs, or the receipt of authority program funds who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of student financial assistance funds, or who has been judicially determined to have committed fraud involving federal funds; or
(3) The institution uses any individual, agency, or organization that has been, or whose officers or employees have been:
(a) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of student financial assistance funds; or
(b) Judicially determined to have committed fraud involving student financial assistance funds.
(4) The authority may execute an administrative agreement if:
(a) The funds that were fraudulently obtained, or criminally acquired, used, or expended have been repaid and any related financial penalty has been paid;
(b) The individuals who were convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime; and
(c) At least five (5) years have elapsed from the date of the conviction, nolo contendere plea, guilty plea, or judicial determination.

Section 14. [8.] The authority may **accept**, as **evidence of financial responsibility**, [a precondition to maintenance of participation, require an educational institution to post] a good and sufficient surety bond or other collateral in an amount necessary to ensure that the educational institution can meet its financial obligations to its students and[/or] to the authority, provided that no separate bond shall be required if the authority is assured to its satisfaction that indemnification is provided to the authority and students in an amount sufficient to cover any potential student aid liability through a bond required by a third party. Said surety bond or other collateral shall be conditioned to provide indemnification to the authority and[/or] to any grantee or payee of benefits under an Authority administered program, related to a student's enrollment or acceptance for enrollment at the educational institution, for loss or damage suffered by reason of the insolvency of the institution, cessation of operation of the institution, misappropriation of student financial assistance funds by the institution,

fraud or misrepresentation by the institution in obtaining student financial assistance benefits for students, or failure by the institution to make timely and proper disposition of funds. The Authority may require such surety bond or other collateral when a reasonable probability exists that the conditions of indemnification may occur.

GEORGE SHAW, Chairman
APPROVED BY AGENCY: September 10, 1991
FILED WITH LRC: September 11, 1991 at 2 p.m.

NATURAL RESOURCES AND ENRIVONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 7:020. Definitions of terms used in 405 KAR Chapters 7 through 24 [and abbreviations].

RELATES TO: KRS Chapter 350, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in [KAR Title] 405 KAR Chapters 7 through 24.

Section 1. Definitions. [Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in KAR Title 405, Chapters 7 through 24 shall have the meanings given in this regulation.]
(1) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.
(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.
(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.
(4) "Administratively complete application" means an application for permit approval, or approval for coal exploration if [where] required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.
(5) "Affected area" means any land or water which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:
(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;
(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and
(c) There is substantial (more than incidental) public use.
(6) "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.
(7) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.
(8) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if [where] required, seeking approval for coal exploration.
(9) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Permanent water impoundments may be permitted if [where] the cabinet has determined that they comply with KRS Chapter 350 and either 405 KAR 16:100, 405 KAR 16:060, Section 10, and 405 KAR 16:210, or 405 KAR 18:100, 405 KAR 18:060, Section 10, and 405 KAR 18:220.
(10) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial

use.

(11) "Area" as used in [KAR Title] 405 KAR Chapter 24, means a geographic unit in which the criteria alleged in the petition pursuant to 405 KAR 24:020, Sections 3 and 4 and 405 KAR 24:030, Section 8, occur throughout and form a significant feature.

(12) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other [such] methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(13) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or run off outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with [KAR Title] 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and [KAR Title] 405 KAR Chapters 7 through 24.

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

(15) "Cemetery" means any area where human bodies are interred.

(16) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(17) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(18) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of [KAR Title] 405 KAR Chapters 7 through 24 if the [where such] activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water or other environmental resources.

(19) "Coal mine waste" means coal processing waste and underground development waste.

(20) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including but not limited to: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(21) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(22) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(23) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(24) "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(25) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(26) "Complete and accurate application" means an application for permit approval or approval for coal exploration if [where] required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and [Title] 450 KAR Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and whether a permit or exploration approval may [should] be issued.

(27) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

(28) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface - and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development

information available.

(29) "Date of primacy" means the effective date of the Secretary of Interior's unconditional or conditional approval of Kentucky's permanent regulatory program under SMCRA Section 503 [of the 1977 Surface Mining Control and Reclamation Act (P.L. 95-87)]. The effective date of the subject approval was May 18, 1982.

(30) "Day" means calendar day unless otherwise specified to be a working day.

(31) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(32) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(33) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by [KAR Title] 405 KAR Chapter 10 is released.

(34) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(35) "Downslope" means the land surface below the projected outcrop of the lowest coal-bed being mined along each highwall.

(36) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to [,] support roads or railways; or for other similar purposes.

(37) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(38) "Excess spoil" means spoil [material] disposed of in a location other than the coal extraction area, except [provided] that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(39) "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction began [begins] prior to January 18, 1983.

(40) "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line, or similar [other such] construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and [KAR Title] 405 KAR Chapters 7 through 24.

(41) "Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(42) "Federal lands program" means a program established by the Secretary of the Interior pursuant to SMCRA Section 523 [of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87, 91 State. 445 (30 USC Section 1201 et seq.))] to regulate surface coal mining and reclamation operations on federal lands.

(43) "Fish and wildlife land use [habitat]", as used in 405 KAR 16:210 and 405 KAR 18:220 and in similar situations when referring to a premining or postmining land use, means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife. Areas considered as having the fish and wildlife land use are typically characterized by a diversity of habitats in which use by wildlife is the dominant characteristic, whether actively managed or not.

(44) "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products. [Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.]

(45) "Fragile lands" means areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include uncommon geologic formations, paleontological sites, National Natural Landmarks, valuable habitats for fish or wildlife, areas where mining may result in flooding, critical habitats for endangered or threatened species of animals or plants, wetlands, environmental corridors containing a concentration of ecologic and aesthetic features, state-designated nature preserves and wild rivers, and areas of recreational value due to high environmental quality.

(46) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(47) "General area" means, with respect to hydrology, the topographic and groundwater basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and groundwater zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and groundwater systems in the basins.

(48) "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(49) "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a cabinet, department, agency or office of the unit which, directly or through another unit of government, finance construction.

(50) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement. ["Grazing land" means grassland and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay

production. Land used for facilities in support of grazing operations which are adjacent to or an integral part of these operations is also included.]

(51) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(52) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October. ["Half-shrub" means a perennial plant with a woody base whose annually-produced stems die back each year.]

(53) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(54) "Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

(55) [(54)] "Highwall" means the face of exposed overburden and coal in an open cut of a surface [coal] mining activity or for entry to underground mining activities.

(56) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(57) [(55)] "Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, archaeological sites, properties having religious or cultural significant to Native Americans or religious groups, and properties for which historic designation is pending.

(58) [(56)] "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or paragraph (a)2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Land that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(59) [(57)] "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, run-off, evaporation, and changes in ground and surface water storage.

(60) [(58)] "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(61) [(59)] "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(62) [(60)] "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(63) [(61)] "Incidental boundary revision" means an extension to a permit area that is necessary for reasons unforeseen when [at the time] the original permit application was prepared and that is small in relation to the original or amended permit area [(surface operations area for underground mining activities)].

[(a) Where an extension includes new areas from which coal will be removed, it will be considered as an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage or five (5) acres, whichever is less.]

[(b) Where an extension is for new areas not involving extraction of coal, it will be considered an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage (surface operations area acreage for underground mining activities) or two (2) acres, whichever is greater.]

[(c) Cumulative acreage added by successive revisions may not exceed the above limitations.]

(64) [(62)] "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or [for] long-term storage of products, and heavy and light manufacturing facilities. Land used for facilities in support

of these operations which is adjacent to or an integral part of that operation is also included.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Lands used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

[(c) Commercial agriculture activities including pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants for sale or resale.]

(65) [(63)] "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(66) [(64)] "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of stream that is below the local water table for at least some part of the year, and obtains its flow from both surface run-off and groundwater discharge.

(67) [(65)] "Irreparable damage to the environment" means any damage to the environment, in violation of SMCRA, KRS Chapter 350, or [KAR Title] 405 KAR Chapters 7 through 24, that cannot be corrected by actions of the applicant.

(68) "Knowingly" means that a person knew or had reason to know in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that the act or omission constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

(69) [(66)] "Land use" means specific functions, uses or management-related activities [rather than the vegetation or cover] of an area [the land], and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(70) "Modified highwall" means either:

(a) The highwall resulting from remining where the preexisting highwall face is removed; or

(b) The highwall resulting from remining where the preexisting highwall is vertically enlarged.

(71) [(67)] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(72) [(68)] "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

(73) [(69)] "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including, but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(74) [(70)] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, [KAR Title] 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(75) [(71)] "Notice of violation" means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication. This shall include a notice of noncompliance and order for remedial measures.

(76) [(72)] "Noxious plants" means species classified under Kentucky law as noxious plants.

(77) [(73)] "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(78) [(74)] "Operations" means surface coal mining and reclamation operations, all of the premises, facilities, roads, and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality, or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or removal of coal.

(79) [(75)] "Operator" means any person, partnership, or corporation engaged in surface coal mining and reclamation operations.

(80) [(76)] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, [KAR Title] 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(81) [(77)] "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(82) [(78)] "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

(83) [(79)] "Owned or controlled" and "owns or controls" means any one (1) or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

(a)1. Being a permittee of a surface coal mining operation;

2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or

3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;

2. Being the operator of a surface coal mining operation;

3. Having the ability to commit the financial or real property assets or working resources of an entity;

4. Being a general partner in a partnership;

5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(84) [(80)] "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.

(85) [(81)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream."

(86) [(82)] "Performance bond" means a surety bond, collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, [KAR Title] 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(87) [(83)] "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(88) [(84)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(89) [(85)] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(90) [(86)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or [KAR Title] 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and [KAR Title] 405 KAR Chapters 7 through 24 are satisfied.

(91) [(87)] "Person" means any individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization, or any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government.

(92) [(88)] "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(93) [(89)] "Petitioner" means a person who submits a petition under [KAR Title] 405 KAR Chapter 24 to designate a specific area as unsuitable for all or certain types of surface coal mining and reclamation operations, or who submits a petition under [KAR Title] 405 KAR Chapter 24 to terminate such a designation.

(94) [(90)] "Precipitation event" means a quantity of water resulting from drizzle, rain, snow melt, sleet, or hail in a specified period of time.

(95) "Previously mined area" means land that was disturbed or affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title, and for which there is no continuing responsibility to reclaim to the standards of this title.

(96) [(91)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically [been] used for cropland" as that phrase is defined above.

(97) [(92)] "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant.

(98) [(93)] "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(99) [(94)] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing and pattern; and the stream channel conditions on the permit area and adjacent areas.

(100) [(95)] "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(101) [(96)] "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(102) [(97)] "Publicly-owned park" means a public park that is owned by a federal, state, or local governmental entity.

(103) [(98)] "Public office" means a facility under the direction and control of a

governmental entity which is open to public access on a regular basis during reasonable business hours.

(104) [(99)] "Public park" means an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, despite whether the [such] use is limited to certain times or days. It includes any land leased, reserved or held open to the public because of that use.

(105) [(100)] "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(106) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all spoil of this nature located in the immediate vicinity of the mining operation.

(107) [(101)] "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and run-off to infiltrate and reach the zone of saturation.

(108) [(102)] "Reclamation" means the reconditioning and restoration of areas affected by surface coal mining operations as required by KRS Chapter 350 and [KAR Title] 405 KAR Chapters 7 through 24 under a plan approved by the cabinet.

(109) [(103)] "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(110) [(104)] "Recurrence interval" means the interval of time in which an event is expected to occur once, on the average.

(111) [(105)] "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative [vegetation] ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet. Reference areas must be representative of geology, soil, slope and vegetation in the permit area.

(112) [(106)] "Refuge pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(113) "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(114) [(107)] "Renewable resource lands".

(a) As used in [KAR Title] 405 KAR Chapter 24, "renewable resource lands" means geographic areas which contribute significantly to the long-range productivity of water supplies or of food or fiber products, these [such] lands to include aquifers and aquifer recharge areas.

(b) As used in 405 KAR 8:040, Section 26, "renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(115) [(108)] "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(116) [(109)] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and [such] contiguous appendages [as are] necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to [KAR Title] 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(117) [(110)] "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(118) [(111)] "Secretary" means the Secretary of the Cabinet for Natural Resources and Environmental Protection.

(119) [(112)] "Sedimentation pond" means a primary sediment controlled structure designed, constructed and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water run-off to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce run-off volume or trap sediment, to the extent that the [such] secondary sedimentation structures drain to a sedimentation pond.

(120) [(113)] "Significant, imminent environmental harm" means [is] an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental [such] harm; or

2. May reasonably be expected to cause environmental [such] harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(121) [(114)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

(122) [(115)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the education of the resulting slurry to the surface for processing.

(123) [(116)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by a lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequence by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(124) [(117)] "Soil survey" means a field or other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets the [such] soils for use. Soil surveys shall [must] meet the standards of the National Cooperative Soil Survey.

(125) [(118)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mine coal, that are excavated during surface coal mining and reclamation operations.

(126) [(119)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(127) [(120)] "Steep slope" means any slope of more than twenty (20) degrees.

(128) [(121)] "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface; or by other [such] activities, or to remove more than twenty-five (25) [250] tons of coal.

(129) [(122)] "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(130) [(123)] "Surety bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky [where the surface or underground coal mining operation subject to the indemnity agreement is located].

(131) [(124)] "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of those [such] operations.

(132) [(125)] "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface operations and surface impacts incident to an underground coal mine. These [Such] activities include excavation for the purpose of obtaining coal, including [such] common methods such as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine site. These [Such] activities shall not include the extraction of coal by a landowner of fifty (50) tons or less within twelve (12) successive calendar months for his own noncommercial use from land owned or leased by him, except that noncommercial use shall not include the extraction of coal by one (1) unit of an integrated company or other business entity which uses the coal in its own manufacturing or power plants; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction; or the extraction of, or intent to extract, twenty-five (25) [250] tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals if [where] coal does not exceed sixteen and two-thirds (16 2/3) percent of the tonnage of minerals removed for the purpose of commercial use or sale; or coal exploration. Surface coal mining operations shall also include the areas upon which these [such] activities occur or where the [such] activities disturb the natural land surface. These [Such] areas shall also include any adjacent land the use of which is incidental to any of the [such] activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the [such] activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to the [such] activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

(133) [(126)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(134) [(127)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials

carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's [Environmental Protection Agency's] regulations for waste water and analyses (40 CFR 136).

(135) [(128)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(136) [(129)] "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

(137) [(130)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(138) [(131)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(139) [(132)] "Toxic-mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(140) [(133)] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(141) [(134)] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(142) [(135)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, audits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(143) [(136)] "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(144) [(137)] "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, [the regulations of KAR Title] 405 KAR Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, [the regulations of KAR Title] 405 KAR Chapters 7 through 24, or permit conditions.

(145) [(138)] "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(146) [(139)] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(147) [(140)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

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

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(149) "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

[(142) "Willful violation" means an act or omission which violates the Surface Mining Control and Reclamation Act (P.L. 95-87), KRS Chapter 350, the regulations of KAR Title 405, Chapters 7 through 24, or any permit condition, committed by a person who intends the result which actually occurs.]

Section 2. Abbreviations. As used in [KAR Title] 405 KAR Chapters 7 through 24, the following abbreviations shall have the meanings given below:

ac - acre
CFR - Code of Federal Regulations
dB - decibels
FDIC - Federal Deposit Insurance Corporation
FSLIC - Federal Savings and Loan Insurance Corporation
Hz - hertz
KAR - Kentucky Administrative Regulations
KDFWR - Kentucky Department of Fish and

Wildlife Resources
KPDES – Kentucky Pollutant Discharge Elimination System
KRS – Kentucky Revised Statutes
l – liter
mg – milligram
MRP – mining and reclamation plan
MSHA – Mine Safety and Health Administration
NPDES – National Pollutant Discharge Elimination System
OSM – Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior
PARP – Permit Application Review Procedure
RAM – Reclamation Advisory Memorandum
SCS – Soil Conservation Service
SMCRA – Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87), as amended
TRM – Technical Reclamation Memorandum
USDA – United States Department of Agriculture
USDI – United States Department of the Interior
U.S. EPA – United States Environmental Protection Agency
USGS – United States Geological Survey.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 13, 1991
FILED WITH LRC: September 13, 1991 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 7:035. Exemption for coal extraction incidental to the extraction of other minerals.

RELATES TO: KRS 350.010, 350.028, 350.060, 350.151, 350.465, 30 CFR Parts 702, 730-733, 735, 917, 30 USC 1253, 1255, 1291
STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 CFR Parts 702, 730-733, 735, 917, 30 USC 1253, 1255, 1291
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate regulations pertaining to surface coal mining and reclamation operations. KRS Chapter 350 also recognizes exemptions from regulation for certain types of operations. This regulation recognizes a regulatory exemption for operations in which coal is extracted incidental to the extraction of other minerals. The regulation sets forth application requirements and procedures for obtaining approval of these exemptions, requirements for public notice and disclosure of information concerning the exemption, standards for cabinet approval of the exemption, conditions for maintaining the exemption, rights of entry and inspection to the site for which the exemption was granted, and enforcement procedures and reporting requirements applicable to the exemption.

Section 1. Definitions. (1) "Cumulative measurement period" means the period of time over which both cumulative production and cumulative revenue are measured.
(a) The beginning of the period is:
1. For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area; and
2. For mining areas where coal or other minerals were extracted prior to August 3, 1977, the operator shall select and consistently use one (1) of the following, subject to cabinet approval: the date extraction of coal or other minerals commenced at that mining area or August 3, 1977.
(b) The end of the period is (for annual reporting purposes pursuant to Section 9 of this regulation):
1. For mining areas where extraction of coal or other minerals commenced on or after the effective date of this regulation, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter; and
2. For mining areas where coal or other minerals were extracted prior to the effective date of this regulation, December 31, 1992 and each anniversary of that day thereafter.
(2) "Cumulative production" means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total shall be governed by Section 7 of this regulation.
(3) "Cumulative revenue" means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.
(4) "Mining area" means an individual excavation site or pit from which coal, other minerals, and overburden are removed.
(5) "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

Section 2. Application Requirements and Procedures. (1)(a) Any person who plans to commence or continue coal extraction after the effective date of this regulation, in reliance on the incidental mining exemption, shall file a complete application for exemption with the cabinet for each mining area.
(b) Following the effective date of this regulation, a person shall not commence coal extraction based upon the exemption until the cabinet approves the application for exemption, except as provided in subsection (5)(c) of this section.
(2) Existing operations. Any person who has commenced coal extraction at a mining area, prior to the effective date of this regulation, in reliance upon the incidental mining exemption, may continue mining operations for sixty (60) days after the effective date of this regulation. Coal extraction shall not continue after this sixty (60) day period unless that person files an administratively complete application for exemption with the cabinet. If an administratively complete application is filed within sixty (60) days, the person may continue extracting coal in reliance on the exemption beyond the sixty (60) day period until the cabinet makes an administrative decision on the application.
(3) Additional information. The cabinet shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.
(4) Public comment period. Following publication of the newspaper notice required by Section 3(9) of this regulation, the cabinet

shall provide a period of no less than thirty (30) days during which any person having an interest that is or may be adversely affected by a decision on the application may submit written comments or objections.

(5) Exemption determination.

(a) No later than ninety (90) days after filing of an administratively complete application, the cabinet shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this regulation, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(b) The determination of exemption shall be based upon information contained in the application and any other information available to the cabinet at that time.

(c) If the cabinet fails to provide an applicant with the determination specified in paragraph (a) of this subsection, an applicant who has not begun may commence coal extraction pending a determination on the application unless the cabinet issues an interim finding, together with reasons therefore, that the applicant shall not begin coal extraction.

(6) Administrative review.

(a) In accordance with the procedures established under 405 KAR 7:090, Section 5, within thirty (30) days of the notification of a determination under subsection (5) of this section, any person adversely affected by the determination may request a formal hearing to review the determination.

(b) A request for formal hearing filed under 405 KAR 7:090, Section 5 shall not suspend the effect of a determination under subsection (5) of this section.

Section 3. Contents of Application for Exemption. An application for exemption shall include at a minimum:

(1) The name and address of the applicant;

(2) A list of the minerals sought to be extracted;

(3) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;

(4) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;

(5) If coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;

(6) The basis for all annual production, revenue, and fair market value estimates;

(7) A description, including county, city if within municipal boundaries, and boundaries of the land, of sufficient certainty that the mining areas can be located and distinguished from other mining areas;

(8) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;

(9) Evidence of publication, in the newspaper of largest bona fide circulation (according to the definition in KRS 424.110 to 424.120) in the county of the mining area, of a public notice that an application for exemption has been filed with the cabinet. The public notice shall identify the persons claiming the exemption and shall contain a description of the proposed operation and its locality sufficient for interested persons to identify the operation;

(10) Representative stratigraphic cross-section(s) based on test borings or other information identifying and showing:

(a) The relative position, approximate thickness, and density of the coal and each other mineral to be extracted for commercial use or sale; and

(b) The relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;

(11) A map of appropriate scale that clearly identifies the mining area;

(12) A general description of mining and mineral processing activities for the mining area;

(13) A summary of sale commitments and agreements, if any, that the applicant has received for future delivery of other minerals to be extracted from the mining area, or a description of potential markets for the other minerals;

(14) If the other minerals are to be commercially used by the applicant, a description specifying the use;

(15) For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information:

(a) Any relevant documents the operator has received from the cabinet documenting the operation's exemption from the requirements of the SMCRA, KRS Chapter 350, and KAR Title 405;

(b) The cumulative production of the coal and other minerals from the mining area; and

(c) Estimated tonnages of stockpiled coal and other minerals; and

(16) Any other information pertinent to the qualification of the operation as exempt.

Section 4. Public Availability of Information. (1) Except as provided in subsection (2) of this section, all information submitted to the cabinet under this regulation shall be made immediately available for public inspection and copying at the department's regional office with jurisdiction over coal mining in the locality of the subject exempt operation, until at least three (3) years after expiration of the period during which the subject mining area is active.

(2) The cabinet may keep information submitted to the cabinet under this regulation confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and if the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this regulation.

(3) Information requested to be held as confidential under subsection (2) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

Section 5. Requirements for Exemption. (1) Activities are exempt from the requirements of SMCRA, KRS Chapter 350, and KAR Title 405 (excluding this regulation) if all of the following are satisfied:

(a) The cumulative production of coal

extracted from the mining area does not exceed sixteen and two-thirds (16 2/3) percent of the total cumulative production of coal and other minerals removed for purposes of bona fide sale or reasonable commercial use, determined annually.

(b) The coal is produced from one (1) or more seams lying above the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use, or from a seam immediately below this deepest stratum.

(c) The cumulative revenue derived from the coal extracted from the mining area does not exceed fifty (50) percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use, determined annually. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

(2) Persons that are seeking or have obtained an exemption under this regulation from the requirements of SMCRA, KRS Chapter 350, and 405 KAR Chapters 7 through 24 (excluding this regulation) shall comply with the following:

(a) Each other mineral upon which an exemption under this regulation is based shall be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve (12) months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals shall be sufficient to demonstrate this standard.

(b) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction shall be made for legitimate business purposes.

Section 6. Conditions of Exemption and Right of Inspection and Entry. (1) A person conducting activities covered by this regulation shall:

(a) Maintain on-site, or at other locations available to authorized representatives of the cabinet and the Secretary of the U.S. Department of the Interior, information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the cabinet;

(b) Notify the cabinet upon completion of the mining operations or permanent cessation of all coal extraction activities; and

(c) Conduct operations in accordance with the approved application or, if authorized to extract coal under Section 2(2) or (5)(c) of this regulation prior to submittal or approval of an exemption application, in accordance with the standards of this regulation.

(2) Authorized representatives of the cabinet and the Secretary of the U.S. Department of the Interior shall have the right to conduct inspections of operations claiming exemption under this regulation.

(3) Each authorized representative of the cabinet and the Secretary of the U.S. Department of the Interior conducting an inspection under this regulation shall:

(a) Have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

(b) At reasonable times and without delay, have access to and copy any records relevant to the exemption; and

(c) Have a right to gather physical and photographic evidence to document conditions, practices, or violations at a site.

(4) No search warrant shall be required with respect to any activity under subsections (2) and (3) of this section, except that a search warrant may be required for entry into a building.

Section 7. Stockpiling of Minerals. (1) Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity, or use:

(a) Up to an amount equaling a twelve (12) month supply of the coal required for future sale, transfer, or use as calculated based upon the average annual sales, transfer, and use from the mining area over the two (2) preceding years; or

(b) For a mining area where coal has been extracted for a period of less than two (2) years, up to an amount that would represent a twelve (12) month supply of the coal required for future sales, transfer, or use as calculated based on the average amount of coal sold, transferred, or used each month.

(2) Other minerals.

(a) The cabinet shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this regulation if the operator fails to maintain adequate and verifiable records of the mining area of origin or the disposition of stockpiles, or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(b) The cabinet shall only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this regulation if:

1. The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

2. Except as provided in paragraph (c) of this subsection, the stockpiled other minerals do not exceed a twelve (12) month supply of the mineral required for future sales as approved by the cabinet on the basis of the exemption application.

(c) The cabinet may allow an operator to utilize tonnages of stockpiled other minerals beyond the twelve (12) month limit established in paragraph (b) of this subsection if the operator can demonstrate to the cabinet's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

(d) The cabinet may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by paragraphs (b) and (c) of this subsection based on additional information available to the cabinet.

Section 8. Revocation and Enforcement. (1) Cabinet responsibility. The cabinet shall conduct an annual compliance review of the mining area, utilizing:

(a) The annual report submitted pursuant to Section 9 of this regulation;

(b) An on-site inspection; and

(c) Any other information available to the cabinet.

(2) If the cabinet has reason to believe that a specific mining area was not exempt under the provisions of this regulation at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the cabinet shall notify the operator that the exemption may be revoked and the reason(s) therefor[e]. The exemption shall be revoked unless the operator demonstrates to the cabinet within thirty (30) days that the mining area in question **did meet and will continue to** [does] meet the criteria for exemption.

(3)(a) If the cabinet finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the cabinet shall revoke the exemption and immediately notify the operator and interveners. If a decision is made not to revoke an exemption, the cabinet shall immediately notify the operator and interveners.

(b) In accordance with the procedures established under 405 KAR 7:090, Section 5, within thirty (30) days of the notification of a decision whether to revoke an exemption, any person adversely affected by the decision may request a formal hearing to review the decision.

(c) A request for formal hearing filed under 405 KAR 7:090, Section 5 shall not suspend the effect of a decision whether to revoke an exemption.

(4) Direct enforcement.

(a) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 that occurred prior to the revocation of the exemption.

(b) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or ought to know that the activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of KRS Chapter 350 and 405 KAR Chapters 7 through 24 that occur during the period of the activities.

(c) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained, and shall comply with the reclamation standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24 with regard to conditions, areas, and activities existing at the time of revocation or denial.

Section 9. Reporting Requirements. (1)(a) Following approval by the cabinet of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the cabinet containing the information specified in subsection (2) of this section.

(b) The report shall be filed no later than thirty (30) days after the end of the twelve (12) month period as determined in accordance with the definition of "cumulative measurement period" in Section 1(1) of this regulation.

(c) The information in the report shall cover:

1. Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding twelve (12) month period; and

2. The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

(2) For each period and mining area covered by the report, the report shall specify:

(a) The number of tons of extracted coal sold in bona fide sales and the total revenue derived from these sales;

(b) The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of this coal;

(c) The number of tons of coal stockpiled;

(d) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from these sales;

(e) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of these minerals; and

(f) The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 13, 1991
FILED WITH LRC: September 13, 1991 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 8:010. General provisions for permits.

RELATES TO: KRS 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 27 CFR 55.206, 55.218, 55.219, 55.220, 30 CFR 77.1301(c), 30 CFR Parts 730-733, 735, 773-775, 777, 778.17, 917, 30 USC 1253, 1255-1261, 1263-1266, 1272

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 30 CFR Parts 730-733, 735, 773-775, 777, 778.17, 917, 30 USC 1253, 1255-1261, 1263-1266, 1272

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface coal mining and reclamation operations. This regulation provides for permits to conduct these operations. The regulation specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits and renewals, transfers, assignments, and sales of permit rights.

Section 1. Applicability. Excluding coal exploration operations, this regulation shall apply to all applications, all actions regarding permits, and all surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. No person shall engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit under this chapter for the area to be affected by the operations.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations shall file a complete and accurate application for a permanent program permit which shall comply fully with all applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and shall not begin the operations until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit under Section 21 of this regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may, at any time, apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted under prior permanent program permits. An application for the transfer, sale, or assignment of rights granted under a permit may be submitted at any time. The actual transfer, sale, or assignment of permit rights, however, may not take place until written permission has been granted by the cabinet.

(e) Amendment of permanent program permits. A permittee may, at any time, apply for an amendment to a permit under Section 23 of this regulation, but shall not begin surface coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. Any person engaging in surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet, and the applicable requirements of KRS Chapter 350 and 405 KAR.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA; and

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 USC 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 USC 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.); and the Bald Eagle Protection Act, as amended (16 USC 668a), as required by 30 CFR 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as set forth in Section 8(6) and (7) of this regulation and, if necessary, by any other measures the cabinet may deem appropriate.

Section 4. Preliminary Requirements. A person desiring a permit shall submit to the cabinet a preliminary application of the form and content prescribed by the cabinet. The preliminary application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area and adjacent areas; and the areas of land to be affected, including, but not limited to, locations of the coal seam[(s)] or seams to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the cabinet. Personnel of the cabinet shall conduct, within fifteen (15) working days after the filing of the preliminary application, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form and content required by the cabinet, including a copy to be filed for public inspection under Section 8(8) of this regulation.

(b) The application shall be on forms provided by the cabinet, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the cabinet with attachments, plans, maps, certifications, drawings, calculations or other documentation or relevant information as the cabinet may require.

(c) The following forms, which are required to be submitted by applicants, are hereby incorporated by reference:

1. Preliminary Application, SMP-03, revised August 3, 1984;

2. Application for a Comprehensive Mining and Reclamation Permit, SMP-01-R, November, 1985;

3. Application for Mining Permit Revision, SMP-02-REV, December, 1987;

4. Application for Renewal of a Comprehensive Mining and Reclamation Permit, SMP-01-N1, September, 1987;

5. Application for Coal Marketing Reclamation Deferment, SMP-09, October, 1984;

6. Notification of Operator Change, SMP-11, August, 1990;

7. Notification of Change in Corporate Permittee and/or Corporate Name, SMP-10, December, 1987; and

8. Application for Transfer, Assignment or Sale of Permit Rights, SMP-08, October, 1982.

(d) These forms may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(e) [(c)] The application shall be complete

with respect to all information required by 405 KAR and include, at a minimum: for surface mining activities, all the applicable information required under 405 KAR 8:030; for underground mining activities, all the information required under 405 KAR 8:040; and, for special types of surface coal mining and reclamation operations, all the information required under 405 KAR 8:050. No application shall be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of all technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations which collected and analyzed the data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency who provided information which has been made a part of the application regarding land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either himself or some other person who will serve as agent for service of notices and orders. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may designate persons authorized by the applicant to submit modifications to the application to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If any of the information marked on the preliminary map required under Section 4 of this regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this regulation.

(b) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map. However, if [when] the cabinet determines that a map scale larger than 400 feet to the inch is required to adequately show mine site details, a map of larger scale shall be provided by the applicant. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) If [Where] a map or drawing is required to be certified by a qualified registered professional engineer, the map or drawing shall bear the seal and signature of the engineer as required by KRS Chapter 322, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with applications shall be prepared by or under the direction of a qualified registered professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS Chapter 322 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the cabinet. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering and enforcing the permit.

(2) The applicant shall submit an application fee of $375 for each application, plus an additional seventy-five (75) for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. However, no acreage fees shall be required for surface areas overlying underground or auger workings which will not be affected by surface operations and facilities.

(3) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. No permit application shall be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations

are to be located.

(2)(a) The first advertisement shall be published on or after the date the application is submitted to the cabinet. The applicant may elect to begin publication on or after the date the applicant receives the notification from the cabinet under Section 13(2) of this regulation that the application has been deemed administratively complete and ready for technical review. The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(b) The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application may be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, satisfactory to the cabinet, which may consist of an affidavit from the publishing newspaper certifying the dates, place and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the cabinet.

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant; and

(b) A map or description which shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey seven and one-half (7 1/2) minute quadrangle map(s) which contains the area shown or described; and

4. If a map is used, show the north arrow and map scale.

(c) The location where a copy of the application is available for public inspection under subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted under Sections 9, 10, and 11 of this regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except <u>when</u> [where] public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6)[(a) and (b)]; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) If the application includes a request for an experimental practice under 405 KAR 7:060, a statement indicating that an experimental practice is requested and identifying the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted under Section 9 of this regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, planning agencies and sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(b) All federal and Kentucky governmental agencies which have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are a part of the permit coordination process required by Section 3 of this regulation; and

(c) Those agencies with an interest in the particular proposed operation including, but not limited to:

1. The USDA Soil Conservation Service State Conservationist;

2. The local U.S. Army Corps of Engineers district engineer;

3. The National Park Service;

4. Kentucky and federal fish and wildlife agencies; and

5. The state historic preservation officer.

(8) In accordance with Section 12 of this regulation, the cabinet shall, upon receipt of the application, make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed, and shall provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided under Section 8(6) and (7) of this regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet in the manner prescribed by the cabinet, and shall be submitted within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state or local government agency or authority to be notified under Section 8 of this regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the requester at the conference;

(b) State whether the requester desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant under Section 8(1) of this regulation.

(2) Except as provided in subsection (3) of this section, if a permit conference has been requested in accordance with subsection (1) of this section, the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section. The conference shall be conducted according to the following:

(a) If requested under subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a conference requester in a reasonable time prior to the conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:090 shall not apply to the conduct of the conference. The conference shall be conducted by a representative of the cabinet, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(3) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference need not be held.

(4) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required under 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability.

(a) The cabinet shall make an application for a permit, [major or minor] revision, amendment, or renewal of a <u>or an application for transfer, assignment, or sale of permit rights</u> permit available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure under subsections (2) and (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office when the changes are submitted to the Division of Permits.

(2) Information pertaining to coal seams, test borings, core samples, or soil samples in applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected.

(3) Confidentiality. The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information. Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application. <u>If</u> [Where] a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:090. Confidential information shall be limited to the following:

(a) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal which are potentially

toxic in the environment;

(b) Information on the nature and location of archaeological resources on public land and Indian land as required under the Archaeological Resources Protection Act of 1979.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application. If the application is determined to be incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies which render the application incomplete. The applicant may submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness. If, after ten (10) working days, the cabinet determines that the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b) A determination by the cabinet that the application is administratively complete means that the application contains the major elements required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 which are necessary to allow meaningful review of the application by the cabinet. An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination that an application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods set forth in Section 16 of this regulation, the cabinet shall either:

(a) Notify the applicant of the cabinet's decision to issue or deny the application; or

(b) Notify the applicant in writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.

(a) Based on available information concerning failure-to-abate cessation orders issued by OSM, Kentucky, or any other state; unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state; delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, or any other state's laws or regulations under SMCRA; bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected; delinquent abandoned mine reclamation fees; and unabated violations of federal, Kentucky, and any other state's laws, rules and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the cabinet shall not issue the permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, or any other law, rule, or regulation referred to in this subsection. In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and regulations under SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except <u>when</u> [where] evidence to the contrary is set forth in the permit application, or <u>when</u> [where] the violation is for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:

1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

2. Establish for the cabinet that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within thirty (30) days of the judicial action submit proof required under subparagraph 1 of this paragraph.

(b) Any permit that is issued on the basis of proof submitted under paragraph (a)1 of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (a)2 of this subsection, shall be conditionally issued.

(c) If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and regulations adopted pursuant thereto of such nature and duration, and with

resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or regulations, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:090, Section 5(1)(a).

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4).

Section 14. Criteria for Application Approval or Denial. No application for a permit, revision (as applicable), or amendment of a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished under the mining and reclamation plan contained in the application.

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5).

(5)(a) The proposed operations will not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that the cabinet has determined that no additional protection measures are necessary.

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required under 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2).

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this regulation.

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870, or has entered into a payment schedule approved by OSM. <u>If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule.</u>

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of such a nature and duration and with such resulting "irreparable damage to the environment" (as defined in 405 KAR 7:020) as to indicate an intent not to comply with SMCRA or KRS Chapter 350.

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18.

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use.

(12) The applicant can reasonably be expected to submit the performance bond or other equivalent guarantee required under 405 KAR Chapter 10 prior to the issuance of the permit.

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3.

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining.

(15) The cabinet has made all specific approvals required under 405 KAR Chapters 16 through 20.

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 USC 1531 et seq.).

(17) The applicant has not forfeited any bond under KRS Chapter 350. When the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land.

(18) The applicant has not had a permit revoked, suspended or terminated under KRS Chapter 350. If the applicant has had a permit revoked, suspended or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof satisfactory to the cabinet that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her.

(19) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property.

(20) The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures as approved by the cabinet have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as set forth under 405 KAR 24:040.

(21) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7 or 405 KAR 18:190, Section 5, the applicant has demonstrated, to the satisfaction of the cabinet, that the site of the operation will be a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. No application for a permit, revision, or amendment which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information set forth in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as provided for in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(a), (b), (d), and (e) of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as provided in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(c) of this regulation of a major revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application submitted under Section 2(2)(c) of this regulation for a minor revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within fifteen (15) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the fifteen (15) working-day period available to the cabinet.

(b) If the notice, hearing and conference procedures mandated by KRS Chapter 350 and 405 KAR prevent a decision from being made within the time periods specified in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county, and the chief executive officer of any municipality, in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The field office director of the Office of Surface Mining Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet decides to approve the application, it shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining

and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations when construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet under this subsection shall be specifically set forth in the permit and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this regulation; Section 3 of 405 KAR 7:060; Sections 4, 6, and 7 of 405 KAR 8:050; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall be deemed to constitute knowledge and acceptance of the conditions set forth in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter whether or not the conditions have been set forth in the permit.

(1) General.

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24; and

(b) Except to the extent that the cabinet otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the approved application; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted under 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit; and which are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection when the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including, but not limited to:

1. Any accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and which prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

2. Utilizing any methods specified in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer, or use, in the manner required by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted under the permit or after an order for cessation and immediate compliance is issued under 405 KAR 12:020, Section 3 for operations conducted under the permit, except <u>when</u> [where] a stay of the order is granted and remains in effect, the permittee shall either submit to the cabinet the following information, current to the date the order was issued, or notify the cabinet in writing that there has been no change since the immediately preceding submittal of the information:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee under 405 KAR 8:030, Section 2(3) or 405 KAR 8:040, Section 2(3); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3) or 405 KAR 8:040, Section 2(3).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year

terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) After the review required by subsection (1) of this section, or at any time, the cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:090.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations described in the existing application and approved under the current permit.

(b) If [When] a revision is required by an order issued under Section 19 of this regulation;

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required under 405 KAR Chapters 7 through 24.

(2) Major revision.

(a) Except as provided in subsections (3)(f) and (6) of this section, a revision shall be deemed [is] a major revision if the cabinet determines that the proposed change is of such scope and nature that [the cabinet determines that] public notice is necessary to allow participation in the cabinet's decision by persons who have an interest which may be adversely affected by the proposed change. Major revisions shall include, but shall not be limited to:

1. Changes in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. Variances to approximate original contour requirements;

4. Construction or relocation of roads, where the construction or relocation could adversely affect the interests of persons other than the surface owner;

5. Changes which may adversely affect significant fish and wildlife habitats or endangered species;

6. Proposed experimental practices;

7. Changes which may cause major impacts on the hydrologic balance;

8. Incidental boundary revisions that affect new watersheds; and

9. Incidental boundary revisions that include diversions of perennial streams. [;]

[10. Incidental boundary revisions that include new areas from which coal will be removed, except these revisions shall be limited to ten (10) percent of the permit area acreage or five (5) acres, whichever is less.]

(b) Major revisions shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this regulation; and shall be submitted on forms prescribed by the cabinet. In addition to the requirements of Section 8(5) of this regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) All revisions which are not determined by the cabinet under subsection (2) of this section to be major revisions, or which are not operator change revisions under subsection (6) of this section, shall be deemed [are] minor revisions. Minor revisions shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this regulation, except that minor field revisions described in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this regulation, and the time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of application submittal. Minor revisions shall be submitted on forms prescribed by the cabinet.

(b) If the cabinet determines that a proposed minor revision is actually a major revision during the administrative completeness determination under Section 13 of this regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons, if any, that the cabinet determines could have an interest that may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) The following minor revisions shall be deemed minor field revisions which may be reviewed and processed in accordance with this section by the appropriate regional office of the department. However, if the number of persons that potentially could have an interest that may be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine that the proposed revision is a major revision and it shall not be processed under this paragraph.

1. Proposals for minor relocation of underground mine entries if [where]:

a. There are no structures or "renewable resource lands" (as that term is defined in paragraph (b) of the definition provided in 405 KAR 7:020, Section 1) overlying the area;

b. There is no proposed change to the permit boundary; and

c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

2. Proposals for retention of concrete platforms and small buildings if [where]:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure.

3. Proposals to leave roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine

waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining under 405 KAR 24:040, Section 2, regardless of whether a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator has no responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.

4. Proposals to increase the diameter of culverts used as road crossdrains, not including culverts used for stream crossings, if [provided that] the proposed culvert is the same type of pipe as the previously approved culvert.

5. Proposals to install additional culverts used as road crossdrains (not including culverts used for stream crossings), if [provided that] the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain.

6. Proposals for minor relocation of on-bench sediment control structures (dugouts only) in order to locate the structures at low spots on the same bench on which they were initially proposed, if [where]:

a. The drainage area to the structure will remain the same as the original design;

b. The proposed location will not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary.

7. Proposals to retain diversions of overland flow (not including stream diversions) as permanent facilities if [where]:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversions; and

b. The diversions have previously been designed to the standards for permanent diversions.

8. Proposals for relocation of topsoil storage areas if [where]:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

9. Proposals to substitute plant species if [where]:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of the original species with respect to the previously approved: revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted.

10. Proposals to utilize hydroseeding for trees instead of planting trees or tree seedlings if [where]:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. No change in tree species is involved unless concurrently approved under subparagraph 9 of this paragraph.

11. Proposals to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed.

12. Proposals to retain small depressions in the reclaimed area.

13. Proposals required by the cabinet to increase frequency of air blast monitoring.

14. Proposals required by the cabinet to increase frequency of air pollution monitoring.

15. Proposals to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls.

16. Proposals to add a portable coal crusher if [where]:

a. The crusher and associated conveying equipment are a completely portable, trailer mounted unit;

b. The equipment will be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation will not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment will always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds.

17. Proposals to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated.

18. Proposals to relocate an explosive storage area within the existing permit area in accordance with 27 CFR 55.206, 55.218, 55.219, 55.220, and 30 CFR 77.1301(c).

19. Approval for minor relocation of support facilities such as conveyors, hoppers, and coal stockpiles if [where]:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

20. Proposals for modifications of shared facilities if [where] that modification has already been approved in a revision for one of the permittees by the Division of Permits and no additional performance bond was required for the initial revision.

21. Proposals to add a hopper to a permitted area if [where]:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond.

22. Proposals to change the brush disposal

plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills.

[23. Proposals to cut berms, provided that the cuts will not cause bypassing or short circuiting of on-bench structures or other sedimentation control structures.]

23. [24.] Proposals to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 through 24.

24. [25.] Proposals for incidental boundary revisions for minor off-permit disturbances if [where]:

a. The total acreage of the minor off-permit disturbances is no more than one (1) acre combined per proposal;

b. The cumulative acreage limitation in subsection (5) of this section [established in the definition of "incidental boundary revision" in 405 KAR 7:020] is not exceeded;

c. The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish and wildlife, areas that may contain threatened or endangered species, or areas designated unsuitable for mining under 405 KAR Chapter 24;

d. The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

e. There are no structures such as excess spoil disposal fills, coal mine waste disposal fills or impoundments, or water impoundments involved;

f. The surface owner of the area to be permitted is a surface owner of disturbed area under the existing permit; and

g. An additional performance bond in the amount of $5000 has been filed by the permittee.

h. If deemed necessary for any reason, the regional administrator may decline to review and process any proposal to permit an off-permit disturbance as a minor field revision and instead require that an application be submitted to the Division of Permits.

25. [26.] Except as provided below, proposals to remove sedimentation ponds previously approved as permanent impoundments if [where] the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. However, proposals to remove sedimentation ponds [in the following situations] shall not be processed as minor field revisions if:

a. [Where] The structure has a hazard classification of B or C;

b. [Where] The impoundment is a developed water resource land use;

c. [Where] The removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. [Where] The impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland where no other nearby source of water is available to the livestock); or

e. [Where] The impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values.

26. [27.] Proposals to approve exemptions from the requirement to pass drainage through sedimentation ponds for disturbed areas that, due to unexpected field conditions, will not drain to an approved sedimentation pond if [where]:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains a MRP map certified by a registered professional engineer showing the location of the disturbed area and the drainage area clearly.

(e) Proposed minor revisions which only seek to change the engineering design of impoundments and diversions of overland flow where no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this regulation; however, the application shall be processed in, and written notice that the application has been determined to be subject to this paragraph and is being forwarded for technical review shall be provided to the applicant within ten (10) working days. The time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of this notice.

(f) Incidental boundary revisions shall be deemed minor revisions if they:

1. Do not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;

2. Are contiguous to the current permit area;

3. Are within the same watershed as the current permit area;

4. Are required for an orderly continuation of the mining operation;

5. Involve mining of the same coal seam or seams as in the current permit;

6. Involve only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;

7. Do not involve properties on which mining is prohibited under KRS 350.085 and 405 KAR 24:040, unless appropriate waivers have been obtained, or which have been designated as unsuitable for mining under 405 KAR 24:030, or any properties eligible for listing on the National Register of Historic Places;

8. Do not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;

9. Do not constitute a change in the current

method of mining; and

10. Will be reclaimed in conformity with the current reclamation plan.

(4) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved under this section.

(5) Size limitations for incidental boundary revisions.

(a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area, and shall not exceed twenty (20) acres.

(b) For underground mining activities and auger mining, incidental boundary revisions for surface operations and incidental boundary revisions for underground workings shall be determined separately.

1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area, and shall not exceed twenty (20) acres.

2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area, and shall not exceed twenty (20) acres.

(c) Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.

(6) Operator change revisions.

(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment or sale of permit rights.

[(b) A permittee shall not allow an operator to conduct operations on the permit area unless the operator has been approved in the permit.]

(b) [(c)] A permittee proposing to change the operator approved in the permit shall submit a complete and accurate application for approval of the change. The application shall be on forms provided by the cabinet. The required forms are incorporated by reference at 405 KAR 8:030, Section 1 and 405 KAR 8:040, Section 1.

(c) [(d)] The application shall include, but shall not be limited to, the information set forth in this paragraph:

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 2(1) through (4) and (8) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(11) through (13) of those regulations shall also apply; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 3(1) through (3) of 405 KAR 8:030 and 405 KAR 8:040, except information under Section 3(3) pertaining to abated violations shall not be required, and Section 3(5) of those regulations shall also apply.

(d) [(e)] The application shall be verified under oath by the permittee and the proposed operator in the manner required under Section 7 of this regulation.

(e) [(f)] On or after the date the application has been submitted to the cabinet, the application shall be advertised at least once in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located. The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the cabinet. The advertisement shall include, at a minimum, the permit number, the geographic location of the permit area, the name and business address of the permittee, a statement that the permittee proposes to change the operator approved in the permit, the names and business addresses of the currently approved operator and the proposed operator, the cabinet address to which written comments may be sent under paragraph (g) of this subsection and the time available for submission of the comments. A copy of the advertisement and proof of publication acceptable to the cabinet shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication.

(f) [(g)] A person whose interests are or may be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement.

(g) [(h)] The cabinet may approve the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator under the criteria in Section 13(4) of this regulation; and

2. Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(i) The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its final decision.

(7) [(5)] Fees. Applications for [major and minor] revisions shall include a basic fee of $375, except that minor field revisions and operator change revisions shall have no basic fee. If the revision application proposes incidental boundary revisions which would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application, except that no acreage fee shall be required for surface areas overlying underground workings which will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to this chapter shall carry with it the right of successive renewal, within the approved boundaries of the existing

permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. Applications for renewal of permits shall be submitted within the time prescribed by Section 2(2)(b) of this regulation. Renewal applications shall be in a form and with content as required by the cabinet and in accordance with this section, and shall include at a minimum:

(a) The name and address of the permittee, the term of the renewal requested and the permit number;

(b) A copy of the proposed newspaper notice and proof of publication of same under Section 8 of this regulation;

(c) Evidence that liability insurance under 405 KAR 10:030, Section 4, will be provided by the applicant for the proposed period of renewal;

(d) A renewal fee of $375;

(e) Evidence that the performance bond will continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional revised or updated information which may be required by the cabinet.

(3) Applications for renewal shall be subject to the requirements of Sections 8 through 11, 13 and 16 of this regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 17 of this regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations will continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, to any persons who were parties to any informal conference held on the permit renewal and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest which is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review set forth in Section 24 of this regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to 405 KAR shall be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application, on forms provided by the cabinet, for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; and

4. A processing fee of $375.

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent under subsection (3) of this section.

(c) Obtain sufficient performance bond coverage which will ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria specified in Section 14 of this regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which will ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred, and which is at least equivalent to the bond of the existing permittee;

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall

notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice described in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor. All rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted under a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. However, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet may release the prior permittee from bond liability on the permit area if the successor in interest has filed a performance bond satisfactory to the cabinet, has received written approval of the cabinet for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under 405 KAR for reclamation of the areas affected by all prior permittees.

Section 23. Amendments. Except for incidental boundary revisions, no extensions to an area covered by a permit shall be approved under Section 20 (permit revisions) or Section 21 (permit renewals) of this regulation. All such extensions shall be made by application for another permit. However, if the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet may so amend the original permit, but [provided that] the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits under 405 KAR.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:090.

(2) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall:

(a) Have the right to judicial review as provided in KRS 224.085 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) Have the right to an action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits specified in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Under the violation review criteria of the cabinet at the time the permit was issued:

1. The cabinet should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) If [Where] the permittee was linked to the violation, penalty, or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or if [where] the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, under subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit under subsection (4) of this section.

(4) Rescission procedures. If the cabinet, under subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission which

includes the reasons for the finding of the cabinet under subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically will become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that:

1. The finding of the cabinet under subsection (2) of this section was erroneous;

2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

3. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee;

(b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and

(c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing under 405 KAR 7:090.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 13, 1991
FILED WITH LRC: September 13, 1991 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465, 30 CFR Parts 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 30 USC 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.465, 30 CFR Parts 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 30 USC 1253, 1255, 1257, 1258, 1267

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) This regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This regulation sets forth information required to be contained in applications for permits to conduct surface mining activities, including:

(a) Legal, financial, compliance, and related information;

(b) Environmental resources information; and

(c) Mining and reclamation plan information.

[(4)(a) The following forms, which are required to be submitted by applicants, are hereby incorporated by reference:]

[1. Preliminary Application, SMP-03, revised August 3, 1984;]

[2. Application for a Comprehensive Mining and Reclamation Permit, SMP-01-R, November, 1985;]

[3. Application for Mining Permit Revision, SMP-02-REV, December, 1987;]

[4. Application for Renewal of a Comprehensive Mining and Reclamation Permit, SMP-01-N1, September, 1987;]

[5. Application for Coal Marketing Reclamation Deferment, SMP-09, October, 1984;]

[6. Notification of Operator Change, SMP-11, August, 1990;]

[7. Notification of Change in Corporate Permittee and/or Corporate Name, SMP-10, December, 1987; and]

[8. Application for Transfer, Assignment or Sale of Permit Rights, SMP-08, October, 1982.]

[(b) The forms incorporated by reference in paragraph (a) of this subsection may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security Number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security Number and employer identification number of the:

(a) Applicant;

(b) Applicant's resident agent; and

(c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020, as applicable:

(a) The person's name, address, Social Security Number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the

person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns and controls" in 405 KAR 7:020, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the property to be mined (see the definition of "property to be mined" in 405 KAR 7:020);

(b) The holders of record of any leasehold interest in the property to be mined; and

(c) Any purchaser of record, under a real estate contract, of the property to be mined.

[(6) A statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application and by any person identified in subsection (3)(c) of this section, and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.]

(6) [(7)] The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) [(8)] The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) [(9)] Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) [(10)] A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) [(11)] After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. The cabinet may suspend permits pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

[(12) The applicant shall submit the information required by this section and Section 3 of this regulation on the appropriate forms, incorporated by reference in Section 1(4) of this regulation.]

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or [,] any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture as described in subsection (1) of this section has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For

each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator as defined in KRS 350.450(4)(c[d]), the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) If [Where] the private mineral estate to be mined has been severed from the private surface estate, the application shall contain: [also provide for lands within the permit area, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.]

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods; or

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, a copy of the original instrument of serverance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under 405 KAR Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct surface mining activities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include descriptions of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this regulation. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sights within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. Where aquifers which are located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the area and vertical extent of aquifers which may be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required

design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers.

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Ground Water Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1) of this regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or

other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. (1) The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used for domestic, agricultural, industrial, or other beneficial use.

(2) If contamination, diminution, or interruption of a surface or groundwater source may result, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) General. Each application shall include fish and wildlife resources information for the permit area and the adjacent area. This information shall be in the scope and detail required by the cabinet, and shall be sufficient to design the fish and wildlife protection and enhancement plan and to demonstrate compliance with SMCRA; KRS Chapter 350; and 405 KAR Chapters 7 through 24.

(2) The information, at a minimum, shall include:

(a)1. Identification of listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

2. Identification and description of habitats of unusually high value for fish and wildlife such as important streams classified under 405 KAR 16:180, Section 2(1)(a)3, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, and reproduction and wintering areas. Information obtained pursuant to paragraphs (b) and (c) of this subsection and, as appropriate, from pertinent literature and other sources shall be used to compile this information;

3. Identification of other species or habitats identified through agency consultation as requiring special protection under state or federal law; and

4. The delineation of the following on the environmental resources map: the permit area; any baseline biological and hydrological stations; ephermeral, intermittent, and perennial streams, with their names; outstanding resource waters listed pursuant to 401 KAR 5:026 or 401 KAR 5:031; streams listed in Appendix G of TRM #20; stream buffer zones; wetlands; lakes and impoundments; nature preserves dedicated pursuant to KRS 146.410 et seq.; publicly-owned

wildlife management areas; natural areas owned or managed by state universities; and any other distinctive features.

(b) A terrestrial habitat analysis of the permit area and contiguous area. This habitat analysis shall:

1. Address all terrestrial habitats;

2. Address canopy, understory, and ground cover plant species with their relative abundances or stratum-rank values;

3. Describe the capacity of the existing terrestrial habitats to support wildlife; and

4. Include a delineation of all terrestrial habitats on the vegetation map required under Section 19 of this regulation or on another appropriate map.

(c)1. At least one (1) set of current (as set forth in TRM #20) baseline aquatic resources information collected from at least three (3) representative locations if:

a. The permit area or adjacent area contains, or could reasonably be expected to contain, streams with listed or proposed endangered or threatened aquatic species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those aquatic species or habitats protected by similar state statutes;

b. The permit area or adjacent area includes an important stream classified under 405 KAR 16:180, Section 2(1)(a)3; or

c. A stream buffer zone variance is requested under 405 KAR 16:060, Section 11.

2. This information shall include:

a. Biological information on the fish and macroinvertebrate communities, including taxa richness, relative abundance, biotic integrity, and the prevalence of tolerant or intolerant species;

b. The results of water quality analyses, from locations where biological data were collected, for the parameters specified in Section 15 of this regulation and for dissolved oxygen; and

c. A description of the physical characteristics of the stream sections where biological data were collected.

(3) Other data requirements.

(a)1. The information required by subsection (2) of this section shall be obtained in accordance with TRM #20, "Methodologies for the Evaluation, Protection, and Enhancement of Fish and Wildlife Resources for Coal Mining and Reclamation Operations", Kentucky Department for Fish and Wildlife Resources and Kentucky Department for Surface Mining Reclamation and Enforcement, **September** 13 [June 28], 1991. This document is hereby incorporated by reference. This document may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

2. Wetland evaluations shall be conducted in accordance with the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands", (FICWD, 1989). This manual provides several methods for differentiating between wetland and nonwetland areas; however, an intermediate or comprehensive method shall be followed for wetland determinations under this regulation. This document is hereby incorporated by reference. This document may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. This document may be reviewed or copied, subject to copyright law, at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(b) As necessary, the cabinet shall consult with appropriate state and federal agencies with responsibilities for fish and wildlife, and may require additional information from the applicant to demonstrate compliance with SMCRA; KRS Chapter 350; and 405 KAR Chapters 7 through 24. Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review within ten (10) days of receipt of the request from the service.

(c) The baseline fish and wildlife resources information shall be collected by or under the direction of qualified professionals **and their credentials (education and experience) shall be included in the permit application**. Recommended minimum qualifications are outlined in TRM #20.

(d) Any aquatic biological specimens collected during the baseline study shall be labeled, preserved, maintained, and made available for inspection until the permit is issued or denied, or the application is permanently withdrawn, or until completion of any hearing on the application, whichever is later.

(e) Existing field data may be used instead of conducting field investigations, if the existing data are current as set forth in TRM #20, specific to the permit area and adjacent area, and sufficient to demonstrate compliance with this section.

(4) This section shall apply to applications for permits, amendments, and revisions submitted to the cabinet on or after nine (9) months following the effective date of these amendments, and shall apply to those applications for revisions and amendments in accordance with TRM #20. [Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring a study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.]

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the

lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey.

(a) If [When] a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If [When] a soil survey for lands within the proposed permit area contains no soil map units which have been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;
(l) Other relevant information required by the cabinet.
(2) The application shall include drawings, cross sections, and maps showing:
(a) Elevations and locations of test borings and core samplings;
(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for this [such] data gathering during the term of the permit;
(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;
(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;
(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;
(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;
(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;
(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;
(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;
(j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;
(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:
1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.
2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.
3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.
(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this regulation, and 405 KAR 8:010, Section 5(6).
(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.
(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:
(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and
(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facilities is to be approved as necessary for postmining land use as specified in 405 KAR 16:210):
1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water and air pollution control facilities.
(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:
(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.
(b) The following shall be shown for the proposed permit area:
1. Buildings, utility corridors and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal waste, and noncoal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
7. Each air pollution collection and control facility;

8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;

10. Each explosive storage and handling facility; and

11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150, and 405 KAR 16:190, Section 3, and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC 7401 et seq.), the Clean Water Act (33 USC 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20 or, if the structure does not meet those performance standards, a showing whether the structure meets the performance standards of the interim performance standards of 405 KAR Chapter 1.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the

cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are required, the application shall include the following:

(a) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts which shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220.

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by surface mining activities.

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as

required by 405 KAR 16:060, Section 2;
4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;
5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 5; and
6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.
(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.
(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.
(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.
(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.
(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.
(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:
1. Peak discharge rates, emphasizing the potential for flooding;
2. Settleable solids at peak discharge;
3. Low-flow discharge rates, emphasizing the potential for water supply diminution;
4. Suspended solids at low flow;
5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.
(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:
1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.
2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.
(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.
(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.
(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:
1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and
2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.
(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each plan shall:
(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;
(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;
(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 16; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3) of this regulation;
(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;
(e) Include any geotechnical investigation, design, and construction requirements for the structure;
(f) Describe the operation and maintenance requirements for each structure; and
(g) Describe the timetable and plans to remove each structure, if appropriate.
(2) Sedimentation ponds.
(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 16:100.
(b) Each plan shall, at a minimum, comply with the requirements of the MSHA, 30 CFR 77.216-1

and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan shall comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is to be twenty (20) feet or higher or is to impound more than twenty (20) acre-feet, each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available and in compliance with 405 KAR 16:180, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20(2) of this regulation;

(b) Include protective measures, in accordance with TRM #20, that will be used during mining and reclamation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water;

(c) Include enhancement measures, in accordance with TRM #20, that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and wetlands, retention of ponds or impoundments, establishment of vegetation for wildlife food or cover, and the placement of perches and nesting boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable;

(d) Include a delineation of proposed wildlife habitats and enhancement measures on the postmining land use map or on another appropriate map; and

(e) Be prepared by or under the direction of a qualified professional **and his credentials (education and experience) shall be included in the permit application.** Recommended minimum qualifications are outlined in TRM #20.

(3) As necessary, the cabinet shall consult with appropriate state and federal fish and wildlife management agencies, state and federal conservation agencies, and state and federal land management agencies, and may require additional protection and enhancement measures from the applicant. Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review within ten (10) days of receipt of the request from the service.

(4) This section shall apply to applications for permits, amendments, and revisions submitted to the cabinet on or after nine (9) months following the effective date of these amendments, and shall apply to those applications for revisions and amendments in accordance with TRM #20. [Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring a plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.]

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land within the proposed permit area, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans; [. This description shall explain:]

(b) A discussion of [(a)] how the proposed

postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including but not necessarily limited to management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If [(b) Where] a land use different from the premining land use is proposed, all supporting documentation required [submitted] for approval of the proposed use under 405 KAR 16:210;

(d) A discussion of [(c)] the consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

[(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.]

(e) [(2) The description shall be accompanied by] A copy of the comments concerning the proposed use from [by] the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) [(3)] Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

[Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a public roads transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the surface coal mining operation.]

[(1) The plan shall specify the legal weight limits for each portion of any public road or bridge over which the applicant proposes to transport coal.]

[(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to KRS 189.271 to exceed the weight limits on any road or bridge.]

[(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on the roads and bridges.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 13, 1991
FILED WITH LRC: September 13, 1991 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 8:040. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151, 30 CFR Parts 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 30 USC 1253, 1255, 1257, 1258, 1266, 1267

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.151, 350.465, 30 CFR Parts 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 30 USC 1253, 1255, 1257, 1258, 1266, 1267

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for underground mining activities. This regulation recognizes the distinct differences between surface mining activities and underground mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) Applicability.

(a) This regulation applies to any person who applies for a permit to conduct underground mining activities.

(b) The requirements set forth in this regulation specifically for applications for permits to conduct underground mining activities, are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(c) This regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:

1. Legal, financial, compliance, and related information;
2. Environmental resources information; and
3. Mining and reclamation plan information.

(2) The permit applicant shall provide to the cabinet in the application all the information required by this regulation.

[(3)(a) The following forms, which are required to be submitted by applicants, are hereby incorporated by reference:]

[1. Preliminary Application, SMP-03, revised August 3, 1984;]

[2. Application for a Comprehensive Mining and Reclamation Permit, SMP-01-R, November, 1985;]

[3. Application for Mining Permit Revision, SMP-02-REV, December, 1987;]

[4. Application for Renewal of a Comprehensive Mining and Reclamation Permit, SMP-01-N1, September, 1987;]

[5. Application for Coal Marketing Reclamation Deferment, SMP-09, October, 1984;]

[6. Notification of Operator Change, SMP-11, August, 1990;]

[7. Notification of Change in Corporate Permittee and/or Corporate Name, SMP-10, December, 1987; and]

[8. Application for Transfer, Assignment or Sale of Permit Rights, SMP-08, October, 1982.]

[(b) The forms incorporated by reference in paragraph (a) of this subsection may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security Number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security Number and employer identification number of the:

(a) Applicant;

(b) Applicant's resident agent; and

(c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020, as applicable:

(a) The person's name, address, Social Security Number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

(b) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined; and

(c) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined.

[(6) A statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application, and by any person identified in subsection (3)(c) of this section and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.]

(6) [(7)] The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) [(8)] The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) [(9)] Proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) [(10)] A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) [(11)] After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. The cabinet may suspend permits pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

[(12) The applicant shall submit the information required by this section and Section 3 of this regulation on the appropriate forms, incorporated by reference in Section 1(3) of this regulation.]

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or [,] any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture, as described in subsection (1) of this section, has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator as defined in KRS 350.450(4)(c) [(d)], the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

Section 4. Right of Entry and Right to Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall contain [also provide], for lands to be affected by those operations within the permit area: [, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.]

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods; or

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under 405 KAR Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the

applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct or locate surface operations or facilities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying the underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include a description of the existing environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and adjacent areas, as required by Sections 11 through 23 of this regulation. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation.

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the

applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall include those strata above and below the coal seam to be mined which may be impacted by the mining operation.

3. Where aquifers within the permit area are located above or below the coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata which lie between the coal seam and the aquifer.

4. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

5. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 4 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b)1. To identify strata which have a potential to produce acid or toxic drainage for areas where overburden will be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

2. To identify strata which have a potential to produce acid or toxic drainage for areas overlying underground workings where overburden will not be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of the strata immediately above and below the coal seam to be mined.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) For standard room and pillar mining operations, the engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(e) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; and the structural geology and lithology of strata which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; or the thickness and chemical characteristics of each stratum which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

3. Where aquifers may be adversely affected by the mining operation, the structural geology,

lithology, thickness, and areal extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, whether located above or below the coal seam to be mined, which lie between the coal seam and the aquifers.

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If contamination, diminution, or interruption of an underground or surface source of water (for domestic, agricultural, industrial, or other legitimate use) within the proposed permit area or adjacent area may result from underground mining activities, then the applicant may identify, in the permit application, the alternative sources of water supply that could be developed to replace the existing sources.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) General. Each application shall include fish and wildlife resources information for the permit area and the adjacent area as specified below. This information shall be in the scope and detail required by the cabinet, and shall be sufficient to design the fish and wildlife protection and enhancement plan and to demonstrate compliance with SMCRA; KRS Chapter 350; and 405 KAR Chapters 7 through 24.

(2) For the permit area and adjacent area the information shall include, at a minimum:

(a)1. Identification of listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

2. Identification and description of habitats of unusually high value for fish and wildlife such as important streams classified under 405 KAR 16:180, Section 2(1)(a)3, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, and reproduction and wintering areas. Information obtained pursuant to paragraphs (b) and (c) of this subsection and, as appropriate, from pertinent literature and other sources shall be used to compile this information;

3. Identification of other species or habitats identified through agency consultation as requiring special protection under state or federal law; and

4. The delineation of the following on the environmental resources map: the permit area; any baseline biological and hydrological stations; ephermeral, intermittent, and perennial streams, with their names; outstanding resource waters listed pursuant to 401 KAR 5:026 or 401 KAR 5:031; streams listed in Appendix G of TRM #20; stream buffer zones; wetlands; lakes and impoundments; nature preserves dedicated pursuant to KRS 146.410 et seq.; publicly-owned wildlife management areas; natural areas owned or managed by state universities; and any other distinctive features.

(b) A terrestrial habitat analysis of the area to be affected by surface operations and facilities and contiguous area. This habitat analysis shall:

1. Address all terrestrial habitats;

2. Address canopy, understory, and ground cover plant species with their relative abundances or stratum-rank values;

3. Describe the capacity of the existing terrestrial habitats to support wildlife; and

4. Include a delineation of all terrestrial habitats on the vegetation map required under Section 19 of this regulation or on another appropriate map.

(c)1. At least one (1) set of current (as set forth in TRM #20) baseline aquatic resources information collected from at least three (3) representative locations if:

a. The area to be affected by surface operations and facilities or adjacent area, or area that reasonably can be expected to be affected by subsidence, contains, or could reasonably be expected to contain, streams with listed or proposed endangered or threatened aquatic species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those aquatic species or habitats protected by similar state statutes;

b. The area to be affected by surface operations and facilities or adjacent area, or area that reasonably can be expected to be affected by subsidence, includes an important stream classified under 405 KAR 18:180, Section 2(1)(a)3; or

c. A stream buffer zone variance is requested under 405 KAR 16:060, Section 11.

2. This information shall include:

a. Biological information on the fish and macroinvertebrate communities, including taxa richness, relative abundance, biotic integrity, and the prevalence of tolerant or intolerant species;

b. The results of water quality analyses, from locations where biological data were collected, for the parameters specified in Section 15 of this regulation and for dissolved oxygen; and

c. A description of the physical characteristics of the stream sections where

biological data were collected.

(3) Other data requirements.

(a) The information required by subsection (2) of this section shall be obtained in accordance with TRM #20, incorporated by reference in 405 KAR 8:030, Section 20(3)(a). Wetland evaluations shall be conducted in accordance with the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands", (FICWD, 1989), incorporated by reference in 405 KAR 8:030, Section 20(3)(a). This manual provides several methods for differentiating between wetland and nonwetland areas; however, an intermediate or comprehensive method shall be followed for wetland determinations under this regulation.

(b) As necessary, the cabinet shall consult with appropriate state and federal agencies with responsibilities for fish and wildlife, and may require additional information from the applicant to demonstrate compliance with SMCRA; KRS Chapter 350; and 405 KAR Chapters 7 through 24. Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review within ten (10) days of receipt of the request from the service.

(c) The baseline fish and wildlife resources information shall be collected by or under the direction of qualified professionals **and their credentials (education and experience) shall be included in the permit application.** Recommended minimum qualifications are outlined in TRM #20.

(d) Any aquatic biological specimens collected during the baseline study shall be labeled, preserved, maintained, and made available for inspection until the permit is issued or denied, or the application is permanently withdrawn, or until completion of any hearing on the application, whichever is later.

(e) Existing field data may be used instead of conducting field investigations, if the existing data are current as set forth in TRM #20, specific to the permit area and adjacent area, and sufficient to demonstrate compliance with this section.

(4) This section shall apply to applications for permits, amendments, and revisions submitted to the cabinet on or after nine (9) months following the effective date of these amendments, and shall apply to those applications for revisions and amendments in accordance with TRM #20. [Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring a study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.]

Section 21. Prime Farmland Investigation. (1) The applicant shall conduct a preapplication investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) or more of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) or more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no soil survey has been made for these lands, the applicant shall request the SCS to conduct a soil survey.

(a) If [When] a soil survey as required by this section contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If [When] a soil survey as required by this section contains no soil map units which have been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any

mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for this [such] data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 26, 27(1), 28, 31, 32, 33, 34, and 38 of this regulation and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 39 of this regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facility is to be approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;
7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
8. Each facility to be used to protect and enhance fish and wildlife related environmental values;
9. Each explosive storage and handling facility;
10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and each disposal area for underground development waste and excess spoil, in accordance with Section 28 of this regulation;
11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface configuration to be achieved for the affected areas;
12. Location of each water and any subsidence monitoring point;
13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Plans, maps and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 18:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section

2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC 7401 et seq.), the Clean Water Act (33 USC 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations which the applicant has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of 405 KAR Chapter 3.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1) The application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent areas and whether subsidence, if it occurred could cause material damage or diminution of reasonably foreseeable use of the structures or renewable resource lands.

(2) If the survey shows that no structures or renewable resource lands exist, or no material damage or diminution could be caused in the event of mine subsidence, and if the cabinet agrees with this conclusion, no further information need be provided in the application under this section.

(3) If the survey shows that structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the cabinet determines that damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A detailed description of the mining method and other measures to be taken which may affect subsidence, including:

1. The technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and

2. The extent, if any, to which planned and controlled subsidence is intended.

(b) A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value of reasonably foreseeable use of the surface, including:

1. The anticipated effects of planned subsidence, if any;

2. Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including measures such as backstowing or backfilling of voids; leaving support pillars of coal; and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place.

3. Measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface, including measures such as reinforcement of sensitive structures or features; installation of footers designed to reduce damage caused by movement; change of location of pipelines, utility lines or other features; relocation of movable improvements to sites outside the angle-of-draw; and monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.

(c) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one (1) or more of the following as required by 405 KAR 18:210, Section 3:

1. Restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition;

2. Replacement of structures destroyed by subsidence;

3. Purchase of structures prior to mining and restoration of the land after subsidence to condition capable of supporting and suitable for the structures and foreseeable land uses;

4. Purchase of noncancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

(d) A detailed description of measures to be taken to determine the degree of material damage

or diminution of value or foreseeable use of the surface, including measures such as:

1. The results of presubsidence surveys of all structures and surface features which might be materially damaged by subsidence;

2. Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste and Excess Spoil. Each plan shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil according to 405 KAR 18:130, 405 KAR 18:140, and 405 KAR 18:160 as applicable. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27 and the applicable requirements of this regulation.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by underground mining activities.

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 18:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as

required by 405 KAR 18:060, Section 2; and

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 8 and 9, and 405 KAR 18:080.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each design plan shall:

(a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3) of this regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 18:100.

(b) Each plan shall, at a minimum, comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and

77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is to be twenty (20) feet or higher or is to impound more than twenty (20) acre-feet, each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available and in compliance with 405 KAR 16:180, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20(2) of this regulation;

(b) Include protective measures, in accordance with TRM #20, that will be used during mining and reclamation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water;

(c) Include enhancement measures, in accordance with TRM #20, that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and wetlands, retention of ponds or impoundments, establishment of vegetation for wildlife food or cover, and the placement of perches and nesting boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable;

(d) Include a delineation of proposed wildlife habitats and enhancement measures on the postmining land use map or on another appropriate map; and

(e) Be prepared by or under the direction of a qualified professional **and his credentials (education and experience) shall be included in the permit application.** Recommended minimum qualifications are outlined in TRM #20.

(3) As necessary, the cabinet shall consult with appropriate state and federal fish and wildlife management agencies, state and federal conservation agencies, and state and federal land management agencies, and may require additional protection and enhancement measures from the applicant. Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review within ten (10) days of receipt of the request from the service.

(4) This section shall apply to applications for permits, amendments, and revisions submitted to the cabinet on or after nine (9) months following the effective date of these amendments, and shall apply to those applications for revisions and amendments in accordance with TRM #20. [Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring a plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.]

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses [,] following reclamation of the land to be affected within the proposed permit area by surface operations and [or] facilities, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans; [. This description shall explain:]

(b) A discussion of [(a)] how the proposed postmining land use is to be achieved and the necessary support activities which may be needed

to achieve the proposed land use, including but not necessarily limited to management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If [(b) Where] a land use different from the premining land use is proposed, all supporting documentation required [submitted] for approval of the proposed alternative use under 405 KAR 18:220;

(d) A discussion of [(c)] The consideration which has been given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs;

[(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.]

(e) [(2) The description shall be accompanied by] A copy of the comments concerning the proposed use from the legal or equitable owner of record of the area [surface areas] to be affected by surface operations and [or] facilities [within the proposed permit area] and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) [(3)] Approval of the initial postmining land use plan pursuant to this section shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

[Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the underground mining activities.]

[(1) The plan shall specify the legal weight limits for each portion of any public road or bridge over which the applicant proposes to transport coal.]

[(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to KRS 189.271 to exceed the weight limits on any road or bridge.]

[(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on the roads and bridges.]

Section 38. [39.] MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 18:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 16:180. Protection of fish, wildlife, and related environmental values.

RELATES TO: KRS 350.020, 350.028, 350.405, 350.435, 350.465, 30 CFR Parts 730-733, 735, 816.57, 816.97, 917, 30 USC 1253, 1255, 1265

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 30 CFR Parts 730-733, 735, 816.57, 816.97, 917, 30 USC 1253, 1255, 1265

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth specific requirements and measures for the protection of fish, wildlife, and related environmental values, and for the enhancement of those [such] resources where practicable.

Section 1. General. [Protection of Fish, Wildlife, and Related Environmental Values.] (1) The [Any] permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts [of the activities] on fish, wildlife, and related environmental values, and shall achieve enhancement of those [such] resources where practicable.

(2) Each permittee shall:

(a) To the extent possible using the best technology currently available:

1. Ensure that electric powerlines and other transmission facilities, used for or incident to surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the cabinet determines that these requirements are unnecessary;

2. Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by state or federal law;

3. Construct stream crossings so as not to adversely affect fish migration and aquatic habitat;

4. Design fences, overland conveyors, and

other potential barriers to permit passage of large mammals, except where the cabinet determines that the designs are unnecessary; and

5. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(b) Avoid disturbance to, enhance where practicable, **or** restore[, or replace] habitats of unique or unusually high value for fish and wildlife;

(c) Avoid disturbance to, enhance where practicable, or reestablish riparian vegetation along rivers and streams and bordering ponds and lakes; and

(d) Avoid disturbances to, enhance where practicable, restore or replace wetlands and comply with Section 404 of the Clean Water Act.

Section 2. Protection of Streams. (1) Buffer zones for streams with valuable environmental resources.

(a) A stream or reach of stream with valuable environmental resources is one that:

1. Contains, or could reasonably be expected to contain, listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

2. Is an intermittent or perennial stream that supports a high level of habitat development and quality as reflected by the integrity of fish and macroinvertebrate populations, as set forth in TRM #20 which is incorporated by reference in 405 KAR 8:030, Section 20(3)(a); or

3. Is an important stream. An important stream is one that:

a. Is classified as an outstanding resource water pursuant to 401 KAR 5:026 or 401 KAR 5:031;

b. Based on the Kentucky Rivers Assessment, is a Class 1, 2, or 3 stream in the water quality category or is a Class 1 or 2 stream in the fish resource category. Class 3 streams in the fish resource category may be determined case-by-case to be important streams by the cabinet. These streams that occur in the coal fields are listed in TRM #20; or

c. Is otherwise considered to be an important stream by the cabinet, including but not limited to a stream contained within, immediately upstream of, or bordering a publicly-owned wildlife management area or a nature preserve dedicated pursuant to KRS 146.410 et seq.

(b) The cabinet shall not grant a buffer zone variance under 405 KAR 16:060, Section 11, if the reach of stream that is within the buffer zone is one with valuable environmental resources pursuant to paragraph (a) of this subsection. Exceptions may be made for the following, if the surface mining activities will not cause significant detrimental effects on the valuable environmental resources and if all other requirements of 405 KAR 16:060, Section 11 are met:

1. Stream crossings and appurtenant approaches;

2. Minor disturbances **such as installation of a groundwater monitoring well; or** [; and]

3. Existing roads where no major reconstruction of the road within 100 feet of the stream is proposed including road widening (except widening in which only an incidental portion of the road berm is accidentally disturbed during grading), road relocation, or any other construction activity that might detrimentally affect the stream or its channel. Typical road maintenance including grading, cleaning ditches, and road surfacing shall not be considered major reconstruction measures.

(c) The cabinet may grant a buffer zone variance if the reach of stream with valuable environmental resources is outside (e.g., downstream of) the buffer zone, if surface mining activities will not cause significant detrimental effects on the valuable environmental resources, and if all other requirements of 405 KAR 16:060, Section 11 are met.

(2)(a) During-mining and postmining biological monitoring shall be conducted if required by the cabinet; however, it shall always be required if a reach of stream with valuable environmental resources exists within the permit or adjacent area.

(b) If biological monitoring is required under paragraph (a) of this subsection, the biological monitoring shall be conducted in accordance with TRM #20, and shall be conducted at least semiannually through Phase I bond release and once per year thereafter until final bond release. The cabinet may approve termination of the biological monitoring program after Phase I bond release based upon a demonstration that additional monitoring is not needed to ensure protection of aquatic resources.

(c) Biological monitoring data shall be collected and evaluated by or under the direction of qualified professionals whose credentials have been filed with the department. The results of the biological monitoring data shall be submitted to the cabinet within sixty (60) days after data collection. All biological monitoring samples shall be labeled, preserved, maintained, and made available for inspection, for twelve (12) months.

(3) Other stream protection measures. The cabinet shall require other appropriate stream protection measures (such as those prescribed in TRM #20) as necessary to ensure protection of streams with valuable environmental resources. At the cabinet's discretion, protection measures may also be required for other streams. The protection measures may be required during the permitting process, as a result of during-mining or postmining monitoring, or as a result of a site inspection by the cabinet. These additional protection measures shall be required in consultation with qualified personnel.

(4) The provisions of this section shall apply to operations having permit applications that were subject to 405 KAR 8:030, Sections 20 and 36.

Section 3. Protection of Endangered and Threatened Species. (1)(a) No surface mining activity shall be conducted which is likely to jeopardize the continued existence of an endangered or threatened species listed by the Secretary of the Interior or which is likely to result in the destruction or adverse modification of a designated critical habitat of those species in violation of the Endangered Species Act of 1973 as amended (16 USC Sec. 1531 et seq.). The permittee shall promptly report to the cabinet any state- or federally-listed endangered or threatened species within the permit area of which the permittee becomes aware. Upon notification, the cabinet shall

consult with appropriate state and federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the permittee may proceed.

(b) No surface mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the cabinet any golden or bald eagle nest within the permit area of which the permittee becomes aware. Upon notification, the cabinet shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the Kentucky Department of Fish and Wildlife Resources and, after consultation, shall identify whether, and under what conditions, the permittee may proceed.

(2) Nothing in this title shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 as amended (16 USC 1531 et seq.) or the Bald Eagle Protection Act as amended (16 USC 668 et seq.).

[(2) A permittee shall promptly report to the cabinet the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of the Interior, any plant or animal listed by the Commonwealth of Kentucky as threatened or endangered or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the cabinet by that person.]

[(3) A permittee shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface mining activities on the permit area are in accordance with the guidelines set forth in "Environmental Criteria for Electric Transmission System" (USDI, USDA (1970)), or in alternative guidance manuals approved by the cabinet. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10, "Powerline Contacts by Eagles and Other Large Birds," or in alternative guidance manuals approved by the cabinet.]

[(4) Each permittee shall, to the extent possible using the best technology currently available:]

[(a) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;]

[(b) Fence roadways where specified by the cabinet to guide locally important wildlife to roadway underpasses. No new barrier shall be created in known and important wildlife migration routes;]

[(c) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;]

[(d) Restore, enhance where practicable or avoid disturbance to habitats of unusually high value for fish and wildlife;]

[(e) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas. Wetlands shall be preserved or created, rather than drained or otherwise permanently abolished;]

[(f) Afford protection to aquatic communities by avoiding stream channels as required in 405 KAR 16:060, Section 11 or restoring stream channels as required in 405 KAR 16:080, Section 2;]

[(g) Not use persistent pesticides on the area during surface mining and reclamation activities, unless approved by the cabinet;]

[(h) To the extent possible prevent, control, and suppress range, forest, and coal fires which are not approved by the cabinet as part of a management plan.]

Section 4. Reclamation Strategies and Wildlife Enhancement Techniques. (1) A postmining land use for fish and wildlife shall be characterized by: a combination of habitat types or vegetative types, such as a mix of forest land or woodlots, shrub/scrub areas, grass/legume areas, and wetlands; or palustrine wetlands throughout. If the postmining land use is for fish and wildlife, at least thirty (30) percent of the land area involved, not including permanent impoundments, permanent roads, and brush piles and rock piles for wildlife, shall be stocked with trees or shrubs. Where [(i) If] fish and wildlife [habitat] is to be a [primary or secondary] postmining land use, the permittee [operator] shall, in addition to the requirements of 405 KAR 16:200:

(a) [1.] Select plant species [to be used on reclaimed areas, based] on the basis of the following criteria: their proven nutritional value, their use as cover, their ability to support and enhance fish and wildlife after release of the performance bond, soil conditions and pH tolerances of the species, and species identified during the baseline terrestrial habitat (vegetation) analysis; [their proven nutritional value for fish and wildlife; their uses as cover for fish and wildlife; and their ability to support and enhance fish and wildlife habitat after release of bonds;] and

(b) Group and distribute plants [2. Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed] in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife.

(2) [(j)] Where cropland or pastureland is to be the [alternative] postmining land use, [on lands diverted from a fish and wildlife premining land use] and where appropriate for wildlife and crop management practices, the permittee shall intersperse the fields with trees, hedges, or fence rows throughout the [harvested] area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. [; and]

(3) [(k)] Where [the primary land use is to be] residential[, public service,] or industrial/commercial use is to be the postmining land use, and where consistent with the approved postmining land use, the permittee shall [land use,] intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs and trees useful as food and cover for wildlife [birds and small animals, unless such greenbelts are inconsistent with the approved postmining land use].

(4) Additional reclamation strategies and wildlife enhancement techniques are outlined in TRM #20.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 16:200. Revegetation.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.420, 350.435, 350.465, 30 CFR Parts 730-733, 735, 816.111-.116, 917, 30 USC 1253, 1255, 1265

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.465, 30 CFR Parts 730-733, 735, 816.111-.116, 917, 30 USC 1253, 1255, 1265

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth requirements for revegetation of areas affected by surface mining activities, including requirements for temporary and permanent vegetative cover, use of introduced species, timing of revegetation, mulching and other soil stabilizing practices, standards for measuring revegetation success, and reporting requirements.

Section 1. General Requirements. (1)(a) Each permittee shall establish on all affected land a diverse, effective, and permanent vegetative cover that meets the requirements of this regulation and the revegetation provisions of 405 KAR 16:180, and [of the same seasonal variety native to the region or species] that supports the approved postmining land use. [For areas designated as prime farmland, the requirements of 405 KAR 20:040 shall apply.]

(b) For prime farmland areas, the requirements of 405 KAR 20:040 shall apply in lieu of the productivity standards of this regulation unless those areas are exempted by 405 KAR 8:050, Section 3, in which case the productivity standards of this regulation shall apply.

(2) All revegetation shall be in compliance with the plans submitted under 405 KAR 8:030, Sections 24(4) and 37, as approved by the cabinet, and shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(3) If the approved postmining land use is not cropland or pastureland, [(a)] all disturbed land except water areas, rock areas such as those used for drainage control and wildlife enhancement, and surface areas of roads that are approved as a part of the postmining land use or uses [,] shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the region that is capable of soil stabilization, self-regeneration, and plant succession. The vegetative cover shall be considered of the same seasonal variety if [when] it consists of a mixture of species of equal or superior utility for the approved postmining land use when compared with the utility of naturally occurring vegetation during each season of the year. [If the postmining land use is cropland, successful establishment of the crops normally grown or other appropriate crops will meet the requirements of this paragraph.]

(4) [(b) The vegetative cover shall be capable of stabilizing the soil surface from erosion.] If the postmining land use is cropland or pastureland, establishment of [appropriate] crops or pasture species normally grown in the mine vicinity and normal husbandry practices will meet the requirements of subsection (1)(a) of this section. [this paragraph unless the cabinet determines that other temporary vegetation shall be initially planted in order to stabilize the soil surface prior to the establishment of crops.]

(5)(a) Plant species used for revegetation shall be compatible with the plant and animal species of the area, and shall meet the requirements of applicable state and federal laws or regulations for seeds, poisonous and noxious plants, and introduced species.

(b) Except for cropland [and pastureland], selection of species, distribution patterns, seeding rates, and planting arrangements shall be approved case-by-case by the cabinet based upon [TRM #20 and other] appropriate technical documents. [TRM #20 is incorporated by reference in 405 KAR 8:030, Section 20.] Two (2) or more permanent legume species and **two (2)** [one (1)] or more permanent grasses shall be established on pastureland unless fewer species are approved by the cabinet based on a pasture management plan specifically tailored to the species mix.

(6) [(c)] Subject to the approval of the cabinet, small incidental areas related to the fulfillment of the postmining land use may be exempted from the revegetation standards if [where] no adverse environmental impact will occur if the exemption is granted.

(7) The extended liability period under the performance bond requirements of 405 KAR Chapter 10 shall begin after the last time of augmented seeding, fertilizing, irrigating, or other related work, and shall continue for not less than five (5) years; except:

(a) Discrete areas of 0.25 acre or less needing reseeding due to circumstances specified in subparagraphs 1 through 5 of this paragraph may be reseeded (including reliming, refertilizing, and remulching) without restarting the five (5) year liability period. The total acreage of these areas reseeded during the liability period shall not exceed three (3) percent of the permit area acreage. This paragraph shall only apply to:

1. Reseeding associated with repair of rills and gullies;

2. Reseeding areas where vegetation was disturbed by vehicular traffic not under the control of the permittee;

3. Reseeding areas where vegetation was disturbed by the installation or removal of oil and gas wells or utility lines;

4. Reseeding areas where there was poor seed germination of the initial seeding; and

5. Reseeding areas where vegetation was unavoidably disturbed in the course of conducting some other necessary reclamation activity.

(b) Liming, fertilizing, mulching, seeding, or stocking of haul roads, locations where sedimentation ponds and off-site temporary diversions that divert water to or away from sedimentation ponds have been removed, and locations where collected sediment and embankment material from sedimentation pond removal have been disposed shall not restart the

five (5) year liability period. Vegetation established in these areas shall be in place for at least two (2) years before Phase III bond release;

(c) For cropland, the five (5) year liability period shall commence at the date of initial planting for the long-term intensive agricultural postmining land use;

(d) Irrigating, reliming, and refertilizing cropland and pastureland; reseeding cropland; and renovating pastureland by overseeding with legumes after Phase II bond release and after three (3) years from the initial seeding shall be considered normal husbandry practices and shall not restart the liability period if the amount and frequency of these practices do not exceed normal agricultural practices used on unmined land within the region; and

(e) Other normal husbandry practices that may be conducted without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting of trees and shrubs in accordance with Section 6 of this regulation.

(8) For pastureland, and for cropland except prime farmland subject to 405 KAR 20:040, ground cover and productivity success standards shall be met during the growing seasons of any two (2) years of the liability period except the first year; and areas approved for other uses shall equal or exceed the applicable success standards during the growing season of the last year of the liability period.

Section 2. Use of Introduced Species. Introduced species may be substituted for native species only if approved by the cabinet under the following conditions:

(1) The species shall meet the applicable requirements of Section 1(2), (3), (4), and (5) of this regulation. [The species are compatible with the plant and animal species of the region;]

[(2) The species meet the requirements of applicable state and federal seed or introduced species statutes and are not poisonous or noxious; and]

[(3)(a) After appropriate field trials or other demonstrations or studies satisfactory to the cabinet have shown that the introduced species, if proposed as the permanent vegetation, are desirable and necessary to achieve the approved postmining land use; or]

(2)(a) Appropriate field trials or other studies shall be conducted or published literature shall be submitted to demonstrate to the satisfaction of the cabinet that proposed, unproven, introduced species are desirable and are necessary for achieving the postmining land use; or

(b) The species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion; and measures to establish permanent vegetation are included in the approved plan submitted under 405 KAR 8:030, Sections 24(4)(e) and 37.

[(4) The cabinet may require the use of particular species or mixtures when such species are determined to enhance fish and wildlife resources, to be more effective in controlling erosion, to be more effective in establishing permanent vegetation or to be more effective in achieving the approved postmining land use.]

Section 3. Timing. Seeding and planting of disturbed areas with permanent species shall be conducted no later than during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally, or as approved [established] by the cabinet in the permit, for the type of plant materials selected. In accordance with Section 4 of this regulation and 405 KAR 16:020, a [When necessary to effectively control erosion, any] disturbed area shall be seeded and mulched [planted], as contemporaneously as practicable with the completion of backfilling and grading, to establish a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

Section 4. Soil Amendments and Stabilization. [Mulching and Other Soil Stabilizing Practices.] (1) Nutrients and soil amendments shall be applied to regraded areas in accordance with 405 KAR 16:050, Section 5.

(2) [(1)] Suitable mulch or other soil stabilizing practices shall be used in addition to temporary cover on all regraded and topsoiled areas to control erosion, to promote germination of seeds, and [or] increase the moisture retention capacity of the soil. The cabinet may, on a case-by-case basis, waive [suspend] the requirement for mulch if the cabinet finds, based on seasonal, soil, and slope factors, that the temporary vegetative cover will achieve proper erosion control until a permanent cover is established, except that no waiver shall be granted for any area having a slope greater than ten (10) percent. [that alternative procedures proposed by the permittee will achieve the requirements of Section 6 of this regulation and do not cause or contribute to air or water pollution.]

[(2) When required by the cabinet, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.]

[(3) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch, when the cabinet determines that they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.]

[(4) Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use.]

(3) For areas within the permit boundary to be used as cropland, the area shall be seeded or planted in order to maintain a vegetative cover effective in controlling erosion until the permittee chooses to grow crops.

[Section 5. Grazing. When the approved postmining land use is grazing or pasture land, the permittee may demonstrate successful revegetation by using the reclaimed land for livestock grazing at a grazing capacity approved by the cabinet approximately equal to that for similar nonmined lands, for at least the last two (2) full years of liability required under Section 6(2) of this regulation, or by other appropriate demonstration approved by the cabinet.]

Section 5. Success Standards for Ground Cover and Productivity. (1) Determination of success of ground cover and productivity may be made on

the basis of reference areas from unmined lands in the vicinity of the operation, where applicable, or by application of the specific ground cover and productivity standards of this section (tree and shrub stocking standards are set forth in Section 6 of this regulation).

(2)(a) For an approved postmining land use of pastureland or cropland used for the production of hay (except prime farmland subject to 405 KAR 20:040):

1. Ground cover (percent) and productivity (tons of forage per acre) shall be at least ninety (90) percent of that of an approved reference area with a statistical confidence of ninety (90) percent; and

2. Ground cover shall be at least ninety (90) percent, and productivity shall be at least ninety (90) percent of the average yield for that hay in the county in the three (3) years prior to the year of measurement, as determined from yield data available from the Kentucky Department of Agriculture, with a statistical confidence of ninety (90) percent.

(b) For areas within the permit boundary where row crops will be planted (except prime farmland subject to 405 KAR 20:040):

1. Ground cover on any area not planted in row crops shall be at least ninety (90) percent with a statistical confidence of ninety (90) percent; or

2. Crop production shall be at least ninety (90) percent of that of an approved reference area or at least ninety (90) percent of the average yield for the crop in the county in the three (3) years prior to the year of measurement, as determined from yield data available from the Kentucky Department of Agriculture, with a statistical confidence of ninety (90) percent.

(c) Forest land, or other areas within the permit boundary where woody plants are stocked, shall have at least eighty (80) percent ground cover with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 6.

(d) For all other land uses, ground cover shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 6.

(e) For all land uses other than cropland planted in row crops, at Phase III bond release there shall be no discrete bare area or sparsely covered (less than fifty (50) percent ground cover) area greater than 0.25 acre in size. [6. Standards for Success. (1) Success of revegetation shall be measured by techniques approved by the cabinet after consultation with appropriate state and federal agencies. Comparison of ground cover and productivity may be made on the basis of reference areas or through the use of technical guidance procedures published by USDA or USDI, or other procedures approved by the cabinet and the Director of OSM for assessing ground cover and productivity. Management of the reference area, if applicable, shall be comparable to that which is required for the approved postmining land use of the permit area.]

[(2)(a) Ground cover and productivity of living plants on the revegetated area within the permit area shall be at least equal to the ground cover and productivity of living plants on the approved reference area, or to the standards in technical guides approved by the cabinet and the Director of OSM. Ground cover and productivity shall equal the approved standard for the last two (2) consecutive years of the responsibility period.]

[(b) Except as provided in paragraph (c)3 of this subsection, the period of extended responsibility under the performance bond requirements of Title 405, Chapter 10 begins at the last time of substantially augmented seeding, fertilizing, irrigation or other work necessary to ensure successful vegetation, and continues for not less than five (5) years.]

[(c) The ground cover and productivity of the revegetated area shall be considered equal if they are at least ninety (90) percent of the ground cover and productivity of the reference area with ninety (90) percent statistical confidence, or with eighty (80) percent statistical confidence on shrublands, or ground cover and productivity are at least ninety (90) percent of the standards in a technical guide approved pursuant to paragraph (a) of this subsection. Exceptions may be authorized by the cabinet under the following standards:]

(3) [1.] For previously mined areas that were not reclaimed to the requirements of [Title] 405 KAR Chapters 16 through 20, the ground cover of living plants shall [not be less than can be supported by the best available topsoil or other suitable material in the reaffected area, shall] not be less than the ground cover existing before the redisturbance and shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 6. [adequate to control erosion;]

[2. For areas to be developed for industrial or residential use within two (2) years after regrading is completed, the ground cover of living plants shall not be less than required to control erosion; and]

[3. For areas to be used for cropland, success in revegetation of cropland shall be determined on the basis of crop production from the mined area as compared to approved reference areas or other approved technical guidance procedures. Crop production from the mined area shall be equal to or greater than that of the approved standard for the last two (2) consecutive growing seasons of the five (5) year liability period established in paragraph (b) of this subsection. Production shall not be considered equal if it is less than ninety (90) percent of the production of the approved standard with ninety (90) percent statistical confidence. The applicable five (5) year period of responsibility for revegetation shall commence at the date of initial planting of the crop being grown. Within thirty (30) days of planting, the permittee shall notify the cabinet that the initial planting of the crop has been completed. Promptly thereafter, the cabinet shall inspect the area to verify that the initial planting has been completed.]

[4. On areas to be developed for fish and wildlife management or forestland, success of vegetation shall be determined on the basis of tree, shrub or half-shrub stocking and ground cover. The tree, shrub, or half-shrub stocking shall meet the standards described in Section 7 of this regulation. The area seeded to a ground cover shall be considered acceptable if it is at least seventy (70) percent of the ground cover of the reference areas with ninety (90) percent

statistical confidence or if the ground cover is determined by the cabinet to be adequate to control erosion. This subsection shall determine the responsibility period and the frequency of ground cover measurement.]

[(3) The permittee shall:]

[(a) Maintain any necessary fences and proper management practices; and]

[(b) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the cabinet, to identify conditions during the applicable period of liability specified in subsection (2) of this section.]

[(4) For permit areas forty (40) acres or less in size, the following performance standards, if approved by the cabinet, may be used to measure success of revegetation on sites that are disturbed.]

[(a) Areas planted only in herbaceous species shall sustain a vegetative ground cover of seventy (70) percent for the last three (3) full consecutive years of the five (5) year period of liability.]

[(b) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of seventy (70) percent for the last three (3) full consecutive years of the five (5) year period of liability and 400 woody plants per acre at the end of the five (5) years. On steep slopes, the minimum number of woody plants shall be 600 per acre.]

[(5) For purposes of this section, herbaceous species means grasses, legumes, and nonleguminous forbs; woody plants means woody shrubs, trees, and vines; and ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area of measurement.]

Section 6. [7.] Tree and Shrub Stocking. This section sets forth stocking standards and criteria for counting woody plants for measuring stocking success, and applies in addition to Section 5 of this regulation, where the approved postmining land use or the approved fish and wildlife protection and enhancement plan requires the planting of trees or shrubs. [This section sets forth standards for revegetation of areas for which the approved postmining land use requires woody plants as the primary vegetation, to ensure that a cover of commercial tree species, noncommercial tree species, shrubs or half-shrubs, sufficient for adequate use of the available growing space, is established after surface mining activities.]

(1) If forest land is an approved postmining land use:

(a) The forested area shall have a minimum stocking of 450 trees or trees and shrubs per acre determined with a statistical confidence of ninety (90) percent, with tree species comprising at least fifty (50) percent of the woody plant species;

(b) At least four (4) species of trees or trees and shrubs shall be planted in a mixed distribution pattern for noncommercial (unmanaged) forest land with each of the four (4) species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than fifty (50) percent of the total stock; and

(c) For areas to be used as commercial (managed) forest land, at least seventy-five (75) percent of the woody plant stocking shall be with tree (not shrub) species providing good to excellent commercial value. The species shall be selected from those listed in TRM #20, except the cabinet may approve other species on a case-by-case basis. **TRM #20 is incorporated by reference in 405 KAR 8:030, Section 20.**

(2) For other postmining land uses:

(a) At least thirty (30) percent of the area shall be comprised of multiple rows or plots of trees or shrubs if fish and wildlife is the postmining land use.

(b) For subareas within the permit boundary where trees or shrubs will be planted for the purpose of creating wildlife habitat (either for a fish and wildlife postmining land use or for fish and wildlife enhancement of other postmining land uses):

1. The minimum stocking rate shall be 450 woody plants per acre, determined with a statistical confidence of ninety (90) percent;

2. At least four (4) species of trees or shrubs shall be planted with each of the four (4) species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than fifty (50) percent of the total stock; and

3. Tree and shrub species shall be selected, grouped, and distributed in a manner which optimizes edge effect, cover, and food for wildlife.

(c) For subareas within the permit boundary where trees and shrubs will be planted for the purposes of creating recreation areas, green belts, fence rows, woodlots, or shelter belts for wildlife, or otherwise facilitating the postmining land use, the minimum stocking rate shall be 450 woody plants per acre, unless a lesser density is approved by the cabinet based on site-specific considerations.

(3) For determining tree or shrub stocking success for areas within the permit boundary to be stocked with woody plants, the following criteria shall apply:

(a) At Phase II bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than one (1) growing season. At Phase III bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than two (2) growing seasons;

(b) At Phase III bond release each tree or shrub counted shall have at least one-third (1/3) of its height in live crown;

(c) At Phase III bond release, only woody plants over one (1) foot in height shall be counted, and if multiple stems occur on the same plant, only the tallest stem shall be counted;

(d) Up to a cumulative twenty (20) percent of the woody plants needed to meet the stocking standard of 450 per acre may be replanted during the liability period without restarting the liability period;

(e) At Phase III bond release, at least eighty (80) percent of the trees and shrubs used to determine success shall have been in place for three (3) years or more; and

(f) Portions of the site occupied by approved rock areas, brush piles, permanent impoundments, permanent roads, and surface drainageways shall be excluded from the stocking success determinations.

[(1) Stocking, i.e., the number of stems per unit area, will be used to determine the degree to which space is occupied by well-distributed,

countable trees, shrubs or half-shrubs.]

[(a) Root crown or root sprouts over one (1) foot in height shall count as one (1) toward meeting the stocking requirements. Where multiple stems occur only the tallest stem will be counted.]

[(b) A countable tree or shrub means a tree that can be used in calculating the degree of stocking under the following criteria:]

[1. The tree or shrub shall be in place at least two (2) growing seasons;]

[2. The tree or shrub shall be alive and healthy; and]

[3. The tree or shrub shall have at least one-third (1/3) of its length in live crown.]

[(c) Rock areas, permanent road and surface water drainage ways on the revegetated area shall not require stocking.]

[(2) The following are the minimum performance standards for areas where commercial forest land is the approved postmining land use:]

[(a) The area shall have a minimum stocking of 450 trees or shrubs per acre.]

[(b) A minimum of seventy-five (75) percent of countable trees or shrubs shall be commercial trees species.]

[(c) The number of trees or shrubs and the ground cover shall be determined using procedures described in Section 6(2)(c) of this regulation and this subsection, and the sampling method approved by the cabinet.]

[(d) Upon expiration of the five (5) year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that the stocking of trees and shrubs and the ground cover on the revegetated area satisfy Section 6(2)(c)4 of this regulation and this subsection.]

[(3) The following are the minimum performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:]

[(a) The stocking of trees, shrubs, half-shrubs and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the reference area, or shall approximate the stocking and ground cover as approved in the mining and reclamation plan as appropriate for the approved postmining land use.]

[(b) When a reference area is utilized, an inventory of trees, half-shrubs and shrubs shall be conducted on established reference areas according to methods approved by the cabinet; this inventory shall contain but not be limited to:]

[1. Site quality;]

[2. Stand size;]

[3. Stand condition;]

[4. Site and species relations; and]

[5. Appropriate forest land utilization considerations.]

[(c) Upon expiration of the five (5) year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that:]

[1. The woody plants established on the revegetated site are equal to or greater than ninety (90) percent of the stocking of live woody plants of the same life form on the reference area or of the life form as approved in the permittee's mining and reclamation plan, with eighty (80) percent statistical confidence; and]

[2. The ground cover on the revegetated area satisfies Section 6(2)(c)4 of this regulation. Species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the mining and reclamation plan.]

Section 7. Use of Reference Areas. (1) Access.

(a) If the reference area is not under the control of the permittee, there shall be a written agreement between the permittee and the landowner specifying that the area may be used for the purposes of a reference area;

(b) The agreement shall also specify that representatives of the cabinet and OSM have right of entry for the purpose of observing and measuring vegetation; and

(c) The agreement shall be effective until final bond release on the permit area, and a copy of the agreement shall be submitted in the permit application.

(2) Selection and management.

(a) Reference areas shall be:

1. Located in unmined areas;

2. Of sufficient areas to allow meaningful vegetation measurements and comparisons with the permit area;

3. As close to the permit area as practicable;

4. Representative of the geology, soil, and slope of the permit area, and have the same vegetative type or crops proposed for the postmining land use; and

5. Delineated on the vegetation map pursuant to 405 KAR 8:030, Section 19 or on another appropriate map.

(b) Management of the reference area shall be comparable to that which is required for the approved land use of the permit area.

Section 8. Planting Report. (1) Prior to or simultaneously with the submittal of an application for Phase I [the initial] bond release on an area, the permittee shall file a certified planting report with the cabinet, on a form prescribed and furnished by the cabinet, giving the following information:

(a) [(1)] Identification of the operation;

(b) [(2)] The type of planting or seeding, including mixtures and amounts;

(c) [(3)] The date of planting or seeding;

(d) [(4)] The area of land planted or seeded; and

(e) Any [(5) Such] other relevant information that [as] the cabinet [may] requires.

(2) A planting report as described in subsection (1) of this section shall also be submitted to the cabinet if any augmentive reseeding or replanting, or other augmentive work, is performed within the permit area.

Section 9. Measurement of Vegetation Success. (1) "TRM #19, Field Sampling Techniques for Determining Ground Cover, Productivity, and Stocking Success of Reclaimed Surface Mined Lands", Department for Surface Mining Reclamation and Enforcement, June 28, 1991, is hereby incorporated by reference. This document may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Ground cover and tree and shrub stocking shall be measured using the techniques outlined

in TRM #19.

(3) Productivity for pastureland and cropland shall be measured by either:

(a) The techniques established in TRM #19 or alternatives approved under subsection (4) of this section;

(b) Harvesting and weighing the entire crop or forage by the permittee to determine total yield from the entire permit area or the entire portion designated as cropland (including prime farmland) or pastureland. Representative samples shall be taken to determine moisture content. Procedures for determining total yields under this option shall be approved in advance by the cabinet; or

(c) For cropland where hay is grown that is not prime farmland and for pastureland, harvesting and weighing by the permittee of the forage from a productivity test area that is an approved representative subarea of the area designated as pastureland or cropland, under subsection (6) of this section.

(4) The cabinet may approve alternative sampling and measurement techniques for productivity determinations in addition to those established by TRM #19 if:

(a) A complete description and justification of the methodology is submitted to the cabinet;

(b) The cabinet determines that use of the methodology would provide substantial benefit to the user in terms of cost, efficiency, or accuracy of measuring productivity;

(c) The methodology is determined by the cabinet to be procedurally and statistically valid and in compliance with this regulation;

(d) Methodologies used for prime farmland shall be approved in consultation with SCS; and

(e) Alternative methodologies shall not be used unless they are approved by OSM.

(5) Measurements of ground cover, tree and shrub stocking, and productivity for Phase II and Phase III bond release shall be made by the cabinet, except the permittee may measure productivity.

(a) If the permittee intends to measure productivity, he shall notify the department's appropriate regional office of the measurement dates in order to provide the opportunity for cabinet personnel to observe the measurements. This notification shall be provided in writing at least thirty (30) days prior to the anticipated measurement dates and shall be provided by telephone or in person within two (2) days prior to the measurement date.

(b) If the permittee measures productivity, he shall ensure that the measurements are made by qualified persons.

(c) The cabinet may make measurements or take other appropriate action as deemed necessary to verify measurements made by the permittee.

(6) Productivity test area for cropland where hay is grown that is not prime farmland and for pastureland. If approved by the cabinet a permittee may determine productivity by mowing, baling and weighing the forage on a test area that is a representative subarea of the area designated as pastureland or cropland.

(a) The test area shall be one (1) contiguous subarea of the larger area to be represented; shall include ten (10) percent or more of the larger area but shall not be less than one (1) acre; shall be representative of the soil types, slopes and aspect of the larger area; and at the time of harvesting shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area.

(b) Prior to submitting an application for Phase II bond release the permittee shall submit a copy of the MRP map marked to show the proposed test area. The cabinet shall evaluate the proposed test area and shall notify the permittee in writing whether the proposed test area is approved. The approval shall be conditioned that fertilization and other management of the test area shall be the same as that of the larger area, and that at the time of harvesting the test area shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area. If the cabinet approves the test area the permittee shall physically mark the location of the test area with appropriate markers. The cabinet in its approval may specify the type of markers required.

(c) Within ten (10) working days of receipt of the written notice of anticipated measurement dates under subsection (5)(a) of this section, the cabinet shall inspect the area to determine if species composition, ground cover, and extent of vegetative growth on the test area are representative of the larger area. If the cabinet determines that the test area does not meet the applicable criteria, it shall promptly notify the permittee in writing and set forth the reasons for its determination. If the cabinet determines that the test area meets the applicable criteria, it shall promptly notify the permittee in writing that the test area may be harvested to determine productivity.

(d) The permittee shall mow, bale and weigh the yield from the test area, and shall ensure that the yield from the test area is kept separate from the yield from surrounding areas. Representative samples shall be taken to determine moisture content. Personnel of the cabinet may observe the mowing, baling and weighing and may take any reasonable actions necessary to verify the validity of these activities.

(e) The permittee shall submit the results of the yield measurements to the cabinet. The cabinet shall have the right to reject the results, in whole or in part, for good cause. The cabinet shall evaluate the results and shall notify the permittee in writing of the extent to which the results fulfill the requirement to determine productivity for the larger area.

(7) All crop and forage yields shall be adjusted to standard moisture content; fifteen (15) percent for pasture and hay, fifteen and five-tenths (15.5) percent for corn, and twelve and five-tenths (12.5) percent for soybeans and wheat.

(8) Whether measured by the cabinet or the permittee, vegetation success shall be measured prior to the submittal of an application for a Phase II or Phase III bond release.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 13, 1991
FILED WITH LRC: September 13, 1991 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 18:180. Protection of fish, wildlife, and related environmental values.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.405, 350.435, 350.465, 30 CFR Parts 730-733, 735, 817.57, 817.97, 917, 30 USC 1253, 1255, 1266
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.57, 817.97, 917, 30 USC 1253, 1255, 1266
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific requirements and measures for the protection of fish, wildlife, and related environmental values, and for the enhancement of those [such] resources where practicable.

Section 1. General. [Protection of Fish, Wildlife, and Related Environmental Values.] (1) The [Any] permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts [of the activities] on fish, wildlife, and related environmental values, and achieve enhancement of those [such] resources where practicable.

(2) Each permittee shall:

(a) To the extent possible using the best technology currently available:

1. Ensure that electric powerlines and other transmission facilities, used for or incident to underground mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the cabinet determines that these requirements are unnecessary;

2. Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by state or federal law;

3. Construct stream crossings so as not to adversely affect fish migration and aquatic habitat;

4. Design fences, overland conveyors, and other potential barriers to permit passage of large mammals, except where the cabinet determines that the designs are unnecessary; and

5. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(b) Avoid disturbance to, enhance where practicable, or restore[, or replace] habitats of unique or unusually high value for fish and wildlife;

(c) Avoid disturbance to, enhance where practicable, or reestablish riparian vegetation along rivers and streams and bordering ponds and lakes; and

(d) Avoid disturbances to, enhance where practicable, restore or replace wetlands and comply with Section 404 of the Clean Water Act.

Section 2. Protection of Streams. (1) Buffer zones for streams with valuable environmental resources.

(a) A stream or reach of stream with valuable environmental resources is one that:

1. Contains, or could reasonably be expected to contain, listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

2. Is an intermittent or perennial stream that supports a high level of habitat development and quality as reflected by the integrity of fish and macroinvertebrate populations, as set forth in TRM #20 which is incorporated by reference in 405 KAR 8:030, Section 20(3)(a); or

3. Is an important stream. An important stream is one that:

a. Is classified as an outstanding resource water pursuant to 401 KAR 5:026 or 401 KAR 5:031;

b. Based on the Kentucky Rivers Assessment, is a Class 1, 2, or 3 stream in the water quality category or is a Class 1 or 2 stream in the fish resource category. Class 3 streams in the fish resource category may be determined case-by-case to be important streams by the cabinet. These streams that occur in the coal fields are listed in TRM #20; or

c. Is otherwise considered to be an important stream by the cabinet, including but not limited to a stream contained within, immediately upstream of, or bordering a publicly-owned wildlife management area or a nature preserve dedicated pursuant to KRS 146.410 et seq.

(b) The cabinet shall not grant a buffer zone variance under 405 KAR 16:060, Section 11, if the reach of stream that is within the buffer zone is one with valuable environmental resources pursuant to paragraph (a) of this subsection. Exceptions may be made for the following, if the underground mining activities will not cause significant detrimental effects on the valuable environmental resources and if all other requirements of 405 KAR 16:060, Section 11 are met:

1. Stream crossings and appurtenant approaches;

2. Minor disturbances such as installation of **a groundwater monitoring well; or** [; and]

3. Existing roads where no major reconstruction of the road within 100 feet of the stream is proposed including road widening (except widening in which only an incidental portion of the road berm is accidentally disturbed during grading), road relocation, or any other construction activity that might detrimentally affect the stream or its channel. Typical road maintenance including grading, cleaning ditches, and road surfacing shall not be considered major reconstruction measures.

(c) The cabinet may grant a buffer zone variance if the reach of stream with valuable environmental resources is outside (e.g., downstream of) the buffer zone, if underground mining activities will not cause significant detrimental effects on the valuable environmental resources, and if all other requirements of 405 KAR 16:060, Section 11 are met.

(2)(a) During-mining and postmining biological monitoring shall be conducted if required by the cabinet; however, it shall always be required if a reach of stream with valuable environmental

resources exists within the area affected by surface operations and facilities or the adjacent area.

(b) If biological monitoring is required under paragraph (a) of this subsection, the biological monitoring shall be conducted in accordance with TRM #20, and shall be conducted at least semiannually through Phase I bond release and once per year thereafter until final bond release. The cabinet may approve termination of the biological monitoring program after Phase I bond release based upon a demonstration that additional monitoring is not needed to ensure protection of aquatic resources.

(c) Biological monitoring data shall be collected and evaluated by or under the direction of qualified professionals whose credentials have been filed with the department. The results of the biological monitoring data shall be submitted to the cabinet within sixty (60) days after data collection. All biological monitoring samples shall be labeled, preserved, maintained, and made available for inspection, for twelve (12) months.

(3) Other stream protection measures. The cabinet shall require other appropriate stream protection measures (such as those prescribed in TRM #20) as necessary to ensure protection of streams with valuable environmental resources. At the cabinet's discretion, protection measures may also be required for other streams. The protection measures may be required during the permitting process, as a result of during-mining or postmining monitoring, or as a result of a site inspection by the cabinet. These additional protection measures shall be required in consultation with qualified personnel.

(4) The provisions of this section shall apply to operations having permit applications that were subject to 405 KAR 8:030, Sections 20 and 36.

Section 3. Protection of Endangered and Threatened Species. (1)(a) No underground mining activity shall be conducted which is likely to jeopardize the continued existence of an endangered or threatened species listed by the Secretary of the Interior or which is likely to result in the destruction or adverse modification of a designated critical habitat of those species in violation of the Endangered Species Act of 1973 as amended (16 USC Sec. 1531 et seq.). The permittee shall promptly report to the cabinet any state- or federally-listed endangered or threatened species within the permit area of which the permittee becomes aware. Upon notification, the cabinet shall consult with appropriate state and federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the permittee may proceed.

(b) No underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the cabinet any golden or bald eagle nest within the permit area of which the permittee becomes aware. Upon notification, the cabinet shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the Kentucky Department of Fish and Wildlife Resources and, after consultation, shall identify whether, and under what conditions, the permittee may proceed.

(2) Nothing in this title shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 as amended (16 USC 1531 et seq.) or the Bald Eagle Protection Act as amended (16 USC 668 et seq.).

[(2) A permittee shall promptly report to the cabinet the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of the Interior, any plant or animal listed by the Commonwealth of Kentucky as threatened or endangered, or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the cabinet by that person.]

[(3) A permittee shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the underground mining activities on the permit area shall be designed and constructed in accordance with the guidelines set forth in "Environmental Criteria for Electric Transmission System" (USDI, USDA (1970)), or in alternative guidance manuals approved by the cabinet. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10 "Powerline Contacts by Eagles and Other Large Birds" or in alternative guidance manuals approved by the cabinet.]

[(4) Each permittee shall to the extent possible using the best technology currently available:]

[(a) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;]

[(b) Fence roadways where specified by the cabinet to guide locally important wildlife to roadway underpasses or overpasses and construct the necessary passages. No new barrier shall be located in known and important wildlife migration routes;]

[(c) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;]

[(d) Restore, enhance where practicable, or avoid disturbances to habitats of unusually high value for fish and wildlife;]

[(e) Restore, enhance where practicable, or maintain natural reparian vegetation on the banks of streams, lakes, and other wetland areas. Wetlands shall be preserved or created, rather than drained or otherwise permanently abolished;]

[(f) Afford protection to aquatic communities by avoiding stream channels as required in 405 KAR 18:060, Section 9 and 405 KAR 18:210, Section 4 or restoring stream channels as required in 405 KAR 18:080, Section 2;]

[(g) Not use persistent pesticides on the area during underground mining and reclamation activities unless approved by the cabinet;]

[(h) To the extent possible prevent, control, and suppress range forest and coal fires which are not approved by the cabinet as part of a management plan;]

Section 4. Reclamation Strategies and Wildlife Enhancement Techniques. (1) A postmining land use for fish and wildlife shall be characterized by: a combination of habitat types or vegetative types, such as a mix of forest land or woodlots, shrub/scrub areas, grass/legume areas, and wetlands; or palustrine wetlands throughout. If

the postmining land use is for fish and wildlife, at least thirty (30) percent of the land area involved, not including permanent impoundments, permanent roads, and brush piles and rock piles for wildlife, shall be stocked with trees or shrubs. Where [(i) If] fish and wildlife [habitat] is to be a [primary or secondary] postmining land use, the permittee [operator] shall, in addition to the requirements of 405 KAR 18:200:

(a) [1.] Select plant species [to be used on reclaimed areas, based] on the basis of the following criteria: their proven nutritional value, their use as cover, their ability to support and enhance fish and wildlife after release of the performance bond, soil conditions and pH tolerances of the species, and species identified during the baseline terrestrial habitat (vegetation) analysis; [their proven nutritional value for fish and wildlife; their uses as cover for fish and wildlife; and their ability to support and enhance fish and wildlife habitat after release of bonds;] and

(b) Group and distribute plants [2. Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed] in a manner which optimizes edge effect, cover, food, and other benefits for fish and wildlife;

(2) [(j)] Where cropland or pastureland is to be the [alternative] postmining land use [on lands diverted from a fish and wildlife premining land use], and where appropriate for wildlife and crop management practices, the permittee shall intersperse the fields with trees, hedges or fence rows throughout the [harvested] area to break up large blocks of monoculture and to diversify habitat types of birds and other animals. [; and]

(3) [(k)] Where [the primary land use is to be] residential[, public service,] or industrial/commercial use is to be the postmining land use, and where consistent with the approved postmining land use, the permittee shall [land use,] intersperse reclaimed lands with greenbelts, utilizing species of grass, shrubs and trees useful as food and cover for wildlife [birds and small animals, unless such greenbelts are inconsistent with the approved postmining land use].

(4) Additional reclamation strategies and wildlife enhancement techniques are outlined in TRM #20.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 18:200. Revegetation.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.151, 350.405, 350.410, 350.420, 350.435, 350.465, 30 CFR Parts 730-733, 735, 817.111-.116, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.111-.116, 917, 30 USC 1253, 1255, 1266

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth requirements for revegetation of areas affected by surface operations and facilities of underground mining activities, including requirements for temporary and permanent vegetative cover, use of introduced species, timing of revegetation, mulching and other soil stabilizing practices, standards for measuring revegetation success, and reporting requirements.

Section 1. General Requirements. (1)(a) Each permittee shall establish on all areas affected [disturbed] by surface operations and facilities a diverse, effective, and permanent vegetative cover that meets the requirements of this regulation and the revegetation provisions of 405 KAR 18:180, and that supports the approved postmining land use. [For areas designated as prime farmland, the requirements of 405 KAR 20:040 shall apply.]

(b) For prime farmland areas, the requirements of 405 KAR 20:040 shall apply in lieu of the productivity standards of this regulation unless those areas are exempted by 405 KAR 8:050, Section 3, in which case the productivity standards of this regulation shall apply.

(2) All revegetation shall be in compliance with the plan submitted under 405 KAR 8:040, Sections 24(4) and 37 as approved by the cabinet and shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(3) If the approved postmining land use is not cropland or pastureland, [(a)] all disturbed lands except water areas, rock areas such as those used for drainage control and wildlife enhancement, and surface areas of roads that are approved as a part of the postmining land use or uses shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the region that is capable of soil stabilization, self-regeneration, and plant succession. The vegetative cover shall be considered of the same seasonal variety if [when] it consists of a mixture of species of equal or superior utility for the approved postmining land use, when compared with the utility of naturally occurring vegetation during each season of the year. [If the postmining land use is cropland, successful establishment of the crops normally grown, or other appropriate crops, will meet the requirements of this paragraph.]

(4) [(b) The vegetative cover shall be capable of stabilizing the soil surface from erosion.] If the postmining land use is cropland or pastureland, establishment of [appropriate] crops or pasture species normally grown in the mine vicinity and normal husbandry practices will meet the requirements of subsection (1)(a) of this section. [this paragraph unless the cabinet determines that other temporary vegetation shall be initially planted in order to stabilize the soil surface prior to establishment of crops.]

(5)(a) Plant species used for revegetation shall be compatible with the plant and animal species of the area, and shall meet the requirements of applicable state and federal laws or regulations for seeds, poisonous and noxious plants, and introduced species.

(b) Except for cropland [and pastureland], selection of species, distribution patterns, seeding rates, and planting arrangements shall be approved case-by-case by the cabinet based upon [TRM #20 and other] appropriate technical documents. [TRM #20 is incorporated by reference in 405 KAR 8:030, Section 20.] Two (2) or more permanent legume species and two (2) [one (1)] or more permanent grasses shall be established on pastureland unless fewer species are approved by the cabinet based on a pasture management plan specifically tailored to the species mix.

(6) [(c)] Subject to the approval of the cabinet, small incidental areas related to the fulfillment of the postmining land use may be exempted from the revegetation standards if [where] no adverse environmental impact will occur if the exemption is granted.

(7) The extended liability period under the performance bond requirements of 405 KAR Chapter 10 shall begin after the last time of augmented seeding, fertilizing, irrigating, or other related work, and shall continue for not less than five (5) years; except:

(a) Discrete areas of 0.25 acre or less needing reseeding due to circumstances specified in subparagraphs 1 through 5 of this paragraph may be reseeded (including reliming, refertilizing, and remulching) without restarting the five (5) year liability period. The total acreage of these areas reseeded during the liability period shall not exceed three (3) percent of the acreage affected by surface operations and facilities. This paragraph shall only apply to:

1. Reseeding associated with repair of rills and gullies;

2. Reseeding areas where vegetation was disturbed by vehicular traffic not under the control of the permittee;

3. Reseeding areas where vegetation was disturbed by the installation or removal of oil and gas wells or utility lines;

4. Reseeding areas where there was poor seed germination of the initial seeding; and

5. Reseeding areas where vegetation was unavoidably disturbed in the course of conducting some other necessary reclamation activity.

(b) Liming, fertilizing, mulching, seeding, or stocking of haul roads, locations where sedimentation ponds and off-site temporary diversions that divert water to or away from sedimentation ponds have been removed, and locations where collected sediment and embankment material from sedimentation pond removal have been disposed shall not restart the five (5) year liability period. Vegetation established in these areas shall be in place for at least two (2) years before Phase III bond release;

(c) For cropland, the five (5) year liability period shall commence at the date of initial planting for the long-term intensive agricultural postmining land use;

(d) Irrigating, reliming, and refertilizing cropland and pastureland; reseeding cropland; and renovating pastureland by overseeding with legumes after Phase II bond release and after three (3) years from the initial seeding shall be considered normal husbandry practices and shall not restart the liability period if the amount and frequency of these practices do not exceed normal agricultural practices used on unmined land within the region; and

(e) Other normal husbandry practices that may be conducted without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting of trees and shrubs in accordance with Section 6 of this regulation.

(8) For pastureland, and for cropland except prime farmland subject to 405 KAR 20:040, ground cover and productivity success standards shall be met during the growing seasons of any two (2) years of the liability period except the first year; and areas approved for other uses shall equal or exceed the applicable success standards during the growing season of the last year of the liability period.

Section 2. Use of Introduced Species. Introduced species may be substituted for native species only if approved by the cabinet under the following conditions:

(1) The species shall meet the applicable requirements of Section 1(2), (3), (4), and (5) of this regulation. [The species are compatible with the plant and animal species of the region;]

[(2) The species meet the requirements of applicable state and federal seed or introduced species statutes, and are not poisonous or noxious; and]

[(3)(a) After appropriate field trials or other demonstrations or studies satisfactory to the cabinet have shown that the introduced species, if proposed as the permanent vegetation, are desirable and necessary to achieve the approved postmining land use; or]

(2)(a) Appropriate field trials or other studies shall be conducted or published literature shall be submitted to demonstrate to the satisfaction of the cabinet that proposed, unproven, introduced species are desirable and are necessary for achieving the postmining land use; or

(b) The species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion; and measures to establish permanent vegetation are included in the approved [revegetation] plans submitted under 405 KAR 8:040, Sections 24(4)(e) and 37.

[(4) The cabinet may require the use of particular species or mixtures when such species are determined to enhance fish and wildlife resources, to be more effective in controlling erosion, to be more effective in establishing permanent vegetation, or to be more effective in achieving the approved postmining land use.]

Section 3. Timing. Seeding and planting of disturbed areas with permanent species shall be conducted no later than during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally, or as approved [established] by the cabinet in the permit, for the type of plant materials selected. In accordance with Section 4 of this regulation and 405 KAR 18:020, a [When necessary to effectively control erosion, any] disturbed area shall be seeded and mulched, as contemporaneously as

practicable with the completion of backfilling and grading, to establish a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

Section 4. Soil Amendments and Stabilization. (1) Nutrients and soil amendments shall be applied to regarded areas in accordance with 405 KAR 18:050, Section 5. [Mulching and Other Soil Stabilizing Practices.]

(2) [(1)] Suitable mulch or other soil stabilizing practices shall be used in addition to temporary cover on all regraded and topsoiled areas to control erosion, [to] promote germination of seeds, and [or to] increase the moisture retention capacity of the soil. The cabinet may, on a case-by-case basis, waive [suspend] the requirement for mulch if the cabinet finds, based on seasonal, soil, and slope factors, that the temporary vegetative cover will achieve proper erosion control until a permanent cover is established, except that no waiver shall be granted for any area having a slope greater than ten (10) percent. [that alternative procedures proposed by the permittee will achieve the requirements of Section 6 and do not cause or contribute to air or water pollution.]

[(2) When required by the cabinet, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.]

[(3) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch when the cabinet determines they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.]

[(4) Chemical soil stabilizers alone or in combination with appropriate mulches may be used in conjunction with vegetative covers approved for the postmining land use.]

(3) For areas within the area affected by surface operations and facilities to be used as cropland, the area shall be seeded or planted in order to maintain a vegetative cover effective in controlling erosion until the permittee chooses to grow crops.

[Section 5. Grazing. When the approved postmining land use is grazing or pasture land, the permittee may demonstrate successful revegetation by using the reclaimed land for livestock grazing at a grazing capacity approved by the cabinet approximately equal to that for similar nonmined lands, for at least the last two (2) full years of liability required under Section 6(2) of this regulation or by other appropriate demonstration approved by the cabinet.]

Section 5. Success Standards for Ground Cover and Productivity. (1) Determination of success of ground cover and productivity may be made on the basis of reference areas from unmined lands in the vicinity of the operation, where applicable, or by application of the specific ground cover and productivity standards of this section (tree and shrub stocking standards are set forth in Section 6 of this regulation).

(2)(a) For an approved postmining land use of pastureland or cropland used for the production of hay (except prime farmland subject to 405 KAR 20:040):

1. Ground cover (percent) and productivity (tons of forage per acre) shall be at least ninety (90) percent of that of an approved reference area with a statistical confidence of ninety (90) percent; or

2. Ground cover shall be at least ninety (90) percent, and productivity shall be at least ninety (90) percent of the average yield for that hay in the county in the three (3) years prior to the year of measurement, as determined from yield data available from the Kentucky Department of Agriculture, with a statistical confidence of ninety (90) percent.

(b) For areas within the area affected by surface operations and facilities where row crops will be planted (except prime farmland subject to 405 KAR 20:040):

1. Ground cover on any area not planted in row crops shall be at least ninety (90) percent with a statistical confidence of ninety (90) percent; and

2. Crop production shall be at least ninety (90) percent of that of an approved reference area or at least ninety (90) percent of the average yield for the crop in the county in the three (3) years prior to the year of measurement, as determined from yield data available from the Kentucky Department of Agriculture, with a statistical confidence of ninety (90) percent.

(c) Forest land, or other areas within the area affected by surface operations and facilities where woody plants are stocked, shall have at least eighty (80) percent ground cover with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 4.

(d) For all other land uses, ground cover shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 4.

(e) For all land uses other than cropland planted in row crops, at Phase III bond release there shall be no discrete bare area or sparsely covered (less than fifty (50) percent ground cover) area greater than 0.25 acre in size. [6. Standards for Success. (1) Success of revegetation shall be measured by techniques approved by the cabinet after consultation with appropriate state and federal agencies. Comparison of ground cover and productivity may be made on the basis of reference areas, or through the use of technical guidance procedures published by USDA or USDI or other procedures approved by the cabinet and the Director of OSM for assessing ground cover and productivity. Management of the reference area, if applicable, shall be comparable to that which is required for the approved postmining land use of the permit area.]

[(2)(a) The ground cover and productivity of living plants on the revegetated area shall be at least equal to the ground cover and productivity of living plants on the approved reference area, or to the standards in technical guides approved by the cabinet and the Director of OSM. Ground cover and productivity shall equal the approved standard for the last two (2) consecutive years of the responsibility period.]

[(b) Except as provided in paragraph (c)3 of this subsection, the period of extended responsibility under the performance bond requirements of Title 405, Chapter 10 begins at the last time of substantially augmented seeding, fertilizing, irrigation or other work

necessary to ensure successful vegetation, and continues for not less than five (5) years.]

[(c) The ground cover and productivity of the revegetated area shall be considered equal, if they are at least ninety (90) percent of the ground cover and productivity of the reference area with ninety (90) percent statistical confidence, or with eighty (80) percent statistical confidence on shrublands; or ground cover and productivity are at least ninety (90) percent of the technical guide approved pursuant to paragraph (a) of this subsection. Exceptions may be authorized by the cabinet under the following standards:]

(3) [1.] For previously mined areas that were not reclaimed to the requirements of [Title] 405 KAR Chapters 16 through 20, the ground cover of living plants shall [not be less than can be supported by the best available topsoil or other suitable material in the reaffected area, shall] not be less than the ground cover existing before the redisturbance and shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 18:190, Section 4. [adequate to control erosion;]

[2. For areas to be developed for industrial or residential use within two (2) years after regrading is completed, the ground cover of living plants shall not be less than required to control erosion;]

[3. For areas to be used for cropland, success in revegetation of cropland shall be determined on the basis of crop production from the mined area as compared to the approved reference areas or other approved technical guidance procedures. Crop production from the mined area shall be equal to or greater than that of the approved standard for the last two (2) consecutive growing seasons of the five (5) year liability period established in paragraph (b) of this subsection. Production shall not be considered equal if it is less than ninety (90) percent of the production of the approved standard with ninety (90) percent statistical confidence. The applicable five (5) year period of responsibility for revegetation shall commence at the date of initial planting of the crop being grown. Within thirty (30) days of planting, the permittee shall notify the cabinet that the initial planting of the crop has been completed. Promptly thereafter, the cabinet shall inspect the area to verify that the initial planting has been completed; and]

[4. On areas to be developed for fish and wildlife management or forestland, successful vegetation shall be determined on the basis of tree, shrub or half-shrub stocking and ground cover. The tree, shrub or half-shrub stocking shall meet the standards described in Section 7 of this regulation. The area seeded to a ground cover shall be considered acceptable if it is at least seventy (70) percent of the ground cover of the reference areas with ninety (90) percent statistical confidence or if the ground cover is determined by the cabinet to be adequate to control erosion. This subsection shall determine the responsibility period and the frequency of ground cover measurement.]

[(3) The permittee shall:]

[(a) Maintain any necessary fences and proper management practices; and]

[(b) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the cabinet, to identify conditions during the applicable period of liability specified in subsection (2) of this section.]

[(4) Where land to be affected by surface operations and facilities is forty (40) acres or less in size within a permit area, the following performance standards, if approved by the cabinet, may be used to measure success of revegetation on sites that are disturbed.]

[(a) Areas planted only in herbaceous species shall sustain a vegetative ground cover of seventy (70) percent for the last three (3) full consecutive years of the five (5) year period of liability.]

[(b) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of seventy (70) percent for the last three (3) full consecutive years of the five (5) year period of liability and 400 woody plants per acre at the end of the five (5) years. On steep slopes, the minimum number of woody plants shall be 600 per acre.]

[(5) For the purposes of this section, herbaceous species means grasses, legumes, and nonleguminous forbs; wood plants means woody shrubs, trees, and vines; and ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area of measurement.[

Section 6. [7.] Tree and Shrub Stocking. This section sets forth stocking standards and criteria for counting woody plants for measuring stocking success, and applies in addition to Section 5 of this regulation, where the approved postmining land use or the approved fish and wildlife protection and enhancement plan requires the planting of trees or shrubs. [This section sets forth standards for revegetation of areas for which the approved postmining land use requires woody plants as the primary vegetation, to ensure that a cover of commercial tree species, noncommercial tree species, shrubs or half-shrubs, sufficient for adequate use of available growing space, is established after underground mining activities.]

(1) If forest land is an approved postmining land use:

(a) The forested area shall have a minimum stocking of 450 trees or trees and shrubs per acre determined with a statistical confidence of ninety (90) percent, with tree species comprising at least fifty (50) percent of the woody plant species;

(b) At least four (4) species of trees or trees and shrubs shall be planted in a mixed distribution pattern for noncommercial (unmanaged) forest land with each of the four (4) species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than fifty (50) percent of the total stock; and

(c) For areas to be used as commercial (managed) forest land, at least seventy-five (75) percent of the woody plant stocking shall be with tree (not shrub) species providing good to excellent commercial value. The species shall be selected from those listed in TRM #20, except the cabinet may approve other species on a case-by-case basis. TRM #20 is incorporated by reference in 405 KAR 8:030, Section 20.

(2) For other postmining land uses:

(a) At least thirty (30) percent of the area shall be comprised of multiple rows or plots of

trees or shrubs if fish and wildlife is the postmining land use.

(b) For subareas within the area affected by surface operations and facilities where trees or shrubs will be planted for the purpose of creating wildlife habitat (either for a fish and wildlife postmining land use or for fish and wildlife enhancement of other postmining land uses):

1. The minimum stocking rate shall be 450 woody plants per acre, determined with a statistical confidence of ninety (90) percent;

2. At least four (4) species of trees or shrubs shall be planted with each of the four (4) species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than fifty (50) percent of the total stock; and

3. Tree and shrub species shall be selected, grouped, and distributed in a manner which optimizes edge effect, cover, and food for wildlife.

(c) For subareas within the area affected by surface operations and facilities where trees and shrubs will be planted for the purposes of creating recreation areas, green belts, fence rows, woodlots, or shelter belts for wildlife, or otherwise facilitating the postmining land use, the minimum stocking rate shall be 450 woody plants per acre, unless a lesser density is approved by the cabinet based on site-specific considerations.

(3) For determining tree or shrub stocking success for areas within the area affected by surface operations and facilities to be stocked with woody plants, the following criteria shall apply:

(a) At Phase II bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than one (1) growing season. At Phase III bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than two (2) growing seasons;

(b) At Phase III bond release each tree or shrub counted shall have at least one-third (1/3) of its height in live crown;

(c) At Phase III bond release, only woody plants over one (1) foot in height shall be counted, and if multiple stems occur on the same plant, only the tallest stem shall be counted;

(d) Up to a cumulative twenty (20) percent of the woody plants needed to meet the stocking standard of 450 per acre may be replanted during the liability period without restarting the liability period;

(e) At Phase III bond release, at least eighty (80) percent of the trees and shrubs used to determine success shall have been in place for three (3) years or more; and

(f) Portions of the site occupied by approved rock areas, brush piles, permanent impoundments, permanent roads, and surface drainageways shall be excluded from the stocking success determinations.

[(1) Stocking, i.e., the number of stems per unit area, will be used to determine the degree to which space is occupied by well distributed countable trees, shrubs or half-shrubs.]

[(a) Root crown or root sprouts over one (1) foot in height shall count as one (1) toward meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.]

[(b) A countable tree or shrub means a tree that can be used in calculating the degree of stocking under the following criteria:]

[1. The tree or shrub shall be in place at least two (2) growing seasons;]

[2. The tree or shrub shall be alive and healthy; and]

[3. The tree or shrub shall have at least one-third (1/3) of its length in live crown.]

[(c) Rock areas, permanent road and surface water drainageways on the revegetated area shall not require stocking.]

[(2) The following are the minimum performance standards for areas where commercial forest land is the approved postmining land use:]

[(a) The area shall have a minimum stocking of 450 trees or shrubs per acre.]

[(b) A minimum of seventy-five (75) percent of countable trees or shrubs shall be commercial trees species.]

[(c) The number of trees or shrubs and the ground cover shall be determined using procedures described in Section 6(2)(c)4 of this regulation and subsection (1) of this section and the sampling method approved by the cabinet.]

[(d) Upon expiration of the five (5) year responsibility period and at the time of request for bond release each permittee shall provide documentation showing that the stocking of trees and shrubs and the ground cover on the revegetated area satisfy Section 6(2)(c)4 of this regulation and this subsection.]

[(3) The following are the minimum performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:]

[(a) The stocking of trees, shrubs, half-shrubs, and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the reference area or shall approximate the stocking and ground cover as approved in the mining and reclamation plan as appropriate for the approved postmining land use.]

[(b) Where a reference area is utilized, an inventory of trees, half-shrubs and shrubs shall be conducted on established reference areas according to methods approved by the cabinet. This inventory shall contain but not be limited to:]

[1. Site quality;]

[2. Stand size;]

[3. Stand condition;]

[4. Site species relations; and]

[5. Appropriate forest land utilization considerations.]

[(c) Upon expiration of the five (5) year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that: the woody plants established on the revegetated site are equal to or greater than ninety (90) percent of the stocking of live woody plants of the same life form on the reference area or of the life form as approved in the permittee's mining and reclamation plan with eighty (80) percent statistical confidence; and the ground cover on the revegetated area satisfies Section 6(2)(c)4 of this regulation. Species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the mining and reclamation plan.]

Section 7. Use of Reference Areas. (1) Access.

(a) If the reference area is not under the control of the permittee, there shall be a written agreement between the permittee and the landowner specifying that the area may be used for the purposes of a reference area;

(b) The agreement shall also specify that representatives of the cabinet and OSM have right of entry for the purpose of observing and measuring vegetation; and

(c) The agreement shall be effective until final bond release on the permit area, and a copy of the agreement shall be submitted in the permit application.

(2) Selection and management.

(a) Reference areas shall be:

1. Located in unmined areas;

2. Of sufficient areas to allow meaningful vegetation measurements and comparisons with the permit area;

3. As close to the area affected by surface operations and facilities as practicable;

4. Representative of the geology, soil, and slope of the area affected by surface operations and facilities, and have the same vegetative type or crops proposed for the postmining land use; and

5. Delineated on the vegetation map pursuant to 405 KAR 8:030, Section 19 or on another appropriate map.

(b) Management of the reference area shall be comparable to that which is required for the approved land use of the area affected by surface operations and facilities.

Section 8. Planting Report. (1) Prior to or simultaneously with the submittal of an application for Phase I [the initial] bond release on an area, the permittee shall file a certified planting report with the cabinet, on a form prescribed and furnished by the cabinet, giving the following information:

(a) [(1)] Identification of the operation;

(b) [(2)] The type of planting or seeding, including mixtures and amounts;

(c) [(3)] The date of planting or seeding;

(d) [(4)] The area of land planted or seeded; and

(e) Any [(5) Such] other relevant information that [as] the cabinet [may] requires.

(2) A planting report as described in subsection (1) of this section shall also be submitted to the cabinet if any augmentive reseeding or replanting, or other augmentive work, is performed within the area affected by surface operations and facilities.

Section 9. Measurement of Vegetation Success. (1) Ground cover and tree and shrub stocking shall be measured using the techniques outlined in TRM #19. This document is incorporated by reference in 405 KAR 16:200, Section 9.

(2) Productivity for pastureland and cropland shall be measured by either:

(a) The techniques established in TRM #19 or alternatives approved under subsection (4) of this section;

(b) Harvesting and weighing the entire crop or forage by the permittee to determine total yield from the entire surface operations and facilities area or the entire portion designated as cropland (including prime farmland) or pastureland. Representative samples shall be taken to determine moisture content. Procedures for determining total yields under this option shall be approved in advance by the cabinet; or

(c) For cropland where hay is grown that is not prime farmland and for pastureland, harvesting and weighing by the permittee of the forage from a productivity test area that is an approved representative subarea of the area designated as pastureland or cropland, under subsection (6) of this section.

(3) The cabinet may approve alternative sampling and measurement techniques for productivity determinations in addition to those established by TRM #19 if:

(a) A complete description and justification of the methodology is submitted to the cabinet;

(b) The cabinet determines that use of the methodology would provide substantial benefit to the user in terms of cost, efficiency, or accuracy of measuring productivity;

(c) The methodology is determined by the cabinet to be procedurally and statistically valid and in compliance with this regulation;

(d) Methodologies used for prime farmland shall be approved in consultation with SCS; and

(e) Alternative methodologies shall not be used unless they are approved by OSM.

(4) Measurements of ground cover, tree and shrub stocking, and productivity for Phase II and Phase III bond release shall be made by the cabinet, except the permittee may measure productivity.

(a) If the permittee intends to measure productivity, he shall notify the department's appropriate regional office of the measurement dates in order to provide the opportunity for cabinet personnel to observe the measurements. This notification shall be provided in writing at least thirty (30) days prior to the anticipated measurement dates and shall be provided by telephone or in person within two (2) days prior to the measurement date.

(b) If the permittee measures productivity, he shall ensure that the measurements are made by qualified persons.

(c) The cabinet may make measurements or take other appropriate action as deemed necessary to verify measurements made by the permittee.

(5) Productivity test area for cropland where hay is grown that is not prime farmland and for pastureland. If approved by the cabinet a permittee may determine productivity by mowing, baling and weighing the forage on a test area that is a representative subarea of the area designated as pastureland or cropland.

(a) The test area shall be one (1) contiguous subarea of the larger area to be represented; shall include ten (10) percent or more of the larger area but shall not be less than one (1) acre; shall be representative of the soil types, slopes and aspect of the larger area; and at the time of harvesting shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area.

(b) Prior to submitting an application for Phase II bond release the permittee shall submit a copy of the MRP map marked to show the proposed test area. The cabinet shall evaluate the proposed test area and shall notify the permittee in writing whether the proposed test area is approved. The approval shall be conditioned that fertilization and other management of the test area shall be the same as that of the larger area, and that at the time of harvesting the test area shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area.

If the cabinet approves the test area the permittee shall physically mark the location of the test area with appropriate markers. The cabinet in its approval may specify the type of markers required.

(c) Within ten (10) working days of receipt of the written notice of anticipated measurement dates under subsection (4)(a) of this section, the cabinet shall inspect the area to determine if species composition, ground cover, and extent of vegetative growth on the test area are representative of the larger area. If the cabinet determines that the test area does not meet the applicable criteria, it shall promptly notify the permittee in writing and set forth the reasons for its determination. If the cabinet determines that the test area meets the applicable criteria, it shall promptly notify the permittee in writing that the test area may be harvested to determine productivity.

(d) The permittee shall mow, bale and weigh the yield from the test area, and shall ensure that the yield from the test area is kept separate from the yield from surrounding areas. Representative samples shall be taken to determine moisture content. Personnel of the cabinet may observe the mowing, baling and weighing and may take any reasonable actions necessary to verify the validity of these activities.

(e) The permittee shall submit the results of the yield measurements to the cabinet. The cabinet shall have the right to reject the results, in whole or in part, for good cause. The cabinet shall evaluate the results and shall notify the permittee in writing of the extent to which the results fulfill the requirement to determine productivity for the larger area.

(6) All crop and forage yields shall be adjusted to standard moisture content: fifteen (15) percent for pasture and hay, fifteen and five-tenths (15.5) percent for corn, and twelve and five-tenths (12.5) percent for soybeans and wheat.

(7) Whether measured by the cabinet or the permittee, vegetation success shall be measured prior to the submittal of an application for a Phase II or Phase III bond release.

[Section 9. Date of Applicability. The provisions of this regulation shall become applicable upon the date of primacy.]

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 13, 1991
FILED WITH LRC: September 13, 1991 at noon

JUSTICE CABINET
Office of the Secretary
(Amended After Hearing)

500 KAR 8:010. Certification of operators.

RELATES TO: KRS 189A.103(3)(6) [15A.070, 186.565]
STATUTORY AUTHORITY: KRS 15A.160
NECESSITY AND FUNCTION: [KRS 186.565 provides that the state shall supply each county with one (1) breath analysis and simulating unit. KRS 15A.070 authorizes the Secretary of Justice to establish, supervise, and coordinate training programs for law enforcement personnel.] This regulation establishes the certification of breath analysis operators as required by KRS 189A.103(3)(6).

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

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

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

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

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

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

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

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

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

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

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

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

(c) Failure to testify at any judicial proceeding under KRS Chapter 189A [an administrative revocation hearing held pursuant to KRS 186.570] without just cause; and

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

(2) Revocation will be held only following a hearing conducted by the Commissioner of the Department of Criminal Justice Training [which issued the certificate], or his designee,

following written notice to the certified operator of the basis for revocation.

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

RAY CORNS, Secretary
APPROVED BY AGENCY: August 30, 1991
FILED WITH LRC: August 30, 1991 at 2 p.m.

JUSTICE CABINET
Office of the Secretary
(Amended After Hearing)

500 KAR 8:020. Breath alcohol analysis instruments.

RELATES TO: KRS 189A.300
STATUTORY AUTHORITY: KRS 15A.160, 189A.103(3)(a)
NECESSITY AND FUNCTION: This regulation establishes procedures for providing breath alcohol analysis instruments as mandated by KRS 189A.300.

Section 1. (1) The Forensic Laboratory Section, Department of State Police, shall be responsible for [standards relating to] the purchase of breath alcohol analysis instruments and related units.

(2) All breath alcohol analysis instruments and related units owned by the state used pursuant to KRS Chapter 189A shall be assigned to the Department of State Police, Forensic Laboratories Section.

[(3) The Forensic Laboratory Section, Department of State Police, shall establish standards and procedures for the maintenance and calibration of breath and blood alcohol analysis instruments and related units used pursuant to KRS Chapter 189A.]

[(4) All breath alcohol analysis instruments used pursuant to KRS Chapter 189A shall be listed in the "Qualified Products List of Evidential Breath Alcohol Measuring Devices" prepared by the National Highway Traffic Safety Administration of the United States Department of Transportation.]

[(5) Any breath alcohol analysis instruments and related units used pursuant to KRS Chapter 189A shall meet the minimum qualifications for maintenance and calibration as set forth by the Forensic Laboratory Section, Department of State Police.]

Section 2. (1) **A breath alcohol** [An] instrument must be accurate within plus or minus 0.005 alcohol concentration units reading to be certified. To determine accuracy of instruments, a [certified] technician **trained or employed by the Forensic Laboratory Section of the Department of State Police** shall perform analyses using a certified reference sample at regular intervals.

(2) All breath alcohol analysis instruments shall be examined by a [certified] technician **trained or employed by the Forensic Laboratory Section of the Department of State Police** prior to being placed into operation and after repairs of any malfunctions.

RAY CORNS, Secretary
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JUSTICE CABINET
Office of the Secretary
(Amended After Hearing)

500 KAR 8:030. Administration of chemical analysis tests.

RELATES TO: KRS 189A.103
STATUTORY AUTHORITY: KRS 15A.160, 189A.103
NECESSITY AND FUNCTION: This regulation establishes procedures for administering chemical analysis tests pursuant to KRS 189A.103.

Section 1. The following procedures shall apply to breath alcohol tests:

(1) A certified operator shall have continuous control of the person by present sense perception for at least twenty (20) minutes prior to the breath alcohol analysis. During that period the subject shall not have oral or nasal intake of substances which will affect the test.

(2) A breath alcohol concentration test shall consist of the following steps in this sequence:

(a) Ambient air analysis;
(b) Alcohol simulator analysis;
(c) Ambient air analysis;
(d) Subject breath sample analysis; and
(e) Ambient air analysis.

(3) Each ambient air analysis performed as part of the breath alcohol testing sequence shall be less than 0.010 alcohol concentration units.

Section 2. The following procedures shall apply regarding chemical tests of blood for alcohol or other substances:

(1) The blood sample shall be collected in the presence of **a peace officer, or another person at the direction of the officer,** [the arresting officer or a representative of the arresting officer's agency] who can authenticate the sample.

(2) The blood sample shall be collected by a person authorized to do so by KRS 189A.103(6).

(3) Collection of the blood sample shall be by the following method:

(a) No alcohol or other volatile organic substance shall be used to clean the skin where a sample is to be collected.

(b) All samples shall be collected with needles and syringes or vacuum-type collecting containers approved by the licensing agency of the collector.

(c) Blood collecting containers shall not contain an anticoagulant or preservative which will interfere with the intended analytical method.

(d) Individual containers shall be appropriate and securely labeled to provide the following information:

1. Name of person giving sample;
2. Date and time of collection;
3. Collector's name and agency identification;

4. Requesting officer's name and agency identification;
5. Complete uniform citation number; and
6. Officer present during collection of sample.

(4) The blood sample shall be delivered to a **Kentucky State Police Forensic laboratory or a clinical** laboratory **certified by the Cabinet for Human Resources** for analysis **for the presence of alcohol or other drugs in the sample**.

Section 3. The following procedures shall apply regarding chemical analysis of urine for alcohol or other substances:

(1) Urine samples shall be collected at two (2) separate times in the presence of **a peace officer** [the arresting officer], or another person at the direction of the officer, who can authenticate the samples. The witnessing person shall be of the same sex as the person providing the sample.

(2) The subject person shall empty his bladder and this first sample shall be tested for substances of abuse other than alcohol.

(3) Thirty (30) minutes following the initial emptying of the bladder, the subject person shall be requested to again empty his bladder and this second sample shall be tested for alcohol and may be tested for substances of abuse other than alcohol.

(4) Samples shall be collected in clean, dry containers. No preservatives shall be used. Each container shall be securely sealed.

(5) Each container shall be appropriately and securely labeled to provide the following information:

(a) Name of person giving the sample;
(b) Date and time of collection;
(c) Collecting attendant's name and agency identification;
(d) Complete uniform citation number; and
(e) Requesting officer's name and agency identification.

(6) The urine samples shall be delivered to **a Kentucky State Police Forensic laboratory or a clinical** [the] laboratory **certified by the Cabinet for Human Resources** for analysis **for the presence of alcohol or other drugs in the sample**.

RAY CORNS, Secretary
APPROVED BY AGENCY: August 30, 1991
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EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance
(Amended After Hearing)

702 KAR 5:080. Bus drivers' qualifications; responsibilities.

RELATES TO: KRS [156.031,] 156.160, 189.540
STATUTORY AUTHORITY: KRS [156.070,] 156.160, 189.540
NECESSITY AND FUNCTION: KRS [156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; KRS] 156.160 requires the State Board for Elementary and Secondary Education to adopt regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children; and KRS 189.540 requires the State Board to adopt regulations to govern the design and operation of school buses. This regulation implements those duties relative to the qualifications and responsibilities of the school bus driver.

Section 1. All local boards of education shall require annual medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and such events related to such schools. The medical examination shall include tests for hearing and vision disorders, emotional instability, and for serious medical conditions including diabetes, epilepsy, heart disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician. The examination shall include tests for tuberculosis upon initial employment and positive reactors shall be required to have further evaluations. All medical examinations of the school bus drivers shall be reported on a form prescribed by the State Department of Education and submitted to the local superintendent. The form, TC 94-35, July 1990, and Supplement to TC 94-35, is incorporated by reference may be obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

Section 2. [(1) Prior to initial employment, school bus driver applicants shall be screened, through appropriate testing and verification procedures, for unprescribed use of controlled substances. Appropriate tests shall be administered as a part of the preemployment medical examination and shall screen for at least the following drugs: marijuana, cocaine, opiates, amphetamines, and phencyclidine.]

(1) [(2)] Prior to initial employment or after any break in service (excluding summers), a criminal records and driving history check on all new school bus drivers shall be performed by local districts. Employment shall be contingent upon such a check. A school bus driver shall immediately report to the local superintendent or his designee any revocation of his driver's license or conviction for DUI or reckless driving.

(2) [(3)] No person shall be employed as a school bus driver who has [tested positive for the unprescribed use of any of the drugs set forth in subsection (1) of this section or who has] been convicted of driving any motor vehicle under the influence of alcohol or any illegal drug within the last five (5) years. No person shall drive a school bus unless he or she is physically or mentally able to operate a school bus safely and satisfactorily. If there is limitation of motion in joints, neck, back, arms, legs, or other bodily parts, due to injury or disease and that would limit the driver's ability to safely perform the task of safely driving a school bus, the driver shall be rejected. Any driver taking medication either by prescription or without prescription, shall not be permitted to drive if that medication would affect, in any way, the driver's ability to safely drive a school bus.

Section 3. (1) No person shall drive a school bus unless he or she has:
(a) Visual acuity of at least 20/40 (Snellan) in each eye either without glasses or by correction with glasses;
(b) Form field vision of not less than a total of 140 degrees; and
(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.
(2) Drivers requiring correction by glasses shall wear properly prescribed glasses at all times while driving.

Section 4. No person shall drive a school bus whose hearing is less than 7/15 in the better ear, or hearing loss is greater than forty (40) decibels if audiogram is used, for conversational tones, with or without a hearing aid. Drivers requiring a hearing aid shall wear such properly operating aids at all times while driving.

Section 5. The board, at its discretion, may require a school bus driver to pass a routine physical examination or a special type physical examination more often than annually. The school bus driver shall have a current physical fitness certificate on file in the district superintendent's office.

Section 6. A driver shall not start driving a school bus until his 18th birthday. After April 1, 1992, school bus drivers shall be twenty-one (21) years of age or older.

Section 7. (1) The school bus driver shall have a current driver's license that is valid in Kentucky. Beginning April 1, 1992, all Kentucky school bus drivers shall possess a commercial driver's license, with the passenger endorsement for a school bus, which is valid in Kentucky.
(2) A driver applicant, prior to acceptance into the driver training program, shall be required to demonstrate driving skills judged to be acceptable by a certified driver training instructor, with acceptable performance standards as outlined in the Division of Pupil Transportation curriculum and with the score sheet to become a part of each drivers record. Skill levels shall be demonstrated in:
(a) Vehicle knowledge;
(b) Driver ability to perform steering, shifting, maneuvering, braking, use of mirrors, and negotiate each of the following:
1. Ninety (90) degree left hand turns;
2. Ninety (90) degree right hand turns;
3. Straight ahead;
4. Irregular surface maneuverability at speeds;
5. Backing ability using mirrors only; and
6. Demonstration of spatial awareness.

Section 8. (1) Minimum training requirements to become a Kentucky school bus driver shall consist of the training course developed by the Kentucky Department of Education. The training course shall consist of the following instructional units and minimum instructional times:
(a) Laws and regulations - one (1) hour;
(b) Driving fundamentals - one (1) hour;
(c) Care and maintenance - one (1) hour;
(d) Critical situations - one (1) hour;
(e) Accidents and emergency procedures - one (1) hour;
(f) Pupil management - one (1) hour;
(g) First aid - one (1) hour;
(h) Special education transportation - five-tenths (.5) hour;
(i) Extracurricular trips - five-tenths (.5) hour; and
(j) Vehicle operations - three (3) hours.
(k) Vehicle control at speed - one (1) hour; and
(l) Bus route identification, driver review and instruction - two (2) hours.
(2) Upon successful completion of the core curriculum the school bus driver applicant shall complete within thirty (30) days:
(a) Driver review I, evaluation and instruction - two (2) hours within the first five (5) days of driving; and
(b) Driver review II, evaluation and instruction - two (2) hours not less than twenty (20) days nor more than thirty (30) days.

Section 9. (1) Certified drivers shall complete annually an eight (8) hour in-service update relevant to the curriculum prior to the beginning of the school year.
(2) Discontinuance of driver employment and subsequent reemployment shall require drivers to become requalified by a training update within a twelve (12) month period following his or her certification termination date.
(3) Drivers who are not updated and recertified within such twelve (12) month period shall be required to be retrained through the beginning training program.

Section 10. Substitute school bus drivers shall meet the same requirements as regular school bus drivers.

Section 11. In case of an emergency that would make it necessary for the driver to leave the bus while pupils are on board, the driver shall stop the motor, shift the bus to low gear, set the parking brake, remove the ignition key, and place one (1) of the older responsible pupils in charge during the driver's absence.

Section 12. The driver shall operate the school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances.

Section 13. The driver shall supervise the seating of the pupils on the bus. The driver shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle.

Section 14. The driver shall not, at any time, permit pupils to stand in the stepwell or landing area or where the pupil would likely fall out of the bus if the rear emergency door was opened, or where the driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

Section 15. The driver shall report to the superintendent any overcrowded conditions on the bus.

Section 16. The driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school

principal or his designate. The driver shall not permit an assigned pupil to leave the bus at a stop other than where the pupil regularly leaves the bus unless presented with a written permission signed by the principal or his designate.

Section 17. The driver shall not transport adult employees of the board or any person not employed by the board unless he receives written permission from the district superintendent.

Section 18. The driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus. The driver shall not knowingly permit any fireworks or any other explosive materials of any type to be transported.

Section 19. The driver shall not knowingly permit any live animals, fowls, or reptiles to be transported on the bus. The driver shall not knowingly permit any preserved specimen to be transported that would likely frighten any pupil or cause a commotion on the bus.

Section 20. The driver shall not permit the transportation of any object that would likely block the bus aisle or exits in case of a collision.

Section 21. The driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 22. The driver shall activate the flashing amber signal lights a sufficient distance from a bus stop to warn motorists of the intended stop. Once the bus comes to a complete stop, the driver shall activate the stop arm and red flashing signal lights.

Section 23. For safety reasons, the driver shall not permit fueling of the bus while pupils are on board the bus.

Section 24. If a pupil's conduct on the bus is such that it endangers the lives and morals of the other people on the bus and makes it unsafe for the bus to continue on its route, and when requested by the driver to desist from such conduct and the pupil does not comply, it shall be the duty of the driver to order the pupil to leave the bus. Should the order be ignored, the driver shall eject the pupil from the bus or send for assistance, whichever the circumstance dictates. Ejecting a pupil from the bus shall be done only in the most extreme circumstances. When ejection from the bus is required, the driver shall notify the principal of the school where the pupil attends, the district superintendent or some other school authority of the action taken as soon as possible.

Section 25. The school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level. The stop shall be made not less than fifteen (15) feet nor more than fifty (50) feet from the nearest track. After making the stop, the driver shall open the service door and driver side window and carefully look in each direction and listen for approaching trains before proceeding. When the driver has ascertained that it is safe for the bus to cross the railroad tracks, he shall close the bus entrance door, shift the bus gears into the range that will provide adequate power and proceed immediately to cross the railroad tracks. In cases of severe weather or restricted visibility, the driver shall request assistance from the oldest pupils on the bus in determining whether or not it is safe for the bus to cross the railroad tracks. Under these circumstances, the stop signal arm and flashing warning lights shall be used only if these pupils get off the bus before it is driven across the tracks and board the bus after it has crossed the tracks.

Section 26 The driver shall have the authority to assign a pupil to a specific seat on the school bus.

Section 27. The driver shall make a pretrip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of pupils.

Section 28. The school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on any section of highways over which the bus travels. The bus shall not be operated upon any highway at speeds in excess of fifty-five (55) miles per hour. The driver shall not drive the school bus on any roadway at any time at a speed where the conditions of the roadway, weather conditions, or other extenuating circumstances would likely make it unsafe.

Section 29. The driver shall wear the driver's seat belt at all times that the bus is operated.

Section 30. The stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 31. The driver shall not use tobacco products while operating the school bus, nor knowingly permit pupils to use tobacco products when on the school bus.

Section 32. The driver shall signal pupils who must cross a roadway to board or leave the bus when the driver has determined that any visible approaching traffic creating a substantive risk of harm has come to a complete stop and is not attempting to start up or pass the bus.

Section 33. A driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug as provided in Section 2 of this regulation. Drivers found under the influence of alcohol or any illegal drugs while on duty or with remaining driving responsibilities that same day shall be dismissed from employment. A driver shall report to the superintendent or his designate immediately any revocation of license or conviction for driving under the influence.

Section 34. The driver of a school bus shall be on the bus at all times students are loading or unloading.

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: September 6, 1991
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EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Amended After Hearing)

704 KAR 3:006. Annual performance reports and standards of student, program, service, and operational performance.

RELATES TO: KRS 158.650 to 158.710
STATUTORY AUTHORITY: KRS 158.650, 158.685
NECESSITY AND FUNCTION: KRS 158.650 to 158.710 mandate a program of annual performance reports, educational improvement plans, performance standards, and assistance and various sanctions by the Department of Education pursuant to regulations of the State Board for Elementary and Secondary Education. This regulation implements the state board duty to promulgate administrative regulations.

Section 1. (1) The annual performance report which KRS 158.650 requires each local school district to publish shall be submitted to the State Board for Elementary and Secondary Education by September 15 of each year and shall be published in the newspaper with the largest circulation in the county by October 1. The purpose of the October 1 publishing requirement is to inform the public in each school district regarding the operation and performance of each school district.

(2) The annual performance report shall include local district data for the following factors:

(a) Student data. Results of the biennial state-mandated testing program; results of Scholastic Aptitude Test and American College Board Test; dropout rate; retention rate; percentage of average daily attendance; number and percentage of students entering the workforce, military service, going to college or other postsecondary training; number and percentage of students with disabilities receiving specially designed instruction and related services according to individual education programs; and percentage of enrollment classified as economically deprived shall be reported and published.

(b) Staff data. Percentage of attendance by professional staff; student/teacher ratio; teacher/administrator ratio; salary data by rank; the number of teachers teaching out of their field of specialty and the number of classes taught by teachers out of their field of specialty; and average cost per professional staff for staff development activities shall be reported and published.

(c) Management data. Transportation cost per pupil transported; current expenses per pupil in average daily attendance; cost per pupil for instruction; cost per pupil for administration; percentage of district revenue received from local, state and federal sources; local revenue per child in average daily attendance; assessed property value per child in average daily attendance; and district goals for the succeeding year shall be reported and published.

Section 2. Each local district board of education shall achieve and maintain minimum performance standards established by the State Board for Elementary and Secondary Education in student, program, service and operational performance, as follows:

(1) Program and service performance standards. A local school district shall have a deficiency in program and service performance when one (1) or more of the following standards are not met:

(a) The local school district and each school within the district shall be in compliance with all applicable federal and state statutes and regulations and with federal, state, and local ordinances pertaining to the health and safety of pupils, faculty, and staff of the school district.

(b) Each local district board of education shall adopt and implement, by September 1, 1992 [1991], a continuous student assessment program designed to monitor student progress toward attaining the valued outcomes as defined by the state board.

(c) The local school district and schools within that district providing vocational education programs shall meet the requirements as established in 705 KAR 4:230, general program standards for secondary vocational education programs, and shall meet any additional requirements imposed by federal or state law.

(d) The local school district and schools within that district shall have special education programs and related services for children and youth who have educational disabilities. These programs and services shall meet the requirements of 707 KAR Chapter 1 programs for exceptional children, and shall meet any additional requirements imposed by federal or state law.

(e) The local school district and each school within the district shall, by July 1, 1992, have policies and procedures to assist in the reduction of physical and mental health barriers to learning. The policies and procedures shall provide for:

1. Systematic efforts to define and identify physical and mental health barriers to learning which may impede the successful attainment of the goals and capacities specified in KRS 158.645 and 158.6451;

2. Systematic screening of students to identify physical and mental health barriers impacting the learning of individual students;

3. Referral of students for medical, educational, social, mental health, and family support services, including prevention, evaluation and intervention, to in-school and district programs and public and nonpublic agencies;

4. Coordination with existing community, regional, and state resources for provision of services to students; and

5. Development of a written plan to assist in reducing physical and mental health barriers to learning which includes:

a. A systematic needs assessment process to provide current data for long-term and annual planning, including data on the service needs of the district and its schools' student population;

b. Strategies and activities designed to reduce physical and mental health barriers to learning; and

c. Evaluation of the implementation of the plan and effectiveness of the activities and strategies for reducing the identified physical and mental health barriers to learning.

(2) Student performance standards. The determination of district performance and individual school performance within the district shall be based on data collected through an individual student identification

system. A local school district shall have a deficiency in student performance when one (1) or more of the following standards are not met, after any applicable percentage figures are rounded to the nearest one-tenth (.1) of one (1) percent:

(a) Academic performance. Academic performance shall be based on student performance, and standards shall be established by administrative regulation, based on the Council on School Performance Standards' definition of the statutory goals in measurable terms under KRS 158.6451, once that task is completed.

(b) Attendance standard. The percentage of attendance shall be calculated by dividing the aggregate days attendance by the aggregate days membership. The local school district shall achieve an annual attendance rate of ninety-four (94) percent or above.

(c) Dropout standard. The dropout rate shall be defined as the annual percentage of students leaving school prior to graduation in grades 7-12 and include withdrawals in attendance accounting codes W6 (child turns sixteen (16) years of age and drops out), W10 (pupil discharged), W11 (drop out on account of marriage), and W14 (drop out on account of birth of child). The local school district shall achieve an annual dropout percentage equal to or less than five (5) percent.

(d) Completion rate. The percentage of first grade students completing the 12th grade, with this standard to be established by administrative regulation after the implementation of an individual student identification system.

(e) Retention rate. The percentage of the schools' pupils who are retained shall decrease each year until the percentage retained in the district does not exceed four (4) percent.

(f) Transition to work, postsecondary education and military. The annual percentage of the district's students completing a program of studies who enter the workforce, postsecondary training, or military service shall equal seventy-five and four-tenths (75.4) percent or above.

(3) Operational performance standards. A local school district shall have a deficiency in operational performance when one (1) or more of the following standards are not met:

(a)1. The total cost of maintenance and operation of a school district, less the cost of salaries, shall not have a deviation of more than one and one-tenth (1.1) standard deviation above the average per pupil per year costs as compared to the statewide average for comparably sized school districts.

2. Line item codes, excluding salaries that deviate significantly (more than one and one-tenth (1.1)) above state averages for comparably sized school districts shall be reason for the state department to provide consultation to assist the district in eliminating the line item deviation.

3. The following average daily attendance ranges shall constitute the size groups within which county and independent districts are placed for comparative deviation analysis:

County Districts	Independent Districts
10,000 and up	16,000 and up
5,000 to 9,999	900 to 1,599
3,000 to 4,999	500 to 899
2,200 to 2,299	0 to 499
1,500 to 2,199	
0 to 1,499	

4. Approval for major deviations (more than one and one-tenth (1.1) standard deviation) due to renovations, improvements, and additional programs with long-range planning requirements may be authorized annually by the Commissioner of Education.

(b)1. The adjusted total cost of transportation of a school district, as defined in 702 KAR 5:020 shall not have a deviation of more than one and one-tenth (1.1) standard deviations above the per pupil per year cost of transported pupils as compared with the statewide average for comparable density school districts.

2. Line item codes, excluding salaries that deviate significantly (more than one and one-tenth (1.1) standard deviations) in a district above the applicable state average shall be cause to be provided Department of Education consultation to promote efficiency.

3. The buses in operation in a school district, less the spare units, shall have a load capacity of students that shall not vary more than one and one-tenth (1.1) standard deviations as compared with statewide comparable density averages. Approval shall be authorized by the Commissioner of Education for contract buses prior to the beginning of each school year.

4. The following transported pupil density per square mile of area served shall constitute the size groups within which county and independent districts are placed for comparative deviation analysis:

County Districts	Independent Districts
0 - 4.0	0 - 15.0
4.1 - 5.0	15.1 - 30.0
5.1 - 6.0	30.1 - 50.0
6.1 - 7.0	50.1 - 70.0
7.1 - 9.0	70.1 -100.0
9.1 - 12.0	100.0 - 150.0
12.1 - 16.0	150.1 - 200.0
16.1 - 40.0	All over 200
40.1 - 75.0	
All over 75	

5. Approval for major deviations (more than one and one-tenth (1.1) standard deviations), due to major single year improvements of equipment or vehicles, or implementation of new, expanded or required programs, may be authorized annually by the Commissioner of Education.

Section 3. (1) The Kentucky Department of Education shall identify and present to the state board for formal declaration those districts failing to meet minimum student, program, service or operational standards as defined in Section 2 of this regulation.

(2) The performance of districts failing to meet minimum standards and such other information as may be required by this regulation shall be reviewed by the Educational Improvement Advisory Committee quarterly.

Section 4. (1) The State Board for Elementary and Secondary Education shall declare a school

district to be educationally deficient when, in any school year, the district fails to meet any of the minimum student, program, service, or operational standards as defined in Section 2 of this regulation.

(2) Each local school district declared educationally deficient by the State Board for Elementary and Secondary Education shall submit a district improvement plan for approval to the state board, within thirty (30) working days from the date of declaration. The district improvement plan as adopted by the local board shall address each deficiency area in accordance with KRS 158.650, 158.685, and 158.710. The initial plan shall address a period of not less than twelve (12) months.

Section 5. The Commissioner of Education shall determine the extent of and provide appropriate consultation and assistance to any school district which has been declared educationally deficient by the State Board for Elementary and Secondary Education. These services shall be provided in accordance with KRS 158.685(3) and shall be included in the contract of services required in KRS 158.685(3).

Section 6. Failure by an educationally deficient school district to meet the process goals, interim performance goals, or timelines set in the district improvement plan shall constitute grounds for the Commissioner of Education to initiate action in accordance with KRS 158.685(4).

Section 7. 704 KAR 3:005, Educational Improvement Act, is hereby repealed.

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: September 6, 1991
FILED WITH LRC: September 9, 1991 at 3 p.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Amended After Hearing)

704 KAR 3:006. Annual performance reports and standards of student, program, service, and operational performance.

RELATES TO: KRS 158.650 to 158.710
STATUTORY AUTHORITY: KRS 158.650, 158.685
NECESSITY AND FUNCTION: KRS 158.650 to 158.710 mandate a program of annual performance reports, educational improvement plans, performance standards, and assistance and various sanctions by the Department of Education pursuant to regulations of the State Board for Elementary and Secondary Education. This regulation implements the state board duty to promulgate administrative regulations.

Section 1. (1) The annual performance report which KRS 158.650 requires each local school district to publish shall be submitted to the State Board for Elementary and Secondary Education by September 15 of each year and shall be published in the newspaper with the largest circulation in the county by October 1. The purpose of the October 1 publishing requirement is to inform the public in each school district regarding the operation and performance of each school district.

(2) The annual performance report shall include local district data for the following factors:

(a) Student data. Results of the biennial state-mandated testing program; results of Scholastic Aptitude Test and American College Board Test; dropout rate; retention rate; percentage of average daily attendance; number and percentage of students entering the workforce, military service, going to college or other postsecondary training; number and percentage of students with disabilities receiving specially designed instruction and related services according to individual education programs; and percentage of enrollment classified as economically deprived shall be reported and published.

(b) Staff data. Percentage of attendance by professional staff; student/teacher ratio; teacher/administrator ratio; salary data by rank; the number of teachers teaching out of their field of specialty and the number of classes taught by teachers out of their field of specialty; and average cost per professional staff for staff development activities shall be reported and published.

(c) Management data. Transportation cost per pupil transported; current expenses per pupil in average daily attendance; cost per pupil for instruction; cost per pupil for administration; percentage of district revenue received from local, state and federal sources; local revenue per child in average daily attendance; assessed property value per child in average daily attendance; and district goals for the succeeding year shall be reported and published.

Section 2. Each local district board of education shall achieve and maintain minimum performance standards established by the State Board for Elementary and Secondary Education in student, program, service and operational performance, as follows:

(1) Program and service performance standards. A local school district shall have a deficiency in program and service performance when one (1) or more of the following standards are not met:

(a) The local school district and each school within the district shall be in compliance with all applicable federal and state statutes and regulations and with federal, state, and local ordinances pertaining to the health and safety of pupils, faculty, and staff of the school district.

(b) Each local district board of education shall adopt and implement, by September 1, 1992 [1991], a continuous student assessment program designed to monitor student progress toward attaining the valued outcomes as defined by the state board.

(c) The local school district and schools within that district providing vocational education programs shall meet the requirements as established in 705 KAR 4:230, general program standards for secondary vocational education programs, and shall meet any additional requirements imposed by federal or state law.

(d) The local school district and schools within that district shall have special education programs and related services for children and youth who have educational disabilities. These programs and services shall meet the requirements of 707 KAR Chapter 1 programs for exceptional children, and shall meet any additional requirements imposed by

federal or state law.

(e) The local school district and each school within the district shall, by July 1, 1992, have policies and procedures to assist in the reduction of physical and mental health barriers to learning. The policies and procedures shall provide for:

1. Systematic efforts to define and identify physical and mental health barriers to learning which may impede the successful attainment of the goals and capacities specified in KRS 158.645 and 158.6451;

2. Systematic screening of students to identify physical and mental health barriers impacting the learning of individual students;

3. Referral of students for medical, educational, social, mental health, and family support services, including prevention, evaluation and intervention, to in-school and district programs and public and nonpublic agencies;

4. Coordination with existing community, regional, and state resources for provision of services to students; and

5. Development of a written plan to assist in reducing physical and mental health barriers to learning which includes:

a. A systematic needs assessment process to provide current data for long-term and annual planning, including data on the service needs of the district and its schools' student population;

b. Strategies and activities designed to reduce physical and mental health barriers to learning; and

c. Evaluation of the implementation of the plan and effectiveness of the activities and strategies for reducing the identified physical and mental health barriers to learning.

(2) Student performance standards. The determination of district performance and individual school performance within the district shall be based on data collected through an individual student identification system. A local school district shall have a deficiency in student performance when one (1) or more of the following standards are not met, after any applicable percentage figures are rounded to the nearest one-tenth (.1) of one (1) percent:

(a) Academic performance. Academic performance shall be based on student performance, and standards shall be established by administrative regulation, based on the Council on School Performance Standards' definition of the statutory goals in measurable terms under KRS 158.6451, once that task is completed.

(b) Attendance standard. The percentage of attendance shall be calculated by dividing the aggregate days attendance by the aggregate days membership. The local school district shall achieve an annual attendance rate of ninety-four (94) percent or above.

(c) Dropout standard. The dropout rate shall be defined as the annual percentage of students leaving school prior to graduation in grades 7-12 and include withdrawals in attendance accounting codes W6 (child turns sixteen (16) years of age and drops out), W10 (pupil discharged), W11 (drop out on account of marriage), and W14 (drop out on account of birth of child). The local school district shall achieve an annual dropout percentage equal to or less than five (5) percent.

(d) Completion rate. The percentage of first grade students completing the 12th grade, with this standard to be established by administrative regulation after the implementation of an individual student identification system.

(e) Retention rate. The percentage of the schools' pupils who are retained shall decrease each year until the percentage retained in the district does not exceed four (4) percent.

(f) Transition to work, postsecondary education and military. The annual percentage of the district's students completing a program of studies who enter the workforce, postsecondary training, or military service shall equal seventy-five and four-tenths (75.4) percent or above.

(3) Operational performance standards. A local school district shall have a deficiency in operational performance when one (1) or more of the following standards are not met:

(a)1. The total cost of maintenance and operation of a school district, less the cost of salaries, shall not have a deviation of more than one and one-tenth (1.1) standard deviation above the average per pupil per year costs as compared to the statewide average for comparably sized school districts.

2. Line item codes, excluding salaries that deviate significantly (more than one and one-tenth (1.1)) above state averages for comparably sized school districts shall be reason for the state department to provide consultation to assist the district in eliminating the line item deviation.

3. The following average daily attendance ranges shall constitute the size groups within which county and independent districts are placed for comparative deviation analysis:

County Districts	Independent Districts
10,000 and up	16,000 and up
5,000 to 9,999	900 to 1,599
3,000 to 4,999	500 to 899
2,200 to 2,299	0 to 499
1,500 to 2,199	
0 to 1,499	

4. Approval for major deviations (more than one and one-tenth (1.1) standard deviation) due to renovations, improvements, and additional programs with long-range planning requirements may be authorized annually by the Commissioner of Education.

(b)1. The adjusted total cost of transportation of a school district, as defined in 702 KAR 5:020 shall not have a deviation of more than one and one-tenth (1.1) standard deviations above the per pupil per year cost of transported pupils as compared with the statewide average for comparable density school districts.

2. Line item codes, excluding salaries that deviate significantly (more than one and one-tenth (1.1) standard deviations) in a district above the applicable state average shall be cause to be provided Department of Education consultation to promote efficiency.

3. The buses in operation in a school district, less the spare units, shall have a load capacity of students that shall not vary more than one and one-tenth (1.1) standard deviations as compared with statewide comparable density averages. Approval shall be authorized by the Commissioner of Education for contract buses prior to the beginning of each school year.

4. The following transported pupil density per

square mile of area served shall constitute the size groups within which county and independent districts are placed for comparative deviation analysis:

County Districts	Independent Districts
0 - 4.0	0 - 15.0
4.1 - 5.0	15.1 - 30.0
5.1 - 6.0	30.1 - 50.0
6.1 - 7.0	50.1 - 70.0
7.1 - 9.0	70.1 -100.0
9.1 - 12.0	100.0 - 150.0
12.1 - 16.0	150.1 - 200.0
16.1 - 40.0	All over 200
40.1 - 75.0	
All over 75	

5. Approval for major deviations (more than one and one-tenth (1.1) standard deviations), due to major single year improvements of equipment or vehicles, or implementation of new, expanded or required programs, may be authorized annually by the Commissioner of Education.

Section 3. (1) The Kentucky Department of Education shall identify and present to the state board for formal declaration those districts failing to meet minimum student, program, service or operational standards as defined in Section 2 of this regulation.

(2) The performance of districts failing to meet minimum standards and such other information as may be required by this regulation shall be reviewed by the Educational Improvement Advisory Committee quarterly.

Section 4. (1) The State Board for Elementary and Secondary Education shall declare a school district to be educationally deficient when, in any school year, the district fails to meet any of the minimum student, program, service, or operational standards as defined in Section 2 of this regulation.

(2) Each local school district declared educationally deficient by the State Board for Elementary and Secondary Education shall submit a district improvement plan for approval to the state board, within thirty (30) working days from the date of declaration. The district improvement plan as adopted by the local board shall address each deficiency area in accordance with KRS 158.650, 158.685, and 158.710. The initial plan shall address a period of not less than twelve (12) months.

Section 5. The Commissioner of Education shall determine the extent of and provide appropriate consultation and assistance to any school district which has been declared educationally deficient by the State Board for Elementary and Secondary Education. These services shall be provided in accordance with KRS 158.685(3) and shall be included in the contract of services required in KRS 158.685(3).

Section 6. Failure by an educationally deficient school district to meet the process goals, interim performance goals, or timelines set in the district improvement plan shall constitute grounds for the Commissioner of Education to initiate action in accordance with KRS 158.685(4).

Section 7. 704 KAR 3:005, Educational Improvement Act, is hereby repealed.

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: September 6, 1991
FILED WITH LRC: September 9, 1991 at 3 p.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(Amended After Hearing)

707 KAR 1:054. Programs for children and youth with emotional-behavioral disabilities [the emotionally disturbed; behavior disordered].

RELATES TO: KRS [156.031], 157.200, 157.220, 157.224, 157.230
STATUTORY AUTHORITY: KRS 157.220
NECESSITY AND FUNCTION: [KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990;] KRS 157.200 sets forth definitions with respect to special education and exceptional children's programs; KRS 157.220 requires the State Board for Elementary and Secondary Education to promulgate administrative regulations for the proper administration of KRS 157.200 to 157.280; and 157.224 and 157.230 require local school districts to establish and operate appropriate special education programs for residents of their districts. This regulation is necessary to mandate establishment of appropriate local district programs for children and youth with emotional-behavioral disabilities [emotionally disturbed (behavior disordered) children] and to assure uniformity in providing special education and related services to [emotionally disturbed] children and youth with emotional-behavioral disabilities, in conformance with the Individuals with Disabilities Education Act, [Education for All Handicapped Children Act,] 20 U.S.C. 1400 et seq.

Section 1. General Provisions. Local school boards of education shall operate programs for the resident children and youth with emotional-behavioral disabilities [emotionally disturbed (behavior disordered)] of school attendance age pursuant to KRS 157.200 to 157.290, inclusive, and the criteria set forth in this regulation.

Section 2. Eligibility Criteria. (1) An admissions and release committee shall determine that a child or youth is emotionally-behaviorally disabled [disturbed (behavior disordered)] provided the following eligibility criteria are met:

(a) When provided with appropriate interventions to meet instructional and social-emotional needs, the student continues to exhibit one (1) or both of the following across settings, over a long period of time, and to a marked degree:

1. Severe deficits in social competence which impair interpersonal relationships with adults or peers; or

2. Severe deficits in academic performance which are not commensurate with the student's ability levels and are not solely the result of intellectual, sensory, or other health factors, but are related to the student's social-emotional problems. [The child manifests symptoms characterized by diagnostic labels such

as psychosis, schizophrenia and autism; or]

(b) The student's emotional-behavioral problems significantly interfere with his or her interpersonal relationships or learning process to such an extent that specially designed instruction is required for the student to benefit from education. [The child demonstrates one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:]

[1. An inability to learn at a rate commensurate with intellectual, sensory-motor or physical development because of emotional problems;]

[2. An inability to build or maintain satisfactory interpersonal relationships with peers and adults;]

[3. Behavior which is disruptive to the learning process of other students or himself;]

[4. A general pervasive mood of unhappiness or depression; or]

[5. A tendency to develop physical symptoms or fears associated with personal or school problems;]

(c) The student's behavior clearly deviates from the standards for his or her cultural and peer reference group. [The criteria do not include those who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.]

(d) The student's behavior adversely affects his/her educational performance. Educational performance reflects the total involvement of a child or youth in the school environment. It includes social and emotional development, communication skills and participation in classroom activities, as well as academic achievement.

(2) A child who meets the above criteria shall be eligible for special education and related services.

Section 3. Admissions and Release Committee. As required and provided in 707 KAR 1:051, Section 3, a committee process shall be followed for the identification, evaluation, and placement of [emotionally disturbed (behavior disordered)] pupils with emotional-behavioral disabilities. The appropriate admissions and release committee shall assure that procedural safeguards as described in 707 KAR 1:051, Sections 9 and 10, and 707 KAR 1:060 shall be followed.

Section 4. Child Evaluation. Appropriate child evaluation shall be assured by the appropriate admissions and release committee. Evaluation information shall be obtained pursuant to the requirements in 707 KAR 1:051, Section 4. The assessment of the referred pupil for identification and placement purposes shall consist of:

(1) A compilation of existing behavior data and a written record or evidence of previous instructional and social-emotional interventions that have been provided; [A health screening which indicates there are no primary visual, auditory or physical handicapping conditions;]

(2) Screenings of communication and physical functioning which would indicate there are no primary visual, auditory, speech and language, or physical disabilities; [A written account of specific behavioral data collected over a period of time by the referral source describing the behavior(s) of concern;]

(3) An assessment of family, social and cultural factors designed to gather specific information about the behaviors of concern, and to identify any cultural, ethnic, medical, developmental, social or home factors which may be contributing to those behaviors; [A written compilation of data from direct observations of the referred pupil in familiar surroundings by a person other than the referral source;]

(4) An assessment of social competence composed of behavior and social skills ratings and behavioral observations of social interactions; [An individual educational assessment of the referred pupil's specific strengths and weaknesses in basic skill areas;]

(5) An educational assessment of the referred child's specific strengths and weaknesses in basic skills areas and behavioral observations of academic engaged time; [An individual psychological or psychiatric evaluation;]

(6) An individual assessment of cognitive functioning; [A developmental and social history;]

(7) Additional appropriate assessments in cases where an intellectual, sensory, and communication or health-related disability is suspected to be a primary contributor to the referred student's emotional-behavioral problems. [A written record or evidence of previous educational and behavioral intervention strategies that have been utilized.]

Section 5. Individual Education Program (IEP). As required and provided in 707 KAR 1:051, Section 5, for each pupil identified, the appropriate admissions and release committee shall develop and assure the implementation and annual review of an individual education program.

Section 6. Placement. Placement in a program for the children and youth with emotional-behavioral disabilities [emotionally disturbed (behavior disordered) pupils] shall be determined by the appropriate admissions and release committee pursuant to procedures as described in 707 KAR 1:051, Section 6.

Section 7. Classroom Plan. Classroom plans for the children and youth with emotional-behavioral disabilities [emotionally disturbed (behavior disordered)] shall operate pursuant to procedures as described in 707 KAR 1:051, Section 1. Classroom plans for children and youth with emotional-behavioral disabilities [emotionally disturbed (behavior disordered) pupils] shall be established under the resource special class or variation plan.

Section 8. Membership and Age Range. (1) Classroom membership and age range in programs for the children and youth with emotional-behavioral disabilities [emotionally disturbed (behavior disordered)] shall be as follows:

Classroom Plan	Maximum Membership	Age Range
Special Class Plan	8	4 years
Resource Plan	15	6 years

(2) No more than eight (8) pupils, all within the four (4) year age span, shall be in the resource room during any one (1) instructional

period.
(3) Variations of the above shall be considered for approval upon submission of written request and justification to the Office of Education for Exceptional Children. Factors for consideration of approval in determining pupil to teacher ratio and age shall include, but not be limited to, the following:
(a) Age and grade level of the pupils;
(b) Physical condition of the pupils; and
(c) Support personnel.

THOMAS C. BOYSEN, Commissioner
JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: September 6, 1991
FILED WITH LRC: September 9, 1991 at 3 p.m.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Amended After Hearing)

907 KAR 1:025. 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
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 **Medicaid participating** 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 **Medicaid participating** 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 **Medicaid participating** 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 administrative regulation shall be effective with regard to payments for services provided on or after July 1, 1991 [October 1, 1990.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 3, 1991
FILED WITH LRC: September 5, 1991 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Amended After Hearing)

907 KAR 1:061. Payments for medical transportation.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for medical transportation services.

Section 1. Definitions. For purposes of this regulation, the following definitions apply:

(1) "Attendant" means an individual who accompanies the recipient, if necessary, to, from, and while receiving medical services.

(2) [(1)] "Commercial transportation vendors" means those commercial carriers licensed in accordance with the laws of Kentucky, other states, or of the United States to transport members of the general public.

(3) "Noncommercial group carriers" means those vendors who provide bus or bus-type medical transportation to an identifiable segment of the eligible recipient group, but not including vendors whose transportation costs are allowable costs under their reimbursement system (e.g., mental health centers). Such segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, primary care center, etc.), or other similar grouping method. Included within this definition are:

(a) Community action agencies (or successor agencies) providing bus or bus-type service for a poverty or near-poverty area target population; and

(b) Other similar providers as identified by the cabinet.

(4) [(2)] "Private automobile vendor" means a person owning or having access to a private vehicle not used for commercial transportation

purposes and who uses that vehicle for the occasional medical transportation of eligible recipients. Included within this definition are ambulance type vendors who are noncertified or who have not chosen or been approved to participate in the Title XIX program, if willing to accept private automobile vendor rates.

(5) "Specialty individual carrier" means a vendor who provides, through specially equipped vehicles, medical transportation for nonambulatory recipients (those who are required to travel by wheelchair) or for ambulatory but disoriented recipients (those who are sufficiently disoriented as to time, place, person or objects so as to be unable to travel to or from medical services unaccompanied or unsupervised), and who provides services not normally available from other transportation vendors. The equipment ordinarily required shall be a van or similar type vehicle with a lift for wheelchairs; and the service shall be the accompaniment of the recipient from point of origin to point of destination where the recipient is placed in the charge of the receiving individual, including physical assistance or guidance to the recipient if necessary. To be considered a specialty individual carrier for purposes of reimbursement from the cabinet, the carrier must be recognized by the cabinet as a specialty individual carrier with approval given by the cabinet for reimbursement at specialty individual carrier rates. The cabinet may require the submission of documentation designed to show that the vendor is capable of providing specialty individual carrier service in an adequate and safe manner.

(6) [(3)] "Waiting time" means that period of time following provision of transportation to a medical vendor during which the private automobile vendor is waiting for the recipient to receive medical treatment, in order to provide the return trip required by the recipient. In the instance of an eligible recipient being admitted to a medical institution for inpatient care, waiting time is considered to have occurred when the private automobile vendor waits a sufficient period of time to ensure the recipient's admittance to the facility.

[(4) "Noncommercial group carriers" means those vendors who provide bus or bus-type medical transportation to an identifiable segment of the eligible recipient group, but not including vendors whose transportation costs are allowable costs under their reimbursement system (e.g., mental health centers). Such segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, primary care center, etc.), or other similar grouping method. Included within this definition are:]

[(a) Community action agencies (or successor agencies) providing bus or bus-type service for a poverty or near-poverty area target population; and]

[(b) Other similar providers as identified by the cabinet.]

[(5) "Specialty individual carrier" means a vendor who provides, through specially equipped vehicles, medical transportation for nonambulatory recipients (those who are required to travel by wheelchair) or for ambulatory but disoriented recipients (those who are sufficiently disoriented as to time, place, person or objects so as to be unable to travel to or from medical services unaccompanied or unsupervised), and who provides services not normally available from other transportation vendors. The equipment ordinarily required shall be a van or similar type vehicle with a lift for wheelchairs; and the service shall be the accompaniment of the recipient from point of origin to point of destination where the recipient is placed in the charge of the receiving individual, including physical assistance or guidance to the recipient if necessary. To be considered a specialty individual carrier for purposes of reimbursement from the cabinet, the carrier must be recognized by the cabinet as a specialty individual carrier with approval given by the cabinet for reimbursement at specialty individual carrier rates. The cabinet may require the submission of documentation designed to show that the vendor is capable of providing specialty individual carrier service in an adequate and safe manner.]

Section 2. Ambulance Services. (1) The cabinet shall reimburse licensed participating ambulance services at the lesser of their usual and customary charges or the maximum rate established by the cabinet.

(2) The maximum rate shall be the amount arrived at by combining the following component costs, as applicable:

(a) The base rate, which shall be set at fifty (50) dollars per one (1) way trip and includes all mileage costs for the first ten (10) miles;

(b) A mileage allowance of one (1) dollar per mile for mileage above the first ten (10) miles;

(c) An oxygen rate, which is set at eight (8) dollars per one (1) way trip; and

(d) The cost (as determined by the cabinet) of other itemized supplies.

Section 3. Commercial Transportation Vendors. [Effective with regard to services provided on and after October 1, 1990,] The cabinet shall reimburse participating commercial transportation vendors at the normal passenger rate charged to the general public, **taking into consideration as applicable the reduced fees frequently and customarily paid when multiple passengers are transported at the same time.** [except that] The following maximum rates shall be applicable for franchised (licensed) taxi services in those areas of the state where taxi rates are not regulated by the appropriate local rate setting authority, and for franchised (licensed) taxi services in regulated areas when they go outside the medical service area.

(1) The upper limit shall be the usual and customary charge up to a maximum of six (6) dollars for trips of five (5) miles or less, one (1) way, loaded miles.

(2) The upper limit shall be the usual and customary charge up to a maximum of twelve (12) dollars for trips of six (6) to ten (10) miles, one (1) way, loaded miles.

(3) The upper limit shall be the usual and customary charge up to a maximum of twenty (20) dollars for trips of eleven (11) to twenty-five (25) miles, one (1) way, loaded miles.

(4) The upper limit shall be the usual and customary charge up to a maximum of thirty (30) dollars for trips of twenty-six (26) miles to fifty (50) miles, one (1) way, loaded miles.

(5) The upper limit for trips of fifty-one (51) miles or above shall be the lesser of the usual and customary charge or an amount derived

by multiplying one (1) dollar by the actual number of miles, not to exceed a maximum of seventy-five (75) dollars per trip, one (1) way, loaded miles.

Section 4. Private Automobile Vendors. (1) The cabinet shall reimburse private automobile vendors at the basic rate of twelve (12) cents per mile plus a flat fee of two (2) dollars per eligible passenger if waiting time is required. For round trips of less than five (5) miles the rate shall be computed on the basis of a maximum allowable fee of three (3) dollars for the first passenger plus two (2) dollars each for waiting time for additional eligible passengers. [For services provided on or after January 1, 1991] Private automobile vendors shall have a signed participation agreement with the Department for Medicaid Services prior to furnishing reimbursable medical transportation services.

(2) For round trips of five (5) to twenty-five (25) miles the rate for private automobile vendors shall be computed on the basis of a maximum allowable fee of five (5) dollars for the first passenger plus two (2) dollars each for waiting time for additional eligible passengers. The maximum allowable fee rates shall not be utilized in situations where mileage is paid.

(3) Even though the maximum allowable fee rate when computed on the basis of twelve (12) cents per mile plus two (2) dollars for waiting time would not equal the three (3) dollars or five (5) dollars allowable amounts, that amount may be paid to encourage private automobile vendors to provide necessary medical transportation. Additionally, nothing in this section requires the cabinet to pay the amounts specified in the event the private automobile vendor expresses a preference for reimbursement in a lesser amount; in that event, the lesser amount shall [will] be paid. Toll charges shall be [are] reimbursable when incurred.

(4) Waiting time shall be a reimbursable component of the private automobile vendor transportation fee only when waiting time occurs. When waiting time occurs due to admittance of the recipient into the medical institution, the private automobile vendor may be reimbursed for the return trip to the point of recipient pickup as though the client were in the vehicle; that is, the total reimbursable amount shall be computed on the basis of the maximum allowable fee or mileage rate plus waiting time as shown in this section.

Section 5. Noncommercial Group Carriers. The cabinet shall reimburse participating noncommercial group carriers based on actual reasonable, allowable cost to the provider based on cost data submitted to the cabinet by the provider; however, the minimum rate shall be twenty (20) cents per recipient per mile transported and the rate upper limit shall be fifty (50) cents per recipient per mile transported.

Section 6. Specialty Individual Carriers. (1) Participating specialty individual carriers shall be reimbursed at the lesser of the following rates:

(a) The actual charge for the service; or

(b) The usual and customary charge for that service by the carrier, as shown in the schedule of usual and customary charges submitted by the carrier to the cabinet; or

(c) The program maximum established for the service.

(2) For services provided on or after July 1, 1990, program maximums are:

(a) Nonambulatory, wheelchair patients; for transportation within a distance of ten (10) miles or less, the upper limit shall be twenty-five (25) dollars for the first patient plus ten (10) dollars for each additional nonambulatory patient transported on the same trip, for each time a patient is transported to or transported from the medical service site. To this base rate may be added two (2) dollars per mile per patient for miles the patient(s) is transported above ten (10) (one (1) way), and toll charges actually incurred.

(b) Ambulatory, disoriented patients; for transportation within a distance of ten (10) miles or less, the upper limit shall be twelve (12) dollars and fifty (50) cents per patient for each time a patient(s) is transported to or transported from the medical service site. To this base rate may be added two (2) dollars per mile per patient for miles the patient is transported above ten (10) (one (1) way), and toll charges actually incurred.

(c) For both paragraphs (a) and (b) of this subsection, mileage shall be computed by the most direct accessible route from point of pickup to point of delivery, and reimbursement for mileage shall be allowed only for those miles the recipient is actually transported in excess of ten (10). Empty vehicle miles shall not be included when computing allowable reimbursement for mileage.

(3) Reimbursement shall be made at specialty individual carrier rates for the following types of recipients only:

(a) Nonambulatory recipients who need to be transported by wheelchair, but not including recipients who need to be transported as a stretcher patient; and

(b) Ambulatory but disoriented recipients, defined as persons confused, especially with respect to time, place and identity of persons or objects. The extent of disorientation shall be such as to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation.

(4) The specialty carrier shall obtain a statement from the recipient's physician (or, if the recipient is in a skilled nursing or intermediate care facility, from the director of nursing, charge nurse, or medical director in lieu of physician) to verify that transportation by the specialty carrier is medically necessary due to the recipient's nonambulatory or disoriented condition. Claims for payment which are submitted without the required statement of verification shall not be paid.

Section 7. Specially authorized transportation services provided by participating ambulance services may be paid for at a rate of forty (40) dollars per one (1) way trip, which includes all mileage costs for the first ten (10) miles, and a mileage allowance of seventy-five (75) cents per mile above the first ten (10) miles, unless otherwise authorized; specially authorized transportation services provided by participating specialty carriers, or as otherwise authorized in unforeseen circumstances, may be paid for at a rate adequate to secure the necessary service; in no

event, however, shall the amount allowed exceed the usual and customary charge of the provider.

Section 8. Use of Flat Rates. When a recipient chooses to use a medical provider outside the medical service area (i.e., the medical service is available within the medical service area and the recipient has not been appropriately referred to a medical provider outside the medical service area), transportation payment shall not exceed the lesser of six (6) dollars per trip, one (1) way (or twelve (12) dollars for a round trip), or the usual fee for the participating transportation provider computed in the usual manner.

Section 9. Meals and Lodging. Effective with regard to services provided on or after July 1, 1991, the upper limits for meals and lodgings for recipients and attendants when preauthorized (or postauthorized if appropriate) by the cabinet shall be as follows:

(1) Standard area:

(a) Meals: breakfast - $4 per day; lunch - $5 per day; dinner - $11 per day; and

(b) Lodgings: actual cost up to $40 per day if known; if not known, $40 per day.

(2) High rate area:

(a) Meals: breakfast - $5 per day; lunch - $6 per day; dinner - $15 per day; and

(b) Lodgings: actual cost up to $55 per day if known; if not known, $55 per day.

Section 10. [9.] Limitations. Any reimbursement for medical transportation shall be contingent upon the recipient receiving the appropriate pre- or postauthorization for medical transportation as required by the cabinet.

[Section 10. The amendments to this regulation shall be effective for services provided on or after October 1, 1990 except as specified in Section 4 of this regulation.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 3, 1991
FILED WITH LRC: September 5, 1991 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, SEPTEMBER 13, 1991

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Proposed Amendment)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.744(2), 164.753(3)
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), HB 799 (1990 RS), Part I, F., 46., p. 52
NECESSITY AND FUNCTION: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) prescribes certain standards for scholarship programs. House Bill 799 appropriated funds for a new program of teacher scholarships. The General Assembly has expressed a desire, in a budget memorandum prepared under KRS 48.300(2) to accompany House Bill 799, that prior recipients of loans pursuant to KRS 156.611, 156.613, 164.768 and 164.770 should be eligible for benefits under this new program. This regulation delineates eligibility criteria and repayment obligations related to scholarships provided under the new program and establishes a capability for refinancing of prior loans. This amendment is necessary to remove the deficiency determined by the Administrative Regulation Review Subcommittee of the Legislative Research Commission on September 4, 1991. [clarify the continuation of accelerated cancellation for a teacher who begins teaching in a critical shortage area, even if the area subsequently ceases to constitute a shortage, to avoid penalizing individuals who continue to meet their commitment to teach in a particular field.]

Section 1. Definitions. As used in this regulation, the terms listed below shall have the following meanings:
(1) "Critical shortage area" means an understaffing of teachers for particular subjects, grade levels, or geographic locations as determined by the authority from any sources considered reliable, including, but not limited to, consultation with local and state school officials.
(2) "Eligible program of study" means an undergraduate or graduate program of study which is preparatory to initial teacher certification or recertification, and which does not lead to a certificate, diploma, or degree in theology, divinity, or religious education.
(3) "Qualified teaching service" means teaching the major portion of each school day for at least seventy (70) days each semester in a public school or a private school certified pursuant to KRS 156.160(3), of the Commonwealth.
(4) "Semester" means a period of about eighteen (18) weeks, which usually makes up one-half (1/2) of a school year or one-half (1/2) of a participating institution's academic year.
(5) "Participating institution" means an institution of higher education located in Kentucky, which offers an eligible program of study and has in force an agreement with the authority providing for administration of this program.

Section 2. Eligibility. (1) The authority may, to the extent of appropriations and other funds available to it for this purpose, award teacher scholarships to persons enrolled or accepted for enrollment at participating institutions, who declare an intention to render qualified teaching service [enter the teaching profession in public schools of the Commonwealth], and who are eligible under subsections (3) and (4) of this section.
(2) The authority shall, except for limitations imposed by subsection (5) of this section, cancel the repayment obligation of recipients of teacher scholarships who render qualified teaching service in accordance with Section 5 of this regulation.
(3) Kentucky residents who are enrolled or accepted for enrollment in an eligible program of study on a full-time basis at a participating institution and who agree to render qualified teaching service upon completion of the program of study shall be eligible, except for limitations imposed by subsection (5) of this section, to apply for teacher scholarships if they meet the following criteria:
(a) High school graduates with no college hours must rank academically in the top ten (10) percent of their high school graduating class or score at or above the 80th percentile on an instrument approved by the Council on Higher Education for admission to Kentucky's institutions of higher education.
(b) Certified teachers seeking recertification in order to teach in a critical shortage area must have a cumulative grade point average of at least the equivalent of 2.5 on a 4.0 scale on prior undergraduate studies or a 3.0 on a 4.0 scale on prior graduate studies. A certified teacher, who initially enrolls for recertification to teach in a designated critical shortage area, shall continue to benefit from that designation for so long as the teacher pursues that recertification, notwithstanding a change in the critical shortage area designation subsequent to the initial enrollment.
(c) Applicants with earned college hours must have attained at least the equivalent of a 2.5 grade point average on a 4.0 scale for all undergraduate work and a 3.0 on a 4.0 scale for all graduate work and must be currently enrolled or accepted for enrollment in a postsecondary institution.
(4) Persons enrolled full time at a participating institution in an eligible program of study who have previously received a teacher loan or a mathematics and science incentive loan, pursuant to KRS 156.611, 156.613, 164.768 or 164.770, or a teacher scholarship pursuant to this section, not in excess of the aggregate limit prescribed by Section 3 of this regulation, shall be eligible, except for limitations imposed by subsection (5) of this section, to apply for additional teacher scholarships if they:
(a) Have maintained continuous full-time enrollment, exclusive of periods of approved deferment, in an eligible program of study;
(b) Have made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution; and
(c) Have attained a cumulative grade point average of at least the equivalent of 2.5 on a 4.0 scale on all prior undergraduate studies and

at least 3.0 on a 4.0 scale on all prior graduate studies.

(5) No teacher scholarship shall be awarded nor promissory note cancellation granted to any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 until such financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the executive director of the authority at the recommendation of a designated staff review committee, for cause.

(6) Selection process. Applicants shall be considered and teacher scholarships shall be awarded in the following descending order until funds are depleted:

(a) Qualified renewal applicants pursuant to subsection (4) of this section;

(b) Certified teachers seeking recertification in a critical shortage area;

(c) Currently enrolled postsecondary students who have been admitted to a teacher education program;

(d) Currently enrolled postsecondary students who have not yet been admitted to a teacher education program; and

(e) High school seniors ranked by weighted selection scores that include rank in high school class (thirty (30) percent), high school grade point average (forty (40) percent), and American College Test (ACT) Composite Standard Score (thirty (30) percent).

Section 3. Award Maximums. The maximum teacher scholarship award shall be $1,250 for a summer session, $2,500 for a semester, and $5,000 for an academic year (exclusive of a summer session). Awards shall not exceed the student's total cost of attendance less other aid received as determined by the participating institution. The aggregate maximum of teacher scholarship awards shall not exceed $20,000 per individual.

Section 4. Disbursements. Disbursement of teacher scholarships shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

Section 5. Cancellation. (1) Recipients shall render one (1) semester of qualified teaching service as repayment for each semester or summer term of scholarship received, except that recipients who teach in a critical shortage area shall render one (1) semester of qualified teaching service as repayment for two (2) semesters or summer terms of scholarships received. Once an area is designated as a critical shortage area, a recipient who renders uninterrupted qualified teaching service in that designated area shall continue to benefit from the designation, notwithstanding a change in the critical shortage area designation.

(2) Recipients who have outstanding mathematics and science incentive loans or teacher loans pursuant to KRS 156.611, 156.613, 164.768 or 164.770 may execute a new promissory note under the terms of this program in full satisfaction of the outstanding balance of prior promissory notes. The new promissory notes shall be cancelled in accordance with subsection (1) of this section.

(3) In the event that a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, such teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received.

(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) If a recipient ceases to be enrolled on a full-time basis in an eligible program of study at a participating institution prior to completion of the program of study or otherwise fails to attain certification after completion of the eligible program of study, he shall immediately become liable to the authority to pay the sum of all teacher scholarships received and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.

(2) Recipients failing to render qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all outstanding teacher scholarships and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.

(3) Persons liable for repayment of teacher scholarships under this section shall be liable for interest accruing on each promissory note from the respective dates on which the teacher scholarships were disbursed.

(4) The interest rate applicable to repayment of a teacher scholarship under this section shall be twelve (12) percent per annum, except that promissory notes shall provide that if a judgment is rendered to recover payment, the judgment shall bear interest at a rate five (5) percent greater than the rate actually charged on the promissory note.

Section 7. Notifications. Recipients shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 8. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 9. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of students receiving aid under this program and the disbursement of

funds and institutional charges as may be necessary to audit the disposition of funds hereunder. Such records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 10. Refunds. A participating institution shall refund to the authority, within forty (40) days of a recipient's last date of attendance, any amount attributable to this program which is determined to be due under the institution's refund policy.

Section 11. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. Participating institutions shall provide assurances that program information will be disseminated to students enrolled at their institutions. Participating institutions shall actively recruit students from minority population groups for participation in this program.

Section 12. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

GEORGE SHAW, Chairman
APPROVED BY AGENCY: September 10, 1991
FILED WITH LRC: September 11, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, October 21, 1991 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, October 16, 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: Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden
(1) Type and number of entities affected: Approximately 1200 individuals received awards totalling $7,015,143 to enter or continue enrollment in teacher training programs in Kentucky degree-granting institutions, including recipients of the former math/science scholarships and teacher scholarships who will be offered cancellation provisions available to recipients of the new scholarships which are substantially broader than were such provisions under the former scholarship programs.
(a) Direct and indirect costs or savings to those affected:
1. First year: Recipients of the scholarships receive awards of up to $5000 per year, which amount would reduce the financial outlay to the student or family of an equivalent amount. Potentially, all of the recipients could benefit from the cancellation provisions. However, there are currently 9 recipients owing $32,462 who are expected to immediately benefit from the change in cancellation provisions by cancellation of the repayment obligation involving approximately $20,828 this year.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Recipients who enter the teaching field in Kentucky can have cancelled their entire obligation, up to the maximum of $20,000, at the rate of 1 year of teaching for 1 year of borrowing. Additionally, teachers who serve in designated critical fields with respect to grade level, subject taught, and geographical location can have their obligations cancelled at double the regular rate. The proposed change in the definition of qualified teaching service increases the number of institutions in which cancellation can be affected.
(b) Reporting and paperwork requirements: Recipients are required to inform the authority of changes in their eligibility and enrollment status. After recipients enter the teaching field, they will notify the authority of satisfaction of cancellation requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $1,292,700 has been appropriated for each year of the current biennium for purposes of making awards. The promulgating body expects that at least $20,828 in repayment obligation will be cancelled in the current year as the result of this change.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: There will be no appreciable increase or decrease in other costs.
(b) Reporting and paperwork requirements: The promulgating body will receive, process, and evaluate all documentation verifying teacher service for purposes, determine and notify recipients, and disburse awards to the students.
(3) Assessment of anticipated effect on state and local revenues: Implementation of the amendment will have no effect on local and state revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This amendment provides cancellation benefits for those performing qualified teaching service in private, state approved schools as well as public schools. The Administrative Regulations Review Subcommittee has found the regulation deficient in limiting cancellation to persons teaching in public schools. There is no alternative to this provision for purposes of curing the specified deficiency.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation differs from 11 KAR 8:010 (and its statutory authority, KRS 164.770) insofar as this regulation allows cancellation for teaching at a nonpublic school. However, this regulation, under authority of the biennial budget, combines

the provisions of two separate programs, notwithstanding KRS 164.768 and 164.770. This regulation, therefore, supersedes 11 KAR 7:010 and 11 KAR 8:010, despite the differences in statutory authorization for the two prior programs on this issue.

(a) Necessity of proposed regulation if in conflict: See above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation provides accelerated cancellation for those performing qualified teaching service in designated critical shortage areas. However, this amendment increases the potential number of schools in which qualified teaching service may be performed. The benefit of cancellation is available to all teacher scholarship recipients. Therefore, tiering is not applicable to this amendment.

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:045. Applications, qualifications and examinations.

RELATES TO: KRS 18A.030, 18A.110, 18A.120

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110, 18A.150

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern open competitive exams to test the relative fitness of applicants and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the commissioner. This regulation is necessary to implement these statutory requirements and to assure uniformity in administering exams and replaces 101 KAR 2:040.

Section 1. Notices of Examinations. Examinations for entrance to the classified service shall be conducted on an open-competitive basis. For those job classifications in which there is expected to be a considerable and recurring need of eligibles, the commissioner shall establish a recruitment program which shall be both positive and continuous. Under such plan, applications may be accepted at any time and examinations held whenever and wherever the commissioner deems it desirable for the service. For those job classifications for which continuous recruitment is not needed, special announcements will be used. Eligibles will be listed in rank order of score irrespective of date on which the examination was taken. Notice of examinations shall be announced publicly fifteen (15) days prior to opening and may be distributed to public officials, employment service offices, newspapers, radio stations, educational institutions, professional and vocational societies, other media and such other individuals and organizations as the commissioner may deem expedient. The public notice of examination shall specify the title and minimum salary of the job classifications; the minimum qualifications required; the final date on which application will be received; the relative weights to be assigned to different parts of the examination; and all pertinent information and requirements.

Section 2. Minimum Qualifications for Filing. Open-competitive examinations shall be open to all applicants who meet the standards or requirements fixed by the commissioner with regard to education, experience, age, physical condition, and such other factors as may be held to relate to the ability of the candidate to perform with reasonable efficiency the duties of the position.

Section 3. Filing Applications. (1) All applications shall be made on forms prescribed by the commissioner. Such application may require information concerning personal characteristics, education, experience, references, and other pertinent information. When the nature of the work is such that age limits are necessary, the commissioner after consultation with the appointing authority may approve the age limits, which shall be stated in the examination announcement. All applications shall be signed and the truth of the statements contained therein certified by such signatures. Applicants must meet the minimum qualifications specified in announcements as to education and experience, but in no case shall admittance to the examinations constitute assurance of a passing grade.

(2) For those job classifications for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that applications will be received until further notice.

(3) For those job classifications for which continuous recruitment is not needed, special announcement bulletins will be used. Applicants shall have fifteen (15) calendar days to apply for these special openings. The applications will be processed and those applicants who meet the minimum requirements will be notified of the testing dates.

Section 4. Advance Examinations. Any applicant who does not meet minimum requirements as to education but who will meet these requirements as a result of the completion of further educational work which he has scheduled for the six (6) months following the date of receipt of application, may be allowed to take the examination at the discretion of the commissioner. An applicant taking the examination under this provision shall have his or her name entered on the register up to thirty (30) days prior to completing the educational requirements.

Section 5. Character of Examinations. Examinations shall be practical in nature, constructed to reveal the capacity of the candidate for the particular job classification for which he is competing and his general background and related knowledge, and shall be rated impartially. The commissioner may use a rating of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness which in his judgment serves the need to discover the relative fitness of applicants.

Section 6. Conduct of Examinations. (1) Examinations shall be conducted in as many places in the Commonwealth as are found convenient for applicants and practicable for administration.

(2) The commissioner may designate monitors in various parts of the Commonwealth to take charge locally of examinations under instructions prescribed by him, provide for the compensation of such monitors, and make arrangements for the use of public buildings in which to conduct the examinations.

(3) Retest and restoration procedures.

(a) For open continuous testing an applicant may be admitted to the same exam or its alternate no more than two (2) times within a regular workweek.

(b) For open continuous testing an applicant shall not be permitted to take the same exam or its alternate more than twelve (12) times in a twelve (12) month period beginning with the original date such test is taken.

(c) Retest procedures for examinations listed on special announcements shall be stated on the bulletin.

(d) An eligible who is removed from a register, who fails to make himself available to an appointing authority for consideration or who declines appointment by an appointing authority shall not be allowed to retest or be restored for the job class from which removed for six (6) months from the date of removal unless he has been restored for reasons satisfactory to the commissioner or in accordance with the decision of the board on appeal.

Section 7. Rating Examinations. The commissioner shall determine the rating or standing of applicants on the register for all examinations. Such final rating shall be based upon a weighted average of the various parts of the total examination. All applicants for the same job classification shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 8. Rating Education and Experience. (1) When the rating of education and experience forms a part of the total examination, the commissioner shall determine a procedure for the evaluation of the education and experience qualifications of the applicants. The formula used in appraisal shall give due regard to recency and quality as well as quantity of experience and the pertinency of the education.

(2) The commissioner shall investigate the candidate's educational record form. The commissioner may investigate the candidate's work history. If the results of this investigation bring out information affecting the rating of education and experience, the commissioner may rate the candidate accordingly or make the necessary revision of the rating and so notify the candidate.

(3) The selection method for the following classes is 100% qualifying. If the applicant meets the minimum requirements his name shall be placed on the appropriate register.

TITLE CODE	JOB CLASSIFICATION
1001	Laborer
1002	Laborer Trainee
1003	Janitor
1005	Janitor Supervisor
1006	Technical Services Trainee
1007	Blind Industries Worker
1014	Watchman
1022	Maintenance Worker
1036	Highway Laborer
1037	Light Equipment Operator
1038	Driver of Physically Disabled
1040	Heavy Equipment Operator Trainee
1069	Resource Recovery Worker
1078	Water and Sewer Plant Operator
1079	Water and Sewer Plant Operator Senior
1081	Airport Flightline Attendant
1087	Lockmaster
1088	Lockmaster Coordinator
1090	Motor Pool Attendant
1103	Cosmetologist
1121	Stationary Fireman Trainee
1143	Plumber
1145	Plumber Supervisor
1146	Electrician Trainee
1301	Kitchen Worker
1303	Counter Attendant
1305	Serving Attendant
1307	Cook Helper
1308	Cook
1310	Cook Senior
1343	Dietician Clinical
1345	Dietician Chief
1347	Dietetic Administrator Institutional
1401	Laundry Worker
1403	Laundry Worker Senior
1501	Park Laborer
1503	Park Worker
1522	Blacksmith/Farrier
1541	Parks Golf Professional
1629	Illustrator
1701	Automotive Mechanic Trainee
1731	Aviation Mechanic
1733	Aviation Mechanic/Inspector
1735	Aviation Mechanic/Inspector Chief
2151	Pilot
2153	Pilot Chief
2155	Helicopter Pilot
2157	Helicopter Pilot Chief
2433	Polygraph Examiner
2434	Polygraph Examiner Trainee
2441	Hospital Security Officer
2476	Law Enforcement Training Instructor-Legal
3007	Grader – Fruit and Vegetable
3018	Agricultural Veterinarian
3130	Explosives and Blasting Inspector/Instructor
3131	Explosives and Blasting Inspector/Instructor Senior
3133	Mine Safety Instructor
3135	Electrical Mining Instructor
3139	Mine Inspector
3141	Mine Inspector Principal
3143	Mine Inspector Supervisor
3147	Mine Safety Analyst
3149	Mining Inspector/Examiner Chief
3207	Electrical Inspector
3209	Electrical Inspection Supervisor
3211	Elevator Inspector Trainee
3212	Elevator Inspector
3229	Industrialized Building Systems Specialist
3246	Plumbing Inspection Reviewer
3248	Plumbing Inspector
3250	Plumbing Inspector Senior
3252	Plumbing Inspection Program Supervisor
3256	Boiler Inspector
3258	Boiler Inspector Senior
3260	Boiler Inspector Chief
3341	Pharmacy Education Coordinator

3343 Pharmacy and Drug Inspector
3535 Actuary
3802 Animal Health Technician
3806 Horse Identifier
3807 Horse Identification Supervisor
3836 Racing Veterinarian
3837 Racing Veterinarian Senior
3839 Racing Veterinarian Chief
3840 Assistant State Steward
3841 Associate State Steward
4001 Laboratory Aide
4005 Electroencephalographic Technician
4007 Radiographer
4008 Radiographer Senior
4031 Pharmacist
4032 Pharmacist Senior
4034 Pharmacist Supervisor
4036 Pharmacist Consultant
4038 Pharmacy Services Program Manager
4044 Chemist Chief
4046 Chemistry Laboratory Manager
4080 Forensic Anthropologist
4131 Recreation Aide
4143 Audiologist I
4144 Audiologist II
4146 Speech Clinician
4148 Speech Pathologist I
4149 Speech Pathologist II
4151 Speech and Hearing Regional Coordinator
4153 Speech and Hearing Administrator
4156 Occupational/Physical Therapist Trainee
4158 Occupational Therapist
4160 Occupational Therapy Coordinator
4162 Occupational Therapy Supervisor
4164 Physical Therapist Assistant
4166 Physical Therapist
4168 Physical Therapist Coordinator
4170 Physical Therapist Supervisor
4203 Dental Assistant Certified
4205 Dental Hygienist
4207 Dentist
4209 Dental Program Administrator
4301 Patient Aide
4310 Nurse Aide - State Registered
4312 Licensed Practical Nurse
4314 Licensed Practical Nurse Senior
4315 Licensed Practical Nurse Supervisor/Coordinator
4321 Nurse Registered
4322 Charge Nurse
4323 Nurse Shift Supervisor
4324 Nurse Clinician
4325 Nurse Service Administrator
4327 Nurse Infirmary
4328 Advanced Registered Nurse Practitioner
4329 Nurse Medical Claims
4331 Nurse Consultant/Inspector
4333 Handicapped Children Nurse
4334 Handicapped Children Nurse Senior
4335 Handicapped Children Nurse Principal
4336 Handicapped Children Staff Development Coordinator
4337 Nurse Handicapped Children Program Administrator
4339 Nurse/Administrator
4341 Nursing Investigator
4342 Nursing Investigator Senior
4343 Nursing Education Consultant
4405 Certified Psychologist/Psychological Associate
4407 Certified Psychologist/Psychological Associate Chief
4409 Psychologist Licensed
4411 Psychologist Licensed Chief
4413 Psychologist Licensed Program Administrator
4503 Medical Epidemiologist
4506 Medical Examiner
4510 Medical Examiner Chief
4515 Physician B
4516 Physician
4517 Physician Senior
4520 Physician Chief
4526 Physician Consultant
4530 Physician Director
4555 Medical Specialist
4556 Medical Specialist Senior
4557 Medical Specialist Principal
4559 Medical Director
5021 Medical Records Technician
5023 Medical Records Administrator
5102 Interpreter
5103 Interpreter/Coordinator
5104 Lead Interpreter
5105 Vocational Education Instructor (various options)
5108 Industrial and Trade Instructor
5109 Industrial and Trade Teacher (various options)
5110 MSHA Instructor
5141 Vocational Rehabilitation [Education] Teacher Rank III
5142 Vocational Rehabilitation [Education] Teacher Rank II
5143 Vocational Rehabilitation [Education] Teacher Rank I
5171 Orientation and Mobility Specialist I
5173 Orientation and Mobility Specialist II
5348 Vocational School Assistant Principal
5350 Vocational Education Center Principal
5352 Vocational School Principal
5391 KSB/KSD Support Services Officer III
5392 KSB/KSD Support Services Officer V
5394 KSB/KSD Teacher Supervisor V
5396 KSB/KSD Teacher Supervisor VI
6201 Support Services Aide
6203 Human Services Aide Trainee
6210 Human Services Trainee
6287 Chaplain
6288 Chaplain Chief
6311 Administrative Law Judge
7001 Transportation Landscape Architect
7025 Engineer-in-Training I
7026 Engineer-in-Training II
7037 Engineer
7039 Engineer Chief
7040 Capital Construction/Design Project Administrator Associate
7041 Capital Construction/Design Project Administrator I
7042 Capital Construction/Design Project Administrator II
7043 Capital Construction/Design Project Manager
7044 Environmental Engineer Consultant
7045 Environmental Engineer
7047 Environmental Engineer Chief
7048 Environmental Engineering Branch Manager
7049 Public Service Engineer Chief
7048 Environmental Engineering Branch Manager
7049 Public Service Engineer Chief
7051 Public Service Engineer Manager
7053 PSC Engineering Technical Associate
7072 Project Design Coordinator Senior
7073 Project Architect
7082 Chief Highway District Engineer's Assistant
7083 Chief Highway District Engineer
7085 Transportation Engineering Branch Manager

7086 Transportation Engineer Director
7088 Associate Assistant State Highway Engineer
7089 Assistant State Highway Engineer
7094 Transportation Engineer I
7095 Transportation Engineer II
7201 Nursery Aide
8109 Artist Senior
8112 Artist
9002 Clerical Trainee
9020 Clerical Assistant
9041 Micrographics Technician
9233 Meat and Food Inspector
9241 Purchasing Officer Pharmaceutical
9446 Financial, Investment and Forecasting Program Analyst
9450 Financial, Investment and Forecasting Program Specialist
9569 Mineral Valuation Technician Senior
9610 Management Trainee
9678 Kentucky Veterans Center - Administrator
9680 State Interpreter Administrator
[9821 Attorney]
9822 Attorney I [Senior]
9823 Attorney III [Chief]
9825 Attorney II [Principal]
9826 Attorney Supervisor
9827 Assistant General Counsel/Attorney Manager
9831 Assistant Attorney General
9832 Assistant Attorney General Senior
9835 Assistant Attorney General Principal
9836 Assistant Attorney General Chief
9837 Assistant Attorney General Manager
9841 Assistant Public Advocate
9842 Assistant Public Advocate Senior
9843 Assistant Public Advocate Principal
9844 Assistant Public Advocate Chief
9845 Assistant Public Advocate Supervisor
9847 Assistant Public Advocate Manager
9860 PSC Hearing Examiner

Section 9. Oral Examinations. When an oral examination forms a part of the total examination for a position, the commissioner shall appoint one (1) or more oral examination panels as needed. An oral examination panel shall consist of three (3) or more members who shall be known to be interested in the improvement of public administration and in the selection of efficient government personnel of whom one (1) shall be technically familiar with the character of work in the position for which the applicants will be examined. Whenever practicable, all candidates for the same job classification who qualify for the oral examination shall be rated by the same oral examination panel. A member of an oral examination panel shall disclose each instance in which he knows the applicant personally and may refrain from rating such applicant.

Section 10. Notice of Examination Results. Each competitor shall be notified of his final rating as soon as the rating of the examination has been completed. Eligibles shall be entitled to information concerning their relative position on the register upon request and presentation of proper identification.

Section 11. Adjustment of Errors. An error in the rating of an examination, if called to the attention of the commissioner within thirty (30) days after receipt by the applicant of the notice of examination results shall be corrected by the commissioner provided, however, that such corrections shall not invalidate any certification and appointment previously made.

Section 12. Examination Records. The commissioner shall be responsible for the maintenance of all records pertinent to examination programs. Applications and other necessary examination records shall be kept during the life of the register.

Section 13. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: June 26, 1991
FILED WITH LRC: September 11, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1991, at 9:30 a.m., in Room 285, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing, by October 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 204, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Daniel F. Egbers
(1) Type and number of entities affected: All appointing authorities and employees in the Executive Department subject to KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No substantive change.
(2) Effects on the promulgating administrative body: No substantive change.
(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: No substantive change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in

conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No
(6) Any additional information or comments: Section 6(3)(d) clarifies the time an applicant removed from the register must wait before being restored. Section 8 reflects and lists positions that are 100% qualifying.
TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 FR 9209, March 4, 1983).
2. State compliance standards. The purpose of these regulations is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. The merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.
3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:
(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
(b) Providing equitable and adequate compensation.
(c) Training employees, as needed, to assure high quality performance.
(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.
(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.
(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Proposed Amendment)

201 KAR 2:010. Schools approved by the board.

RELATES TO: KRS 315.050
STATUTORY AUTHORITY: KRS 315.050, 315.191(1)
NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy is directed by KRS 315.050(1) to approve the schools or colleges of pharmacy whose curricula or course of studies are acceptable. This regulation is to assure that applicants for licensure are graduates of acceptable and approved colleges or schools.

Section 1. Every applicant for licensure as a pharmacist shall have graduated and received the first professional undergraduate degree from an accredited pharmacy degree program which has been approved by the Board of Pharmacy. Approved programs shall be those programs whose standards are equivalent to the minimum standards required by the American Council on Pharmaceutical Education for the accreditation of such programs. The American Council on Pharmaceutical Education, "Accreditation Standards and Guidelines," 8th Edition, July, 1984, effective January 1, 1985; and the American Council on Pharmaceutical Education, "Accredited Professional Programs of Colleges and Schools of Pharmacy[, Accredited Professional Degree Program]", July 1, 1991 [1989] are incorporated by reference. A copy of the referenced material may be reviewed or obtained from the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

DONALD J. RUWE, President
APPROVED BY AGENCY: September 11, 1991
FILED WITH LRC: September 13, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1991, at 10 a.m. (EDT) at the office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 1991, 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 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 amendments to the administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed amendments to the administrative regulation to: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross
(1) Type and number of entities affected: No fees are affected by this amendment.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No change affected by this amendment.
(2) Effects on the promulgating administrative body: To update incorporated reference.
(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 fees are affected by this amendment.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were required.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict.
(a) Necessity of proposed regulation if in conflict: There is no conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation is being amended to update incorporated reference.

TOURISM CABINET
Department of Fish & Wildlife Resources
(Proposed Amendment)

301 KAR 1:085. Mussel shell harvesting.

RELATES TO: KRS 150.025, 150.110, 150.170, 150.175, 150.190, 150.510, 150.520
STATUTORY AUTHORITY: KRS 13A.150, 150.025
NECESSITY AND FUNCTION: It is necessary to regulate the manner of taking mussels because of their value and their susceptibility to overharvest. This amendment is necessary to protect three (3) species of mussels designated as endangered under the Endangered Species Act. These species are the orange-footed pimple-back, Plethobasus cooperianus, the pink mucket, Lampsilis orbiculata, and the rough pigtoe, Pleurobema plenum.

Section 1. Conforming with KRS 150.170, all persons who actively participate in the harvesting and sale of mussels or mussel shells, whether or not they own or possess the gear being used in the harvest of mussels or mussel shells, shall have an appropriate license. Those persons having a valid mussel buyers license are authorized to sell mussels and mussel shells. No boat shall be used in musseling operations without a licensed operator in the boat.

Section 2. The mussel season is open year round in all streams and on all beds, except as specified in this section.
(1) Musseling is prohibited in the Tennessee River from Kentucky Dam downstream to river mile seventeen and eight-tenths (17.8), an area established as a mussel sanctuary.
(2) Musseling is prohibited within the stream segments 200 yards below any dam on any stream.
(3) Musseling is prohibited on the Cumberland River from Barkley Dam downstream to the U.S. Highway 62 bridge.
(4) Musseling is prohibited in all embayments on Barkley and Kentucky Lakes.
(5) Musseling is prohibited in the Ohio River between river mile 418 and river mile 419 and between river mile 966.3 and river mile 970.0 establishing these areas as mussel sanctuaries.
(6) Musseling is prohibited on the Big South Fork of the Cumberland River and tributaries above the confluence of Koger Creek.
(7) Musseling is prohibited in the Green River from Lock and Dam #5 downstream one and three-tenths (1.3) miles to the state highway 185 bridge. [the western boundary of Mammoth Cave National Park downstream to the confluence with Woodbury Dam,] an area established as a mussel sanctuary.
(8) Musseling is prohibited in the Barren River from Lock and Dam #1 downstream three and five-tenths (3.5) miles to the confluence with Mortar Branch. [the Barren River Lake dam downstream to the confluence with the Green River,] an area established as a mussel sanctuary.

Section 3. Musseling is permitted during the hours of 6 a.m. and 6 p.m. daily except in Barkley and Kentucky Lakes where the hours are 8 a.m. to 6 p.m.

Section 4. The statewide size limits for taking of mussels shall be as follows. All mussels smaller than these minimum sizes shall immediately be returned to the water from which taken.
(1) Washboard mussels, Megalonaias gigantea, shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of three and three-fourths (3 3/4) inches.
(2) Three (3) ridge mussels, Amblema plicata, shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and three-fourths (2 3/4) inches.
(3) All other mussels, except the Asiatic clam, Corbicula sp. shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and one-half (2 1/2) inches.
(4) The Asiatic clam, Corbicula sp., may be taken at any size.

Section 5. Mussel harvesting from the waters of the Commonwealth of Kentucky, except as provided in Section 8 of this regulation, shall be by brail only. No more than two (2) brails each sixteen (16) feet or less in length shall be simultaneously operated from any boat. More than two (2) brails may be carried aboard the boat.

Section 6. Mussel brail hooks when used shall be constructed of wire of at least fourteen (14) gauge; smaller wire is prohibited.

Section 7. Prongs of hooks shall be no longer than one and one-fourth (1 1/4) inch as measured from the tip of point to place on hook where the prongs are joined.

Section 8. The Commissioner may designate as disaster areas waters in which all live mussels have been killed, and may issue a special permit allowing the use of various harvest methods.

Section 9. No mussels designated as endangered shall be taken.

Section 10. Subsections (7) and (8) in Section 2 of this regulation shall not be enforced until January 1, 1992.

Section 11. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
RONALD E. GENTRY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 13, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on Wednesday, October 24, 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: Presently there are approximately 20 mussel fishermen harvesting mussels from the Ohio River, Barren River and Green River.
(a) Direct and indirect costs or savings to those affected: It is difficult to assess costs since the number of mussel fishermen that will move to other areas and the numbers that will quit musseling are not known. It is estimated that approximately 15 mussel fishermen will experience some level of economic impact.
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: No additional effort will be required. Policing will be a part of ongoing routine patrol.
(a) Direct and indirect costs or savings: Very small increased costs will occur as a result of time spent apprehending violators and publication of informational brochures.
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, funding, manpower levels or equipment needs.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Since the Kentucky Department of Fish and Wildlife Resources has a mandate to protect endangered species, there are few options. The only other option to creating mussel sanctuaries would be to provide intensive training to Division of Law Enforcement personnel working in these areas so they will be able to recognize these species with confidence. This would require intensive classroom and field instruction so the personnel will be confident in all identifications and be able to provide adequate court testimony during legal proceedings. The problems with this scenario is the endangered species would have already been harvested, and because survival of such individuals returned to the water is low; such action could continue to contribute to a decline in the numbers of these species.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statute, administrative regulations or government policies which are in conflict, overlapping or duplication.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Only one entity, the commercial mussel fisherman, is impacted by this regulation. There is no social or biological justification for the nonuniform application of commercial musseling requirements.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:140. Seasons for wild turkey.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.175, 150.305, 150.320, 150.330, 150.360, 150.365, 150.390, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation pertains to seasons and limits for wild turkey. The commissioner with the concurrence of the commission finds this regulation necessary for the continued protection and conservation of wild turkey populations and to insure a permanent and continued supply for present and future residents of the state. The function of this regulation is to provide for the prudent taking of wild turkeys within reasonable limits based upon an adequate supply. This amendment is necessary to designate currently appropriate

turkey hunting rules and seasons for specific counties and wildlife management areas.

Section 1. Seasons and Counties Open to Wild Turkey Hunting. Third Wednesday in April for fourteen (14) consecutive days in Adair except west of Highway 61, Allen east of Highway 31E, Anderson west of Highway 127, Ballard, Bath south of I-64, Bell, Boyd south of I-64, Boyle south of Highway 37 and west of Carpenter Fork Road, Breathitt east of Highway 15 and south of Highway 30, Breckinridge northwest of Highway 79, Bullitt south of Salt River, Butler, Caldwell, Calloway, Carlisle except south of Highway 62 and east of Highway 51, Carroll, Carter north of I-64, Casey west of Highway 127, Clinton north of Highway 90 and west of Highway 558, Crittenden south of Highway 120 and east of Highway 641, Crittenden south of Highway 70, Christian, Cumberland, Edmonson, Franklin east of the Kentucky River, Fulton, Gallatin north of I-71, Graves, Grayson except east of Highway 250 and north of West Kentucky Parkway, Green north of Highway 569, Greenup west of Highway 7, Hancock east of Highway 69, Hardin south of West Kentucky and Bluegrass Parkways, Harlan, Hart west of Highway 31E, Henry, Henderson west of Highway 41, Hickman, Hopkins south of Highway 70, Jackson north of Highway 30, Knott north of Highway 80, Larue northeast of Highway 210, Laurel west of I-75, Letcher, Lewis east of Highway 59, Livingston, Logan north of Highway 106, Lyon, Marion west of Highway 527, Marshall, Martin south of Highway 40, McCracken, McCreary south of Highway 92 and west of Highway 27, McCreary north of Highway 92, Meade northwest of Highway 79, Menifee except south of Highway 460 and east of Highway 77, Monroe south of Highway 100, Muhlenberg except north of Highway 70 and west of Highway 431, Nelson west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown, Owen west of Highway 127 north of Owenton and west of Highway 227 south of Owenton, Owsley north of Highway 30 and west of Highway 399, Perry north of Highway 80 and east of Highway 15, Pike south of Elkhorn Creek, Pulaski south of the Cumberland River, Pulaski south of Highway 80 and east of Buck Creek, Rowan north of I-64, Russell west of Highway 127 and south of Highway 92, Taylor northwest of gas lines at Saloma, Todd, Trimble east of Highway 421, Trigg south of Highway 68, Union, Warren southwest of the Green River Parkway and northwest of Highway 80, Wayne southeast of Highway 90 and northwest of Highway 92, Whitley north of Highway 90 and west of Highway 25W.

[(1) Zone A, third Wednesday in April for fourteen (14) consecutive days in Adair north of the Cumberland Parkway, Allen east of Highway 31E, Anderson west of Highway 127, Ballard, Bell, Boyle south of Highway 37 and west of Carpenter Fork Road, Bullitt south of Salt River, Butler, Caldwell east of Highway 139, Calloway south of Highway 94, Casey west of Highway 127, Christian, Edmonson, Grayson except east of Highway 259 and north of West Kentucky Parkway, Green north of Highway 569, Harlan, Hart west of Highway 31E, Hopkins south of Highway 70, Larue northeast of Highway 210, Letcher, Livingston, Logan north of Highway 106, Marion west of Highway 527, McCreary north of Highway 92, Monroe south of Highway 100, Muhlenberg except north of Highway 70 and east of Highway 431, Nelson west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown, Pike south of Elkhorn Creek, Pulaski south of the Cumberland River, Pulaski south of Highway 80 and east of Buck Creek, Taylor northwest of gas lines at Saloma, Todd east of Highway 181, Trigg south of Highway 68, Warren southwest of the Green River Parkway and northwest of Highway 80, and Wayne southeast of Highway 90 and northwest of Highway 92.]

[(2) Zone B, third Wednesday in April for seven (7) consecutive days in Bath south of I-64, Boyd south of I-64, Breathitt east of Highway 15 and south of Highway 30, Breckinridge northwest of Highway 79, Carlisle except south of Highway 62 and east of Highway 51, Carroll west of the Kentucky River, Carter north of I-64, Fulton, Graves, Greenup west of Highway 7, Hancock east of Highway 69, Henderson west of Highway 41, Hickman west of Highway 51, Jackson north of Highway 30, Knott north of Highway 80, Laurel west of I-75, Lewis east of Highway 59, Lyon south of I-24, Marshall, McCracken, McCreary south of Highway 92 and west of Highway 27, Meade northwest of Highway 79, Menifee north of Highway 460 and east of Highway 36, Owen west of Highway 127, Owlsey north of Highway 30 and west of Highway 399, Perry north of Highway 80 and east of Highway 15, Rowan north of I-64, Russell west of Highway 127 and south of Highway 92, Trimble east of Highway 421, Union.]

(2) [(3)] Fall either sex archery only season from October 1 through October 31 in Ballard except Ballard Wildlife Management Area north of Terrell Landing Road, Bullitt south of the Salt River, Butler, Caldwell [east of Highway 139], Calloway [south of Highway 94], Christian, Hart west of Highway 31E, Hopkins south of Highway 70, Larue northeast of Highway 210, Logan north of Highway 106, Muhlenberg except north of Highway 70 and west [east] of Highway 431, Nelson west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown, Todd [east of Highway 181], Trigg south of Highway 68.

(3) [(4)] All other counties and portions of counties are closed to wild turkey hunting except as specified in Section 4 of this regulation.

Section 2. Bag and Possession Limits. (1) No more than two (2) turkeys with visible beards per hunter per spring season shall be taken. [with the following restrictions:] No more than one (1) turkey per day shall be taken[, no more than two (2) turkeys shall be taken in Zone A, and no more than one (1) turkey shall be taken in Zone B].

(2) No more than one (1) turkey shall be taken in the fall.

(3) No more than three (3) turkeys shall be taken in any calendar year.

Section 3. Requirements and Restrictions. (1) The use of dogs is prohibited.

(2) All turkey hunters shall have in their possession a valid wild turkey permit and a valid annual Kentucky hunting license, unless exempted by KRS 150.170(3), (5), (6), (7), or (8).

(3) Turkey shall be taken only from one-half (1/2) hour before sunrise until 1 p.m. During fall seasons, turkey may be taken only during daylight hours.

(4) Turkey may be taken with the aid of hand or mouth operated calls. Electronic calls are prohibited.

(5) Shotguns no larger than ten (10) gauge or

no smaller than twenty (20) gauge are the only firearms which shall be used or possessed while turkey hunting. Only Number 4 shot or smaller shall be used. Shot larger than Number 4 or slugs shall not be possessed while turkey hunting.

(6) Longbows, recurve and compound bows which do not have devices to hold an arrow at full draw without human aid are the only archery equipment which shall be used. Only barbless arrows without chemical treatment or chemical attachments, with broadhead points at least seven-eighths (7/8) inch wide are permitted.

(7) The hunter shall attach the transportation tag to the turkey immediately after taking. Any hunter harvesting a wild turkey shall have it checked at the nearest check station or by the nearest available conservation officer on the day the turkey is taken except as required on specified wildlife management areas. The hunter shall fill out an official game check card and submit it to the check station operator or conservation officer. The hunter's portion of this card shall be retained in the hunter's possession until the turkey is processed. A completed state, Fort Campbell, or Land Between the Lakes game check card shall be attached to and remain with any turkey taken to a taxidermist. Turkeys shall be checked before being transported out of the state.

(8) Turkeys may be taken with the aid of decoys. Live turkeys shall not be used as decoys.

(9) Turkeys shall not be hunted on any baited area. A baited area means any area where feed, grains or any other substances capable of luring wild turkeys have been placed. Such areas shall be considered baited for ten (10) days following the complete removal of all bait. This does not prohibit hunting wild turkeys on any areas where grains, feed or other substances exist as the result of bona fide agricultural practices, or as the result of manipulating a crop for wildlife management purposes, provided that manipulation for wildlife management purposes does not include the placing or scattering of grain, feed or other substances once removed from or stored on the field where grown.

(10) Turkeys shall not be hunted from boats.

(11) All hunters less than eighteen (18) years of age shall be accompanied by an adult who shall maintain reasonable control of the underage hunter at all times.

(12) Calling or attempting to call wild turkeys using any turkey call to mimic the sounds made by a wild turkey shall be prohibited from March 1 to the opening day of spring turkey season in any area open to turkey hunting. This shall not apply to places where turkeys are not reasonably expected to occur. [Indiana residents are prohibited from turkey hunting in Kentucky.]

(13) Turkeys shall not be taken by any means other than those specified in this regulation.

Section 4. Seasons and Exceptions on Wildlife Management Areas. All provisions of this regulation apply unless otherwise specified in this section.

(1) Fort Knox Wildlife Management Area located in Hardin, Bullitt and Meade Counties.

(a) Season: all Saturdays and Sundays in April and the first two (2) Saturdays and Sundays in May.

(b) Hunters shall check turkeys [at French Range Building 9333] by 2 p.m. on the day harvested.

(c) Bag limit: one (1) turkey per season. Turkeys taken on Fort Knox do not count against statewide limits and do not have to be tagged.

(d) Turkey hunters shall hunt in assigned area(s) only.

(2) Land Between the Lakes Wildlife Management Area located in Trigg and Lyon Counties.

(a) Season: April 15, 16, 18, 19, 20, 22 [17, 18, 20, 21, 22, 24] through May 5 [7].

(b) Wild turkey shall be taken only in designated areas.

(c) All hunters shall check in and out, shall check any turkey before leaving Land Between the Lakes and shall affix an LBL game check card to the carcass. State game check cards are not required.

(d) Shooting hours: daylight hours only.

(e) Bag limit: one (1) turkey per season.

(3) Reelfoot National Wildlife Refuge located in Fulton County.

(a) Season: quota hunt April 3, 4, and 5 [5, 6, and 7].

(b) Bag limit: one (1) turkey per season.

(c) Permit: Reelfoot permit required.

(4) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties.

(a) Season: First Saturday in April through the second Sunday in May [April 6 through May 12] with no hunting permitted on Tuesdays or Wednesdays.

(b) Permit. A post combination hunting-fishing permit is required.

(c) Shooting hours: daylight hours only.

(d) Bag limit: two (2) turkeys per spring season. Turkeys taken on Fort Campbell do not count against statewide limits and do not have to be tagged.

(e) A Fort Campbell game check card shall be attached to turkeys before leaving post and shall remain on the bird until processed. State game check cards are not required.

(5) Blue Grass Ordnance Depot Activity located in Madison County. Season: third Wednesday in April for fourteen (14) consecutive days.

(6) Ballard Wildlife Management Area in Ballard County is closed to turkey hunting, except that portion south of Terrell Landing Road.

(7) Swan Lake Wildlife Management Area in Ballard County is closed to turkey hunting.

(8) Higginson-Henry Wildlife Management Area located in Union County. Season: archery only. Third Wednesday in April for nineteen (19) consecutive days [April 17 through May 5] and either sex, October 1-31. Hunters must check in and check out daily. [Bag limit: one (1) turkey per season.]

(9) Robinson Forest Wildlife Management Area in Breathitt and Knott counties is closed to turkey hunting.

(10) West Kentucky Wildlife Management Area in McCracken County is closed to turkey hunting.

(11) Pioneer Weapons Wildlife Management Area in Bath and Menifee Counties.

[(a) Season: third Wednesday in April for seven (7) consecutive days.]

[(b) Bag limit: one (1) turkey per season.]

[(c)] Weapons: muzzle-loading shotguns only. Breech-loading shotguns are prohibited. Longbows, recurve and compound bows, and crossbows of at least 100 pounds pull with a working safety are permitted.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman

RONALD E. GENTRY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 13, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 30, 1991 at 9 a.m. at the Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky in the commission room. Individuals interested in attending this hearing shall notify this agency in writing by October 25, 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, Wildlife Division, Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: Approximately 10,000 persons will participate in the wild turkey hunting proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and a wild turkey permit. Indirect costs are determined by the individual hunter, depending on his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license ($8.50 for residents) and wild turkey permit ($15) unless exempt by regulations.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Hunters will be asked to check their turkey at a check station and fill out tag denoting specific information about the turkey taken.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $80,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Approximately 10,000 turkey hunters may be expected to expend money for equipment, transportation, food and lodging. The annual expenditure for these items averages $46 per day of big game hunting according to the 1985 National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to the necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that wild turkey populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Only one class of citizen, the hunter, is impacted by this regulation. However, wild turkey are unevenly distributed across the state of Kentucky and only certain counties have sufficiently large turkey populations to warrant hunting. This regulation recognizes the variations in turkey populations and only opens.

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. Only parts of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerks office serves as a distribution system for the hunting licenses required by this regulation.

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 County Clerk's office personnel are involved in the sale of hunting licenses and turkey tags. This office receives a $.75 fee for selling licenses and turkey tags. The county circuit courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:010. Definitions for Title 401 Chapter 8.

RELATES TO: KRS Chapter 223, 224, 40 CFR 141.2
STATUTORY AUTHORITY: KRS Chapter 223, 224.032, 224.033, 40 CFR 141.2, as amended at 54 FR 27,526 and 27,562 (1989),[; PL 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, PL 100-572;] 42 USCA 300f, 300g, 300j
NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. The purpose of this regulation is to define terms used by the cabinet in regulation of public and semipublic drinking water supplies pursuant to KRS Chapter 224 and PL 93-523, as amended, as well as to regulate certification of public water system operators pursuant to KRS Chapter 223.

Section 1. The following definitions shall apply to 401 KAR Chapter 8:
(1) "Approved source" means the source[(s)] of the water whether it be from a spring, well, public water system, or [any] other source that has been sampled and the water analyzed, and found to be of a safe and sanitary quality and quantity in accordance with 401 KAR 8:010 through 401 KAR 8:700, inclusive.
(2) "Auxiliary intake" means a [any] piping connection or other device whereby raw water may be secured for treatment from a location or source other than the intake which is normally used.
(3) "Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the cabinet finds, after examination for efficacy under field conditions, and not solely under laboratory conditions, are available to the public water system (taking cost into consideration). For the purposes of setting maximum contaminant levels for synthetic organic chemicals, [any] BAT shall be at least as effective as granular activated carbon.
(4) "Blood lead level or PbB level" means the concentration of lead in the blood as measured in micrograms of lead per deciliter of blood (mg/dl).
(5) "Board" means the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators.
(6) "Boil water advisory" or "consumer advisory" means a notice to the consuming public through radio, television, direct mail, posting, newspaper or other media to convey to the consuming public in the quickest manner possible information that water provided by a system may cause adverse human health effects if consumed. The [Such] advisory shall include information concerning all actions which [should be taken] by the affected public is advised to take.
(7) "Boil water notice" means a notice to the consuming public through radio, television, direct mail, posting, newspaper or other media to convey to the [said] consuming public in the quickest manner possible information that water provided by a system is unfit for human consumption unless first boiled for two (2) minutes at a rolling boil.
(8) "Bottled water" means water that is from an approved bottled water treatment plant and is placed in a sealed container or package and is offered for human consumption or other consumer uses.
(9) "Bottled water system" means a water system which provides bottled drinking water. The term includes, but is not limited to, the sources of water, and treatment, storage, bottling, manufacturing, or distribution facilities. The term excludes a public water system which provides only a source of water supply for a bottled water system and excludes an entity providing only transportation, distribution or sale of bottled water in sealed bottles or other sealed containers. Bottled water systems shall be designated as community public water systems.
(10) "Bottled water treatment plant" means a facility which provides the product water used for bottled water by processing water from an approved source.
(11) "Bypass" means a physical arrangement whereby water may be diverted around any feature of the purification process of a public or semipublic water supply.
(12) "Cabinet" means the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, or its successor.
(13) "Certificate" means a certificate of competency issued by the secretary or his designated agent stating that the operator has met all requirements for the specified operator classification as set by these regulations.
(14) "Certified laboratory" means a laboratory where the physical, instrumental, procedural, and personnel capabilities have been approved by either the U.S. Environmental Protection Agency or the cabinet. A laboratory may be certified for [any] one (1) or more types of the contaminants listed in these regulations or for one (1) or more [any] of the specific constituents or combinations of constituents listed [therein].
(15) "Check samples" means chemical and radiological samples taken subsequent to a routine compliance sample and at the same location to determine if results of the routine sample are valid.
(16) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.
(17) "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion of the filter, in which bacterial colonies are not discrete.
(18) [(16)] "Contaminant" means a [any] physical, chemical, biological, or radiological substance or other matter found in water.
(19) [(17)] "Contaminant group" means all of the constituent members that collectively

comprise the individual bacteriological, inorganic chemical, organic chemical, radiological, volatile organic chemical, synthetic organic chemical, and secondary contaminant groups regulated under these regulations.

(20) "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

(21) [(18)] "Corrosion" means the dissolution or erosion of pipe or other plumbing material by water.

(22) [(19)] "Corrosivity" means the tendency of water to form or dissolve calcium carbonate as a film or scale.

(23) [(20)] "Cross connection" means a [any] physical connection or arrangement between two (2) otherwise separate systems, one (1) of which contains potable water and the other being either water of unknown or questionable safety, or steam, gas or chemicals, whereby there may be flow from one (1) system to the other, the direction of flow depending on the pressure differential between the two (2) systems.

(24) "CT or CT calc" means the product of "residual disinfectant concentration" (C) in mg/l determined before or at the first customer and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T". If a public water system applies disinfectants at more than one (1) point prior to the first customer, it shall determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or "total inactivation ratio". In determining the total inactivation ratio, the public water system shall determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before subsequent disinfection application points. "$CT_{99.9}$" means the CT value required for 99.9 percent (3-log) inactivation of Giardia lamblia cysts.

$$\frac{\text{CT calc}}{CT_{99.9}}$$

is the inactivation ratio. The sum of the inactivation ratios, or total inactivation ratio shown as

$$\frac{(\text{CT calc})}{(CT_{99.9})}$$

is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than one and zero-tenths (1.0) is assumed to provide a 3-log inactivation of Giardia lamblia cysts.

(25) [(21)] "Department" means the Kentucky Department for Environmental Protection.

(26) "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

(27) "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

(28) [(22)] "Direct responsible charge" means personal, first hand responsibility, control or supervision of the operation of a public water system.

(29) "Disinfectant contact time" ("T" in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured. If only one (1) "C" is measured, "T" means the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where residual disinfectant concentration ("C") is measured. If more than one (1) "C" is measured, "T" means for the first measurement of "C", the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured and for subsequent measurements of "C", the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated. Disinfectant contact time in pipelines must be calculated based on "plug flow" by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs shall be determined by tracer studies or an equivalent demonstration.

(30) [(23)] "Disinfection" means a [the] process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents. [of destroying disease-causing organisms, usually through the use of chlorine or other disinfectants approved by the cabinet].

(31) [(24)] "Distributed water" means water leaving the water treatment facility and entering the distribution system.

(32) [(25)] "Division" means the Division of Water.

(33) "Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a public water system with more than one (1) service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(34) [(26)] "Dose equivalent" means the product of the absorbed dose from ionizing radiation and the [such] factors that [as] account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(35) [(27)] "Fee" means a monetary charge to be assessed by the cabinet.

(36) "Filtration" means a process for removing particulate matter from water by passage through porous media.

(37) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

(38) [(28)] "Free flowing tap or outlet" means a [any] tap or outlet that when turned on is flowing freely. It does not mean a continuously operating tap.

(39) [(29)] "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(40) [(30)] "Groundwater source" means a [any] source of water for a public or semipublic water supply that does not have a free water surface exposed to the atmosphere or a turbidity content which exceeds acceptable levels for potable water as specified in 401 KAR 8:010 through 8:700 inclusive, and is not under the direct influence of surface water.

(41) "Groundwater under the direct influence of surface water" means water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence shall be determined for individual sources in accordance with criteria established by the cabinet. The cabinet's determination of direct influence may be based on site-specific measurements of water quality as well as documentation of well construction characteristics and geology with field evaluation.

(42) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(43) [(31)] "Manmade beta particle and photon emitters" means all radionuclides emitting beta particles and photons listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," NBS Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

(44) [(32)] "Maximum contaminant level" (MCL) means the maximum permissible level of a contaminant in water which is delivered to a [any] user of a public water system as measured at points specified in 401 KAR 8:010 through 8:700 inclusive.

(45) [(33)] "Maximum total trihalomethane potential (MTP)" means the maximum concentration of total trihalomethanes (TTHMs) produced in a given water containing excess free chlorine residuals after seven (7) days retention at a temperature of twenty-five (25) degrees Centigrade (seventy-seven (77) degrees Fahrenheit) or above.

(46) [(34)] "Mineral water" means bottled water that contains no less than 500 parts per million total dissolved solids.

(47) "Near the first service connection" means at one (1) of the twenty (20) percent of service connections in the entire system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.

(48) [(35)] "Operator" means a [any] person who has on-site responsibility and authority to conduct the procedures and practices necessary to ensure that the water supply system or a [any] portion thereof is operated in accordance with the laws and regulations of the Commonwealth; or to supervise others in conducting the [such] procedures and practices. Maintenance personnel and others who do not participate directly in the production or distribution of potable water are not included in the term "operator".

(49) [(36)] "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth or any interstate body.

(50) [(37)] "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(51) "Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

(52) [(38)] "Point-of-entry treatment device" means [is] a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

(53) [(39)] "Point-of-use treatment device" means [is] a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

(54) [(40)] "Potable water" means [any] water which meets the provisions of 401 KAR 8:010 through 401 KAR 8:700, inclusive, [these regulations], the quality of which is approved by the cabinet for human consumption [by the cabinet].

(55) [(41)] "Private water supply" means a residential water supply located on private property for the use of residents, and not qualifying as a public or semipublic water system.

(56) [(42)] "Product water" means the water processed by a bottled water treatment plant that is used for bottled drinking water.

(57) [(43)] "Professional engineer" means an engineer with current registration as a professional engineer in Kentucky.

(58) [(44)] "Public water system" means a water [any] system owned by a [any] person, for the provision to the public of water for human consumption, if the [such] system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year, and includes a [any] collection, treatment, storage or distribution facility[ies] used primarily in connection with the [such] system. For the purposes of 401 KAR 8:020, 401 KAR 8:150, 401 KAR 8:200, "public water system" shall also include a [any] commercial facility which serves food to the public and is not using water purchased from a public water system. However, if a facility serving food to the public uses exclusively bottled water as defined by this section for the preparation of food and the cleaning of food preparation utensils and dishes to serve food, the facility may establish, to the cabinet's satisfaction, that only potable water shall be received by the public and the facility shall be exempt from this definition. A public water system is either a "community water system" or a "noncommunity water system."

(a) "Community water system" means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(b) "Noncommunity water system" means a public water system which serves at least fifteen (15) service connections used by persons for a period less than year-round or which serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year but less than year-round. Noncommunity water systems are

either transient or nontransient.

1. "Transient noncommunity water system" means a water system which serves a transient group of people and does not meet the definition for nontransient noncommunity water system set forth below.

2. "Nontransient noncommunity water system" means a system which serves at least twenty-five (25) of the same persons over six (6) months of the year.

(59) [(45)] "Rem" means the unit of dose equivalent from ionizing radiation to the total body or an [any] internal organ or organ system.

(60) "Residual disinfectant concentration" ("C" in CT calculations) means the concentration of disinfectant measured in mg/l in a representative sample of water.

(61) [(46)] "Sanitary survey" means an on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of [such] source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

(62) [(47)] "Secondary contaminants" means contaminants which do not, in general, have a direct impact on the health of consumers but whose presence in excessive quantities may discourage the utilization of drinking water and discredit the supplier.

(63) [(48)] "Secondary standards" means the maximum contaminant levels for secondary contaminants.

(64) [(49)] "Secretary" means the secretary for the Natural Resources and Environmental Protection Cabinet.

(65) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(66) [(50)] "Semipublic water system" means a [any] water system made available for drinking or domestic use which serves more than three (3) families but does not qualify as a public water system.

(67) "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than four-tenths (0.4) m/h) resulting in substantial particulate removal by physical and biological mechanisms.

(68) [(51)] "Specific analysis" means a laboratory analysis or procedure acceptable to the cabinet for determining the amount of a specific constituent of a type of contaminant regulated under these regulations.

(69) [(52)] "Standard Methods" means the 16th Edition of "Standard Methods for the Examination of Water and Wastewater," prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

(70) [(53)] "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(71) [(54)] "Supplier of water" means a [any] person who owns or operates a public water system.

(72) "Surface water" means water which is open to the atmosphere and subject to surface runoff, or groundwater under the direct influence of surface water.

(73) [(55)] "Surface water source" includes, but is not limited to, ponds, reservoirs, streams of all sizes, free-flowing springs, wells with variable turbidity due to the characteristics of the raw water, or a [any] source of water supply for a public water system that has a free water surface exposed to the atmosphere, or groundwater under the influence of surface water.

(74) "System with a single service connection" means a system which supplies drinking water to consumers via a single service line.

(75) [(56)] "Total trihalomethanes (TTHMs)" means the arithmetic sum of the concentrations in milligrams per liter of the trihalomethane (THM) compounds (trichloromethane, dibromochloromethane, bromodichloromethane, and tribromomethane) rounded to two (2) significant figures.

(76) "Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a forty-seven millimeter (47-mm) diameter membrane filter used for coliform detection.

(77) [(57)] "Trihalomethane (THM)" means one (1) family of organic halogen compounds resulting from the displacement of three (3) of the four (4) hydrogen atoms in methane with chlorine, bromine, or iodine atoms in the molecular structure.

(78) [(58)] "Turbidity" means the presence of suspended particulates, including, but not limited to, sand, silt, clay, finely divided organic or inorganic matter, plankton or other microscopic organisms or elements which optically interfere with the clarity of liquids.

(79) "Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

(80) "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment as determined by the cabinet.

(81) [(59)] "Water distribution system" means the portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of a consumer or a system of piping and ancillary equipment which is owned and operated by an established water system independent of the water supply system from which potable water is purchased.

(82) [(60)] "Water supply reservoir" and "lake primarily used for drinking water" means, for the purpose of 401 KAR 8:020, Section 2(18), a [any] lake or reservoir so designated by its developer, a public water system drawing raw water from the lake, a local government, and a property owner having an interest in the lake and the watershed upstream of the dam or downstream outlet of the lake.

(83) [(61)] "Water supply system" means the source of supply and all structures and appurtenances used for the collection, treatment, storage and distribution of water for a public or semipublic water supply.

(84) [(62)] "Water treatment plant" or "purification plant" means that portion of the water supply system which is designed to alter either the physical, chemical or bacteriological quality of the water.

Section 2. The following items are incorporated by reference and are available for public inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the Division of Water, 18 Reilly Road,

Frankfort Office Park, Frankfort, Kentucky 40601:
(1) Standard Methods for the Examination of Water and Wastewater, 16th Edition, 1985, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. This publication may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.
(2) "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and Water for Occupational Exposure," National Bureau of Standards Handbook Number 69, U.S. Department of Commerce, August 1963. This document may be obtained by contacting the Division of Water.

Section 3. Severability. If a [any] provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 13, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1991, at 1 p.m. (EDT) in the ground floor auditorium of the Capital Plaza Tower, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation at any time until the close of business, (4:30 p.m. EDT), October 23, 1991. Send written comments on the proposed administrative regulation to: John T. Smither, Branch Manager, Division of Water, Drinking Water Branch, Department for Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601-1189.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Smither
(1) Type and number of entities affected: This regulation covers 859 public and 98 semipublic water systems. These numbers may vary slightly from month to month.
(a) Direct and indirect costs or savings to those affected: The amendments to this regulation incorporate several new definitions which will be applied to 401 KAR Chapter 8. There is no direct or indirect cost or savings associated with this regulation, although amendments to other regulations which these definitions relate to will involve costs or savings which will be discussed in the RIA relating to those regulations.
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: There are no reporting or paperwork requirements associated with this regulation as it merely defines terms.
(2) Effects on the promulgating administrative body: There are no effects on the promulgating administrative body.
(a) Direct and indirect costs or savings: There are no direct or 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: There are no reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This is a regulation containing definitions. The only alternative to this regulation would be to promulgate definitions in each regulation contained in 401 KAR Chapter 8. This alternative was rejected as more cumbersome.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no duplicative, overlapping, or conflicting regulation, statute or policy.
(a) Necessity of proposed regulation if in conflict: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. This regulation contains definitions only. Other regulations which these definitions apply to are tiered.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 USCA 300 f, g, j; 40 CFR 141.2, as amended at 54 Federal Register 27,526 and 27,562 (1989).
2. State compliance standards. This regulation defines certain terms relating to the enforcement of KRS 224.032. These definitions are consistent with federal definitions when there is a federal definition.
3. Minimum or uniform standards contained in the federal mandate. 40 CFR 141.2 defines certain terms which this regulation also defines. These definitions are consistent.
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.

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 provides definitions for proposed 401 KAR Chapter 8 which will regulate public and semipublic water systems. Some local governments may directly or indirectly own public or semipublic water systems.
3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to

public water systems. It is being amended to conform state regulations to changes made in federal regulations published in the Federal Register June 29, 1989. This regulation only deals with definitions.

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 (+/-): As a regulation containing only definitions, this regulation will not affect revenues. Amendments to other regulations may affect revenue and will be discussed as appropriate.

Expenditures (+/-): This regulation will not affect expenditures.

Other Explanation: This regulation, by itself will not affect revenues or expenditures. Other regulations in 401 KAR Chapter 8 may, and will be discussed as appropriate.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:020. Public and semipublic water supplies - general provisions.

RELATES TO: KRS Chapters 223, 224, 40 CFR 141.3, 141.74, 141.75, 142.14, 142.15

STATUTORY AUTHORITY: KRS Chapter 223, 224.032, 224.033, 40 CFR 141.3, 141.74, 141.75, 142.14, 142.15, as amended at 54 FR 27,530 (1989) [PL 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, PL 100-572], 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. The purpose of this regulation is to stipulate general provisions for public and semipublic water supplies to enable the supplies to comply with KRS 224.032, as well as the Safe Drinking Water Act, as amended. The amendments to this regulation are to add certain new recordkeeping and reporting requirements which have become necessary as a result of new federal requirements.

Section 1. Applicability. (1) Inclusions. All public and semipublic water systems are subject to the requirements of 401 KAR 8:010 through 8:700, inclusive except those noted in subsection (2) of this section. A [Any] commercial facility which uses water from its own premises to prepare food to be served to the public is subject to the requirements of 401 KAR 8:020, 401 KAR 8:150, and 401 KAR 8:200 unless bottled water is used exclusively for food preparation and dish washing, and the facility has demonstrated to the cabinet's satisfaction that no contaminated water may reach the public.

(2) Exclusions. Except as stated above, this chapter does not apply to water systems in the following two (2) categories:

(a) Water systems which consist only of distribution and storage facilities, which do not have [any] collection or [and] treatment facilities, which obtain all of their water from, but are not owned or operated by, public water systems covered by these regulations, and which do not sell water to any person; or

(b) Water systems which are carriers which convey passengers in interstate commerce.

Section 2. Operation, Maintenance and Safety Requirements. (1) Public and semipublic water systems. No person shall operate or commence operation of a public or semipublic water system except in compliance with the provisions of 401 KAR 8:010 through 8:700, inclusive. Water supply systems constructed prior to the effective date of these regulations may be continued in use, if the operation, maintenance, bacteriological, chemical, physical, and radiological standards comply with 401 KAR 8:010 through 401 KAR 8:700 inclusive, or the [such] system[s] obtains a variance or exemption as set forth in 401 KAR 8:060 from those standards with which they do not comply.

(2) Cross-connections prohibited. All cross-connections are prohibited. The use of automatic devices, such as reduced pressure zone back flow preventers and vacuum breakers, may be approved by the cabinet in lieu of proper air gap separation. A combination of air gap separation and automatic devices shall be required if determined by the cabinet to be necessary due to the degree of hazard to public health. It shall be the responsibility of every public water system to determine whether or where cross-connections exist and to immediately eliminate them.

(3) Bypasses. No bypass shall be created or maintained without the prior written approval of the cabinet stating the approved circumstances for establishment of a bypass, its design, and the exact conditions which must exist for its use.

(4) Auxiliary intakes. No auxiliary intake shall be used in direct connection with a public or semipublic water system except with prior written approval from the cabinet stating the emergency conditions which necessitate the [such an] intake.

(5) Water and sewer connections. The sewer system serving the purification plant and auxiliary facilities, including all plumbing fixtures, toilets, showers, drinking fountains, and floor drains, shall discharge to the sewer system where available. If no such sewer is available, the connection shall be made to an approved sewage disposal facility. There shall be no connections between the sewer system and a [any] filter backwash, filter-to-waste drains or clearwell overflow lines, unless an approved air gap is provided between such drains and overflow lines and the approved sanitary, storm sewer, or natural drainage system, so as to preclude the possibility of back-up of sewage or waste into the drain or overflow lines.

(6) Proper operation and maintenance. The owner or operator of a public water system shall

at all times properly operate and maintain all facilities and systems of treatment, intake and distribution to achieve compliance with the provisions of 401 KAR 8:010 through 8:700 inclusive. Proper operation and maintenance includes effective performance, preventive maintenance, adequate operator staffing and training, adequate representative sample points, and adequate process controls for testing, including appropriate quality assurance procedures.

(7) Reports to the cabinet.

(a) Monthly operating reports. The supplier of water shall file complete monthly operating reports with the cabinet. The reports shall be on forms provided or approved by the cabinet and shall be received at the Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601, no later than ten (10) days after the end of the month for which the report is filed. Completed reports shall include volume of water treated, type and amount of chemicals added, and test results appropriate to be reported by the plant. Completed reports shall also include the dated original signature of the owner or authorized agent. Beginning with the month of July 1992 for subparagraph 1 of this paragraph, and January 1993 for subparagraph 2 of this paragraph, the supplier of water shall submit the following reports to the cabinet no later than ten (10) days after the end of each month the public water system serves water to the public:

1. Turbidity measurements with maximum contaminant levels as required by 401 KAR 8:200, Section 4(4) and (5) and monitoring in accordance with that section and 401 KAR 8:150, Section 3(2)(a) until June 29, 1993. After June 29, 1993, turbidity monitoring shall be in accordance with 401 KAR 8:150, Section 3(2)(a), with measurements in accordance with 401 KAR 8:150, Section 3(1)(d) and (2)(a), and maximum contaminant levels in accordance with 401 KAR 8:150, Section 2. The supplier of water shall include the following turbidity information in the monthly operating report:

a. The total number of filtered water turbidity measurements taken during the month.

b. The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in 401 KAR 8:150, Section 2, for the filtration technology being used.

c. The date and value of any turbidity measurements taken during the month which exceed five (5) NTU.

2. Disinfection information specified in 401 KAR 8:150, Section 3(2)(b). The supplier of water shall include the following disinfection information in the monthly operating report:

a. For each day, the lowest measurement of residual disinfectant concentration in mg/l in water entering the distribution system.

b. The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below the residual requirements as specified in 401 KAR 8:150, Section 1(1), and when the cabinet was notified as of the occurrence.

c. The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to 401 KAR 8:150, Sections 1 and 3(2)(c):

(i) Number of instances where the residual disinfectant concentration is measured.

(ii) Number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured.

(iii) Number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured.

(iv) Number of instances where no residual disinfectant concentration is detected and where HPC is greater than 500/ml.

(v) Number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500/ml.

(vi) For the current and previous month the system serves water to the public the value of "V" in the following formula:

$$V = \frac{c+d+e}{a+b} \times 100$$

where
a = the value in subclause (i) of this clause
b = the value in subclause (ii) of this clause
c = the value in subclause (iii) of this clause
d = the value in subclause (iv) of this clause
e = the value in subclause (v) of this clause

(vii) If the cabinet determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory within the requisite time and temperature conditions specified by 401 KAR 8:150, Section 3(1)(c), and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (a)2c(i) through (vi) of this subsection do not apply.

d. A system need not report the date listed in clause a. of this subparagraph if all data listed in clauses a. through c. of this subparagraph remain on file at the system and the cabinet determines that the system has submitted all the information required by clauses a. through c. of this subparagraph for at least twelve (12) months.

3. Each system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, shall report that occurrence to the cabinet in accordance with paragraph (c) of this subsection. If the turbidity exceeds five (5) NTU, the system shall inform the cabinet as soon as possible in accordance with paragraph (c) of this subsection. If the residual falls below the requirements specified in 401 KAR 8:150, Section 1(1), in the water entering the distribution system, the system shall notify the cabinet as soon as possible in accordance with paragraph (c) of this subsection. The system also shall notify the cabinet by the end of the next business day whether or not the residual was restored to the residual required by 401 KAR 8:150, Section 1(1), within four (4) hours.

(b) Reports of failure to comply. Public water systems shall report to the cabinet, within forty-eight (48) hours, by phone or in writing, the failure to comply with any provision of 401 KAR 8:010 through 8:700, inclusive, including the failure to comply with monitoring requirements.

(c) Emergency reports. When a public water system experiences a line break as described in 401 KAR 8:150, Section 4(3), loss of pressure, loss of disinfection, or other event which may result in contamination of the water, the public water system shall immediately report to the cabinet by calling the drinking water branch of

the division of water in Frankfort at (502) 564-3410 or the appropriate regional field office of the division of water. If a report required by paragraph (c) of this subsection is made at a time other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number, (502) 564-2380.

(8) Records to be maintained. All owners or operators of public water and semipublic water systems shall keep on or near the premises the records set forth in this subsection.

(a) Data summaries. Either actual laboratory reports shall be kept or data shall be transferred to tabular summaries. The following information shall be included:

1. The date, place and time of sampling, and the name of the person who collected the sample;
2. Whether the sample was a routine distribution system sample, check sample, raw or processed water sample or other special purpose sample;
3. The date of analysis;
4. The laboratory and person responsible for performing analysis;
5. The analytical technique or [/] method used; and
6. The results of the analysis.

(b) Bacteriological analysis records shall be kept at least five (5) years.

(c) Chemical analysis records shall be kept for a period of ten (10) years.

(d) Turbidity analysis records shall be kept for a period of at least one (1) year.

(e) Records of violations and the actions taken by the system to correct violation of primary drinking water regulations shall be kept no less than ten (10) years after the last action taken with respect to the particular violation involved.

(f) Records of sanitary surveys, copies of [any] written reports, summaries of communications relating to sanitary surveys of the system, conducted by the system, a private consultant, or a [any] local, state or federal agency, shall be kept no less than ten (10) years after completion of the sanitary survey involved, at which time they may be transferred to the cabinet.

(g) Records concerning a [any] variance or exemption granted to the system shall be kept no less then five (5) years following the expiration of the variance or exemption.

(9) Boil water notices and consumer advisories.

(a) Boil water notices and advisories. Public water systems and semipublic water systems may issue boil water notices or boil water advisories if [at any time] the system feels a notice or advisory is warranted. The cabinet may direct that a boil water notice be issued when positive bacteriological sample results have been confirmed by an analysis or analyses made in a certified laboratory. The cabinet may direct that a boil water advisory be issued when conditions within a public water system indicate a possible adverse health effect from microbiological contamination may result from consumption of the water distributed by a system. The cabinet may, when it determines circumstances warrant, issue a boil water notice or boil water advisory directly, rather than rely on a public or semipublic water system to issue the [such] notice.

(b) Consumer advisory. The cabinet may issue a consumer advisory if [at any time] conditions within a public water system or semipublic water system indicate a possible adverse health effect from consumption of the water distributed by the system or when [anytime] other information of interest to the consumer exists. The advisory will notify affected persons of a [any] required or recommended action that should be taken.

(10) How to issue notice or advisory. Boil water notices, boil water advisories, and consumer advisories shall be issued through newspapers, radio, television, or [any] other media having an immediate public impact. As a health and safety measure, the water system shall repeat the notification during the period of imminent danger at intervals which maintain public awareness. The notice or advisory shall be readily understandable and shall include instructions for the public, as well as an explanation of the steps being taken to correct the problem. Boiling instructions shall caution to only boil drinking water for short range use by boiling water for at least two (2) minutes at a rolling boil.

(11) Other notices. Other public notifications shall be issued by public water systems as required by 401 KAR 8:010 through 8:700 inclusive.

(12) Maps. Within twelve (12) months of November 15, 1990, [the effective date of this regulation, all] public and semipublic water systems shall have on the premises, or conveniently located to the premises, an up-to-date map of the distribution system. The map shall, at a minimum, show line size, cutoff valves, fire hydrants, flush hydrants, tanks, booster pumps, chlorination stations, connection to emergency or alternative sources, and wholesale customer master meters. The type of piping material in the distribution system and its location shall also be provided. If a public water system, due to age, improper documentation, lost documentation or other valid reason cannot comply with this requirement, the system may petition the cabinet to modify this requirement to the extent that compliance is not feasible. The petition for modification [waiver] shall state specifically what portion of this requirement is not practical and why.

(13) Operation and maintenance manual. Each public water [supply] system shall develop and keep on the premises, for operators and employees of the system, an operation and maintenance manual that includes a detailed design of the plant, daily operating procedures, a schedule of testing requirements designating who is responsible for the [such] tests, and safety procedures for operation of the facility, including storage and inventory requirements for materials and supplies used by the facility. The operation and maintenance manual shall be updated as necessary and no less than annually and shall [will] be available by November 16, 1991 [within twelve (12) months of the effective date of this regulation]. Public water systems serving fewer than 100 people or thirty (30) service connections may request that the cabinet waive this requirement. The request shall be in writing and any waiver granted by the cabinet shall be in writing and be retained by the public water system for examination by cabinet personnel.

(14) Flushing recommended. It is recommended that all distribution systems be thoroughly flushed at least twice a year, usually in the spring and fall. The purpose of systematic

flushing is to reduce turbidity created from the scouring of accumulated sediment within the water lines. Flushing should start at the hydrants nearest the source of supply and proceed in an outward direction to the end of each main. Flushing should continue at each hydrant until all traces of turbidity and color are gone. Hydrants should be opened and shut slowly to prevent damage from water hammer. In addition to the regularly scheduled flushing, the following conditions indicate a need to flush the entire system: turbidity within the distribution system greater than five (5) nephelometric turbidity units (NTU); an inability to maintain an adequate residual of a disinfection agent in any part of the system or a heterotrophic plate count (HPC) in excess of 500. Other indicators that flushing may be called for are taste and odor complaints, color of water, contaminated water samples, or line repairs.

(15) No person shall introduce a [any] substance which may have a deleterious physiological effect, or for which physiological effects may not be known, to the water supply system.

(16) Certified lab analysis required. For the purpose of determining compliance with the sampling requirements of 401 KAR 8:010 through 8:700 inclusive, samples shall be analyzed by a laboratory certified by the cabinet as prescribed in 401 KAR 8:040, except that measurements for turbidity and disinfectant residuals [free chlorine] may be performed by a [any] person approved by the cabinet.

(17) Right of entry. The cabinet may enter, during normal business hours, an [any] establishment, facility or other property of public and semipublic water supplies in order to determine whether the [such] supplies have acted or are acting in compliance with [any] applicable laws or regulations which the cabinet has the authority to enforce. [Such] Entry may include collection of water samples for laboratory analyses, inspection of records, files, papers, processes, controls and facilities required to be kept, installed or used under the provisions of 401 KAR 8:010 through 8:700, inclusive. The cabinet or its authorized agent may cause to be tested a [any] feature of a public water system, including its raw water source, to determine compliance with applicable legal requirements.

(18) Recommended practices for water supply reservoirs to be used for drinking water. The following practices are recommended to be employed by water systems which have a lake primarily used as a source of raw drinking water:

(a) Prohibition of swimming, water skiing and other contact sports.

(b) Prohibition of large motor-driven craft or any craft with toilets.

(c) An area at least 100 feet wide from the upper pool elevation shall be kept clear of all sources of potential contamination such as septic tanks, drain fields, livestock, barns, etc.

(d) No effluent from sewage treatment plants shall be discharged into the lake.

(e) Picnicking may be permitted around the lake if plans for the development of any picnic area meet regulatory requirements of the cabinet.

(f) A nonpoint source pollution control plan shall be implemented.

(19) Water treatment chemicals and system components. [All] Chemical additives and protective materials (such as paints and linings) used by a water system shall be acceptable to the cabinet for use in contact with potable water.

(20) Disposal of chlorinated water. Chlorinated water resulting from disinfection of treatment facilities and new, repaired or extended distribution systems shall be disposed in a manner which will not violate 401 KAR 5:031.

(21) Water loading stations. Public water systems which provide water loading stations for the purpose of providing water to water hauling trucks or other bulk water devices shall construct such stations to conform to the standards in the Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers' "Recommended Standards for Water Works," incorporated by reference in Section 4 [3](1) of this regulation.

Section 3. Records and Reports Maintained by the Cabinet. The cabinet shall maintain and report records and reports as governed by 40 CFR 142.14 and 142.15, as amended at 54 Federal Register 27,557, 27,567, and 27,579 (1989), hereby adopted without change.

Section 4. [3.] Incorporation by Reference. The following materials are hereby incorporated by reference and are available for public inspection and copying between 8 a.m. and 4:30 p.m., Monday through Friday, at the Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Ky. 40601:

(1) Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers' "Recommended Standards for Water Works," 1987, published by the Health Research Inc., Health Education Services Division, P.O. Box 7126, Albany, New York 12224.

(2) "General Design Criteria for Surface and Ground Water Supplies", 1984, published by the Kentucky Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

(3) "Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed Within Five Miles Upstream from Public Water Supply Sources or From the Location of Public Water Supply Intakes Within Five Miles Downstream from Wastewater Discharges" 1983, published by the Kentucky Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

Section 5. [4.] Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 13, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1991, at 1 p.m. EDT in the ground floor auditorium of the Capital Plaza Tower, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed

administrative regulation at any time until the close of business, (4:30 p.m. EDT), October 23, 1991. Send written comments on the proposed administrative regulation to: John T. Smither, Branch Manager, Division of Water, Drinking Water Branch, Department for Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601-1189.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Smither

(1) Type and number of entities affected: This regulation covers 859 public and 98 semipublic water systems. These numbers may vary slightly from month to month.

(a) Direct and indirect costs or savings to those affected: The amendments to this regulation will require certain reports to be submitted to the cabinet. These reports are currently being submitted, although changes in 401 KAR 8:150 and 401 KAR 8:200 will require different, more detailed information. Although 401 KAR 8:150 and 401 KAR 8:200 will involve changes in cost to public water systems in order to obtain the information, the cost for submitting the necessary reports to the cabinet will not increase or decrease.

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: This regulation requires information to be reported to the cabinet which is generated as a result of amendments to 401 KAR 8:150 and 401 KAR 8:200. These reports will contain more detailed, different, or new information. Increased paperwork or reports will primarily be the recording of additional turbidity and disinfection test results. This regulation also requires that a log of line breaks be submitted to the cabinet on a monthly basis.

(2) Effects on the promulgating administrative body: The amendment of this regulation will have no effect on the promulgating administrative body since recordkeeping personnel and procedures are already in place.

(a) Direct and indirect costs or savings: There are no direct or 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: Records and paperwork are already required and the promulgating administrative body will not be affected by amendment of this regulation.

(3) Assessment of anticipated effect on state and local revenues: The amendment of this regulation will have no effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is a regulation containing general provisions. The amendments to this regulation are a result of changes in federal regulations. While these reporting requirements could have been included elsewhere in 401 KAR Chapter 8, it seemed logical to include these requirements in this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no duplicative, overlapping, or conflicting regulation, statute, or policy.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This regulation relates to general provisions which apply to public and semipublic water systems. Certain distinctions are made in relation to the size and type of system.

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 apply to any public or semipublic water system owned by local governments.

3. State the aspect or service of local government to which this administrative regulation relates. Public or semipublic water systems. 40 CFR 141 and 142, as amended at 54 Federal Register 27,530 (1989), require certain reports be made to the cabinet by public water systems and to EPA by the cabinet. This regulation is being amended to incorporate those new requirements.

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 will not affect revenues.

Expenditures (+/-): The reports required by this regulation may require some increase in paperwork submitted to the cabinet. However, monthly operating reports are currently required.

Other Explanation: The amendments to this regulation represent some slight change in content of reports already required. However, these changes are less substantive than cosmetic.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 USC 300 f,g,j. 40 CFR 141 and 142, as amended at 54 Federal Register 27,530 (1989).

2. State compliance standards. Public water systems must submit certain reports relating to turbidity and disinfection of the public water system.

3. Minimum or uniform standards contained in the federal mandate. Federal requirements require certain reports relating to turbidity and disinfection of the public water system.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This regulation does not, by itself impose stricter standards. However, 401 KAR 8:150 imposes new monitoring requirements for turbidity and disinfection sooner than federal requirements

and this regulation requires reports based on when the new requirements take effect.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. New federal turbidity requirements increase the number of times per day turbidity is measured. They also will cut in half turbidity maximum contaminant levels. The cabinet feels that public water systems will benefit by discovering how the new monitoring requirements will effect their turbidity levels before the imposition of the stricter MCL. New federal requirements will require continuous monitoring for disinfection which will require specific equipment be purchased. By moving up the timetable for putting this equipment in place, public water systems will have a better chance of being in compliance with the continuous monitoring requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:070. Public notification.

RELATES TO: KRS Chapter 224, 40 CFR Parts 141, 142, 143.5

STATUTORY AUTHORITY: KRS 224.032, 224.033, 40 CFR Part 141.32, as amended by Federal Register 27,556 (1989) and 54 Federal Register 27,527 (1989), [PL 93-523, The Safe Drinking Water Act, as amended in 1986 and by the Lead Contamination and Control Act of 1988, PL 100-572,] 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary enforcement responsibility. This regulation relates to notification of the public when these regulations have been violated by a public or semipublic water system. It has been substantially revised to reflect amendments to the Safe Drinking Water Act[, and it will replace the public notification requirements of 401 KAR 6:015(12)].

Section 1. Notification for Tier One Violations. The owner or operator of a public or semipublic water system which fails to comply with an applicable maximum contaminant level or treatment technique established by 401 KAR 8:010 through 401 KAR 8:700, inclusive, or which fails to comply with the requirements of a [any] schedule prescribed pursuant to a variance or exemption, shall notify the public in accordance with the requirements of this section. These violations are Tier One violations and may be designated by the cabinet as ordinary or acute, with acute violations representing a class of violation which may represent an immediate threat to the public health, requiring consumers to take special precautions.

(1) Community public water systems. The owner or operator of a community public water system shall provide notice of a [any] Tier One violation in the following manner:

(a) Newspaper. By publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but in no case later than fourteen (14) days after the violation or failure has occurred. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area; and

(b) Mail. By mail delivery (by direct mail or with the water bill), or by hand delivery, no later than forty-five (45) days after the violation or failure. The cabinet may waive mail or hand delivery if it determines that the owner or operator of the public water system in violation has corrected the violation or failure within the forty-five (45) day period. The cabinet, if it chooses to issue a waiver, will issue the waiver in writing and within the forty-five (45) day period; and

(c) Acute violation. In addition to the other requirements of this section, for violations of acute Tier One standards the owner or operator of the public water system shall furnish copies of the public notification to radio and television stations serving the area served by the public water system as soon as possible, but in no case later than seventy-two (72) hours after notice of the violation is received by the public water system from the laboratory. The following violations are acute violations:

1. Violations of the maximum contaminant level for total coliforms, if fecal coliforms or E. coli are present in the water distribution system, [coliform bacteria, confirmed by a check sample] as provided in 401 KAR 8:200;

2. Violation of the maximum contaminant level for nitrate, as provided in 401 KAR 8:250; and

3. [Any] Other violations that the cabinet or public water system determines call[s] for special care by the consumer.

(d) Repeat notice. For as long as the violation continues, the owner or operator of the public water system shall give notice at least once every three (3) months by mail delivery (by direct mail or with the water bill) or by hand delivery.

(e) Newspaper not available. Community water systems in an area not served by a daily or weekly newspaper of general circulation may satisfy the requirements of this subsection by giving notice, within fourteen (14) days of the violation or failure, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation or failure exists. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation or failure exists.

(2) Noncommunity public water systems. The owner or operator of noncommunity water systems may comply with the notice requirements of this section by giving notice within seventy-two (72) hours for acute violations or within fourteen (14) days after [any] other violations or failure by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for

as long as the violation or failure exists. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation or failure exists.

(3) Semipublic. The owner or operator of semipublic water systems may be required to give notice equivalent to the requirements of noncommunity systems at the discretion of the cabinet.

Section 2. Notification for Tier Two Violations. The owner or operator of a public or semipublic water system which fails to perform the monitoring required by 401 KAR 8:010 through 8:700, inclusive, fails to make a report required by 401 KAR 8:010 through 8:700, inclusive, fails to comply with a testing procedure established by 401 KAR 8:010 through 8:700, inclusive, is subject to a variance to 401 KAR 8:010 through 8:700, inclusive, granted by the cabinet, or is subject to an exemption from 401 KAR 8:010 through 8:700, inclusive, granted by the cabinet, shall notify persons served by the system as prescribed in this section. The [Such] violation or receipt of a variance or exemption shall be considered a Tier Two category violation.

(1) Community systems. The owner or operator of community public water systems shall give notice of Tier Two violations in the following manner:

(a) Newspaper. Notice of Tier Two violations shall be made by the owner or operator of a community public water system, within three (3) months of the violation or granting of a variance or exemption, by publication in a daily newspaper of general circulation in the area served by the system. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area.

(b) Repeat notice. Following the initial notice given under this section, the owner or operator of the public water system shall give notice at least once every three (3) months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists. Repeat notice of the existence of a variance or exemption shall be given for as long as the variance or exemption remains in effect.

(c) Notice when newspaper not available. The owner or operator of community water systems not being served by a daily or weekly newspaper of general circulation may meet the requirements of paragraphs (a) and (b) of this subsection by giving notice, within three (3) months of the violation or granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation exists or a variance or exemption remains in effect. Notice by hand delivery shall [must] be repeated at least once every three (3) months for as long as the violation exists or a variance or exemption remains in effect.

(2) Noncommunity public water systems. The owner or operator of a noncommunity water system may comply with the notice provisions of this section by giving notice, within three (3) months of the violation or the granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation exists or the variance or exemption remains in effect. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation exists or a variance or exemption remains in effect.

(3) Semipublic. The owner or operator of semipublic water systems may be compelled to give the notice required of noncommunity systems when public health considerations require it.

(4) Reduction in notification frequency. The cabinet may reduce notification frequency for minor violations when criteria for the [such] reduction have been approved as a program revision, as stipulated by the U.S. Environmental Protection Agency.

Section 3. New Billing Units. The owner or operator of a community water system shall give a copy of the most recent public notice for any outstanding Tier One violation to all new billing units or new hookups prior to, or when [at the time] service begins.

Section 4. General Content of Public Notices. Each notice required by this regulation shall provide a clear and readily understandable explanation of the violation, [any] potential adverse health effects, the population at risk, the steps that the public water system is taking to correct the [such] violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected. Each notice shall be conspicuous; shall not contain unduly technical language, unduly small print, or other problems that frustrate the purpose of the notice; and, where appropriate, the notice shall be multilingual. Each notice shall include the name and telephone number of the owner, operator or designee of the public water system as a source of additional information concerning the notice.

Section 5. Proof of Notice. (1) How to submit. [All] Public notices required by this regulation shall be submitted to the cabinet. For [In the case of] newspaper advertisements, a copy of the complete page of the newspaper or newspapers in which the advertisement appeared and the date of its appearance, shall be submitted by the water system. For notices to radio and television media for acute violations, a copy of all material submitted to the radio and television media shall be submitted to the cabinet by the water system, along with an affidavit, signed by the operator or owner of the public water system, stating when and to which radio and television media the notice was given. A copy of notices that are hand delivered, delivered to radio or television media for acute violations, or mailed, shall be mailed to the cabinet by the water system, along with an affidavit signed by the operator or owner of the water system stating that all consumers were notified. Mailing to the cabinet shall take place the same day as hand delivery, delivery to radio or television media, or mailing to the public. If the notice is posted, the owner or operator of the water system shall submit a copy of the notice and an affidavit stating where the [such] notices were placed. All notices to the cabinet shall be addressed to the Division of Water,

Drinking Water Branch, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

(2) Public notification by the cabinet. The cabinet may give the notice to the public required by this section on behalf of the owner or operator of the public water system. However, the owner or operator of the public water system remains legally responsible for ensuring that the requirements are met.

(3) Failure to submit proof of notice. The cabinet may construe failure to submit proof of notice as evidence that the public water system has failed to notify the public. When the public water system fails to submit proof of notice within thirty (30) days of any requirement for notice, the cabinet may submit the notice to be published, with the cost of publication to be billed to the public water system by the publishing entity. [Any] Costs incurred by the cabinet to notify the public, resulting from the failure of the public water system to do so, may be recovered by the cabinet.

Section 6. Mandatory Language for Tier One Violations. Public notice for those contaminants listed in this section shall contain language in addition to the information on potential adverse health effects required by Section 4 of this regulation. The owner or operator of a public water system shall include the language specified below for each contaminant listed in those notices. The following mandatory-health-effects language shall be published intact and may not include inserted material not prescribed by this regulation:

(1) Trichloroethylene. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that trichloroethylene is a health concern at certain levels of exposure. This chemical is a common metal cleaning and dry cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set forth the enforceable drinking water standard for trichloroethylene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(2) Carbon tetrachloride. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that carbon tetrachloride is a health concern at certain levels of exposure. This chemical was once a popular household cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for carbon tetrachloride at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(3) 1,2-Dichloroethane. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2-dichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaning fluid for fats, oils, waxes, and resins. It generally gets into drinking water from improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,2-dichloroethane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(4) Vinyl chloride. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that vinyl chloride is a health concern at certain levels of exposure. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. The solvents are used as cleaners and degreasers of metals and generally get into drinking water by improper waste disposal. This chemical has been associated with significantly increased risks of cancer among certain industrial workers who were exposed to relatively large amounts of this chemical during their working careers. This chemical has also been shown to cause cancer in laboratory animals when the animals are exposed at high levels over their lifetimes. Chemicals that cause increased risk of cancer among exposed industrial workers and in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for vinyl chloride at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(5) Benzene. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that benzene is a health concern at certain levels of exposure. This chemical is used as a solvent and degreaser of metals. It is also a major component of gasoline. Drinking water contamination generally results from leaking underground gasoline and petroleum tanks or improper waste disposal. This chemical has been associated with significantly increased risks of leukemia among certain industrial workers who were exposed to relatively large amounts of this chemical during their working careers. This chemical has also been shown to cause cancer in laboratory animals when the animals are exposed at high levels over their lifetimes. Chemicals that cause increased risk of cancer among exposed industrial workers and in laboratory animals also may increase the risk of cancer in humans who are exposed at lower

levels over long periods of time. EPA has set the enforceable drinking water standard for benzene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(6) 1,1-Dichloroethylene. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1-dichloroethylene is a health concern at certain levels of exposure. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. The solvents are used as cleaners and degreasers of metals and generally get into drinking water by improper waste disposal. This chemical has been shown to cause liver and kidney damage in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1-dichloroethylene at 0.007 parts per million (ppm) to reduce the risk of these adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(7) Para-dichlorobenzene. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that para-dichlorobenzene is a health concern at certain levels of exposure. This chemical is a component of deodorizers, moth balls, and pesticides. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause liver and kidney damage in laboratory animals such as rats and mice when the animals are exposed to high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for para-dichlorobenzene at 0.075 parts per million (ppm) to reduce the risk of these adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(8) 1,1,1-Trichloroethane. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1,1-trichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaner and degreaser of metals. It generally gets into drinking water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and circulatory system of laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during their working careers also suffered damage to the liver, nervous system, and circulatory system. Chemicals which cause adverse effects among exposed industrial workers and in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1,1-trichloroethane at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(9) Fluoride. The U.S. Environmental Protection Agency (EPA) requires that we send you this notice on the level of fluoride in your drinking water. The drinking water in your community has a fluoride concentration of _____ (Public Water Supply shall insert the compliance result which triggered public notice) milligrams per liter (mg/l).

Federal regulations require that fluoride, which occurs naturally in your water supply, not exceed a concentration of 4.0 mg/l in drinking water. This is an enforceable standard called a Maximum Contaminant Level (MCL), and it has been established to protect the public health. Exposure to drinking water levels above 4.0 mg/l for many years may result in some cases of crippling skeletal fluorosis, which is a serious bone disorder.

Federal law also requires that we notify you when monitoring indicates that the fluoride in your drinking water exceeds 2.0 mg/l. This is intended to alert families about dental problems that might affect children under nine (9) years of age. The fluoride concentration of your water exceeds this federal guideline.

Fluoride in children's drinking water at levels of approximately 1.0 mg/l reduces the number of dental cavities. However, some children exposed to levels of fluoride greater than about 2.0 mg/l may develop dental fluorosis. Dental fluorosis, in its moderate and severe forms, is a brown staining and/or pitting of the permanent teeth.

Because dental fluorosis occurs only when developing teeth (before they erupt from the gums) are exposed to elevated fluoride levels, households without children are not expected to be affected by this level of fluoride. Families with children under the age of nine (9) are encouraged to seek other sources of drinking water for their children to avoid the possibility of staining and pitting. Your water supplier can lower the concentration of fluoride in your water so that you will still receive the benefits of cavity prevention while the possibility of stained and pitted teeth is minimized. Removal of fluoride may increase your water costs. Treatment systems are also commercially available for home use. Information on such systems is available at the address given below. Low fluoride bottled drinking water that would meet all standards is also commercially available. For further information contact _____ (Public Water Supply shall insert the name, address and telephone number of a contact person) at your water system.

(10) Total coliforms (to be used when there is a violation of 401 KAR 8:200, Section 2(1), and not a violation of 401 KAR 8:200, Section 2(2)). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of total coliforms is a possible health concern. Total coliforms are common in the environment and are generally not harmful themselves. The presence of these bacteria in drinking water, however,

generally is a result of a problem with water treatment of the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for total coliforms to reduce the risk of these adverse health effects. Under this standard, no more than five (5.0) percent of the samples collected during a month can contain these bacteria, except that systems collecting fewer than forty (40) samples/month that have one (1) total coliform-positive sample per month are not violating the standard. Drinking water which meets this standard is usually not associated with a health risk from disease-causing bacteria and should be considered safe.

(11) Fecal Coliforms--E. coli (to be used when there is a violation of 401 KAR 8:200, Section 2(2)). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of fecal coliforms of E. coli is a serious health concern. Fecal coliforms and E. coli are generally not harmful themselves, but their presence in drinking water is serious because they usually are associated with sewage or animal wastes. The presence of these bacteria in drinking water is generally a result to a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for fecal coliforms and E. coli to reduce the risk of these adverse health effects. Under this standard all drinking water samples must be free of these bacteria. Drinking water which meets this standard is associated with little or none of this risk and should be considered safe. State and local health authorities recommend that consumers take the following precautions: (to be inserted by the public water system according to instructions from state or local authorities).

(12) Microbiological contaminants (for use when there is a violation of the treatment technique requirements for filtration and disinfection in 401 KAR 8:150). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of microbiological contaminants are a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet EPA requirements is associated with little to none of this risk and should be considered safe.

Section 7. Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 13, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1991, at 1 p.m. EDT in the ground floor auditorium of the Capital Plaza Tower, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation at any time until the close of business, (4:30 p.m. EDT), October 23, 1991. Send written comments on the proposed administrative regulation to: John T. Smither, Branch Manager, Division of Water, Drinking Water Branch, Department for Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601-1189.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Smither

(1) Type and number of entities affected: This regulation covers 859 public and 98 semipublic water systems. These numbers may vary slightly from month to month.

(a) Direct and indirect costs or savings to those affected: The cost of issuing a public notification is a direct cost to the public water system. The amendment to this regulation will require public and semipublic water systems to use mandatory language for violations of maximum contaminant levels for coliform bacteria. Without this amendment, public water systems which violate maximum contaminant levels for coliform bacteria would be required to issue a public notification but not use the mandatory language contained in these amendments. Legal notices using mandatory language may be slightly larger, therefore increasing costs for public water systems to purchase legal advertisements. However, all costs associated with this regulation may be avoided by staying in compliance with maximum contaminant levels.

1. First year: Costs for public notification will be incurred in the first year if public water systems violate maximum contaminant level for coliform bacteria.

2. Continuing costs or savings: Costs will continue for public water systems in violation of the maximum contaminant level for coliform bacteria. These costs will vary widely depending on the type and size of the public water system. A small noncommunity water system may be able to comply with the requirements for under $5 or $10 for a hand typed or painted poster to be placed

at the outlet. A major city may have to expend several hundred dollars for legal advertisements in a major newspaper.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No other factors increase of decrease costs. There is no effect on competition since public water systems are usually monopolies.

(b) Reporting and paperwork requirements: Public water systems must submit to the cabinet a copy of the notification published in a newspaper, or any other public notification given as a result of this regulation.

(2) Effects on the promulgating administrative body: There are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: There are no direct or 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: There is no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: This regulation will have no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The amendments to this regulation are a direct result of changes in Environmental Protection Agency requirements. No alternative was possible.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no duplicative, overlapping, or conflicting regulation, statute, or policy.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This regulation is tiered to take into account the size and type of public water systems regulated.

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 apply to any public or semipublic water system which may be owned by local governments.

3. State the aspect or service of local government to which this administrative regulation relates. Public or semipublic water systems. 40 CFR 141 as amended by 54 Federal Register 27,566 and Federal Register 27,527 (1989), requires that certain notifications of the public take place when violations of drinking water regulations occur. The amendments of this regulation incorporate mandatory language which public water systems must use when these violations occur.

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 will not affect revenues.

Expenditures (+/-): This regulation will affect expenditures, by public water systems since public notifications will have to be published. Expenditures will vary with the type notice (posters, mailouts, newspaper advertisements, ect.) and the location of the public water system (large towns will cost more).

Other Explanation: It should be noted that all expenditures may be avoided by staying within regulatory requirements and therefore avoiding the need for public notice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141, 142, and 143, as amended at 54 Federal Register 27,526 and 27,562 (1989).

2. State compliance standards. This regulation requires public water systems to issue public notifications when the regulations are violated. Semipublic water systems must give notice when health considerations warrant.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate for public notification requires public notifications when the federal regulations are violated.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not for public water systems, but KRS 224.032 requires the cabinet to regulate semipublic systems.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS 224.032 requires the cabinet to enforce regulations for semipublic water systems.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:150. Disinfection and filtration.

RELATES TO: KRS Chapter 224, 40 CFR Parts 141, 142

STATUTORY AUTHORITY: KRS 224.032, 224.033, 40 CFR Parts 141 and 142, as amended at 54 Federal Register 27,526 (1989), [PL 93-523, The Safe Drinking Water Act as amended in 1986 and by the Lead Contamination and Control Act of 1988, PL 100-572,] 42 USCA 300f, 300g, 300j

NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising such primary

enforcement responsibility. This regulation sets out requirements for the disinfection and filtration of drinking water in public water systems using surface water or groundwater under the direct influence of surface water. These requirements shall serve as treatment techniques in lieu of maximum contaminant levels for the following contaminants: Giardia lamblia, viruses, heterotrophic plate count bacteria, Legionella, as well as an MCL for turbidity. [It is anticipated that this regulation will be amended or replaced in the near future as a result of the Surface Water Treatment rule or the Total Coliform rule published in the Federal Register June 29, 1989.]

Section 1. Disinfection. [(1) Obligation to disinfect.] All public and semipublic water systems [supplies] shall provide disinfection.

(1) Public water systems using groundwater or surface water as a source. Supplies which use chlorine shall use [a] continuous automatic disinfection by chlorination and shall provide a minimum free chlorine residual of two-tenths (0.2) milligrams per liter (or ppm) at all points throughout the distribution system. A contact period of at least thirty (30) minutes shall be provided between the chlorine and the water to allow adequate time for disinfection. For those supplies using chlorine, free chlorine residuals shall be checked daily at representative points throughout the system and shall be reported monthly pursuant to 401 KAR 8:020, Section 2(7)(a). Disinfecting agents other than chlorine, such as chloramines and chlorine dioxide, may be acceptable to the cabinet but shall [must] be specifically approved by the cabinet on a case-by-case basis. If chloramination is used, a minimum combined residual of five-tenths [one-half] (0.5) milligrams per liter (or ppm) shall be provided throughout the distribution system. If chlorine dioxide is used, the concentration of combined oxidants (chlorine dioxide, chlorate and chlorite) shall not exceed one and zero-tenths (1.0) milligrams per liter (or ppm) in the water delivered to the distribution system.

(2) All public water systems using surface water as a source, or groundwater under the direct influence of surface water, shall provide disinfection treatment as follows:

(a) The disinfection treatment shall be sufficient to ensure that the total treatment processes of that system achieve at least ninety-nine and nine-tenths (99.9) percent (3-log) inactivation or removal of Giardia lamblia cysts and at least ninety-nine and 99.99 percent (4-log) inactivation or removal of viruses as determined by the cabinet, consistent with the "Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems using Surface Water Sources" incorporated by reference in Section 5 of this regulation.

(b) The residual disinfectant concentration in the water entering the distribution system measured as specified in Section 3(1)(e) of this regulation shall not be less than required by subsection (1) of this section for more than four (4) hours.

(c) The residual disinfectant concentration in the distribution system measured as free chlorine, total chlorine, combined chlorine, or chlorine dioxide as specified in Section 3(1)(e) of this regulation, shall not be less than two-tenths (0.2) milligrams per liter (or ppm) in more than five (5) percent of the samples each month, for two (2) consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500/ml, measured as heterotrophic plate count (HPC), as specified in Section 3(1)(c) of this regulation, is deemed to have an adequate disinfectant residual for purposes of determining compliance with this requirement. Thus the value "V" in the following formula shall not exceed five (5) percent in one (1) month for two (2) consecutive months.

$$V = \frac{c+d+e}{a+b} \times 100$$

where:

a = number of instances that the residual disinfectant concentration is measured;

b = number of instances that the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

c = number of instances that the residual disinfectant concentration is measured but not detected and no HPC is measured;

d = number of instances that no residual disinfectant concentration is detected and where the HPC is greater than 500/ml; and

e = number of instances that the residual disinfectant concentration is not measured and HPC is greater than 500/ml.

(d) If the cabinet determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified in Section 3(1)(c) of this regulation and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (c) of this subsection shall not apply.

(3) Variances or exemptions shall not be granted for subsection (2) of this section.

[(2) Disinfection of water lines. All water distribution systems, including storage distribution tanks, repaired portions of existing systems or all extensions to existing systems, shall be thoroughly disinfected before being placed in service. Water distribution shall disinfect with chlorine or chlorine compounds, in such amounts as to produce a concentration of at least fifty (50) ppm and a residual of at least twenty-five (25) ppm at the end of twenty-four (24) hours, followed by a thorough flushing. New water distribution lines shall not be placed into service until bacteriological samples taken at the points specified in paragraph (a) of this subsection are examined and are shown to be negative following disinfection. Other methods of disinfection may be used with the written permission of the cabinet.]

[(a) Water distribution systems shall submit to the cabinet results of bacteriological samples for each new construction project, routine repair (which includes restoration of pressure to lines where pressure is lost), replacement, or extension to existing systems, after the disinfection and flushing. A core zone, which includes up to the first one-half mile, shall be established. Two (2) samples shall be taken from the core zone. Additionally,

one (1) sample taken from each mile of new distribution line shall be submitted to the cabinet. New or routine replacement lines shall not be placed in service until negative laboratory results are obtained on the bacteriological analyses. Sample bottles shall be clearly identified as "special" construction tests. Notification of analytical results shall be given to the cabinet by the most expedient method. Other disinfection methods and testing procedures may be used if the cabinet grants prior written approval.]

[(b) When emergency repairs, due to breaks or ruptures in distribution system lines are required, public water systems may suspend bacteriological sampling, if appropriate and thorough flushing safeguards, with a chlorine residual present, are taken. When this suspension is exercised, records of flushing and chlorine residuals shall be maintained for one (1) year, and bacteriological tests shall be conducted after returning the line to service with records of results maintained for one (1) year. In all cases of loss of pressure below twenty (20) pounds per square inch or breaks or ruptures requiring more than four (4) hours to repair, the public water systems shall notify the cabinet immediately pursuant to 401 KAR 8:020, Section 2(7)(c). These emergency reports are not required for a loss of pressure, break or rupture occurring in service lines serving only one (1), single family residence.]

Section 2. Filtration. All public water systems using a surface water source and all ground water systems under the direct influence of surface water shall establish filtration systems. The design for such systems shall be submitted to the cabinet in accordance with 401 KAR 8:100, and shall comply with the following by June 29, 1993:

(1) Conventional filtration treatment or direct filtration:

(a) If a public water system uses conventional filtration or direct filtration, the turbidity level of representative samples of the system's filtered water shall be less than or equal to five-tenths (0.5) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in Section 3(1)(d) of this regulation, except that if the cabinet determines that the system is capable of achieving at least ninety-nine and nine-tenths (99.9) percent removal or inactivation of Giardia lamblia cysts at some turbidity level higher than five-tenths (0.5) NTU in at least ninety-five (95) percent of the measurements taken each month, the cabinet may substitute this higher turbidity limit for that system. However, the cabinet shall not approve a turbidity limit that allows more than one (1) NTU in more than five (5) percent of the samples taken each month measured as specified in Section 3(1)(d) of this regulation.

(b) The turbidity level of representative samples of a system's filtered water shall not exceed five (5) NTU, measured as specified in Section 3(1)(d) of this regulation.

(2) Slow sand filtration.

(a) If a public water system uses slow sand filtration, the turbidity level of representative samples of the system's filtered water shall be less than or equal to one (1) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in Section 3(1)(d) of this regulation, except that if the cabinet determines there is no significant interference with disinfection at a higher turbidity level, the cabinet may substitute this higher turbidity limit for that system.

(b) The turbidity level of representative samples of a system's filtered water shall not exceed five (5) NTU, measured as specified in Section 3(1)(d) of this regulation.

(3) Diatomaceous earth filtration.

(a) If a public water system uses diatomaceous earth filtration, the turbidity level of representative samples of the system's filtered water shall be less than or equal to one (1) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in Section 3(1)(d) of this regulation.

(b) The turbidity level of representative samples of a system's filtered water shall not exceed five (5) NTU measured as specified in Section 3(1)(d) of this regulation.

(4) Other filtration technologies. A public water system may use a filtration technology not listed in subsections (1) through (3) of this section if it demonstrates to the cabinet, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of this regulation, consistently achieves ninety-nine and nine-tenths (99.9) percent removal or inactivation of Giardia lamblia cysts and 99.99 percent removal or inactivation of viruses. If a system makes this demonstration, the requirements of subsection (2) of this section shall apply.

(5) Variances or exemptions shall not be granted for this section.

Section 3. Analytical and Monitoring Requirements. (1) Analytical requirements. The analytical methods specified in this subsection, or otherwise approved by the cabinet, shall be used to demonstrate compliance with this regulation. Measurements for pH, temperature, turbidity, and residual disinfectant concentrations shall be conducted by a party approved by the cabinet. Measurements for total coliforms, fecal coliforms, and HPC shall be conducted by a laboratory certified by the cabinet or EPA to do the analyses. Until laboratory certification criteria are developed for the analysis of HPC and fecal coliforms, a laboratory certified for total coliform analysis by EPA or the cabinet shall be deemed certified for HPC and fecal coliform analysis. The following procedures shall be performed in accordance with the respective methods set forth below:

(a) Fecal coliform concentration - Method 908C (Fecal Coliform MPN Procedures), pp. 878-880, Method 908D (Estimation of Bacterial Density), pp. 880-882, or Method 909C (Fecal Coliform Membrane Filter Procedure), pp. 896-898, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition.

(b) Total coliform concentration - Method 908A (Standard Total Coliform Multiple - Tube (MPN) Tests), pp. 872-876, Method 908B (Application of Tests to Routine Examinations), pp. 876-878, Method 908D (Estimation of Bacterial Density), pp. 880-882, Method 909A (Standard Total Coliform Membrane Filter Procedure), pp.

887-894, or Method 909B (Delayed - Incubation Total Coliform Procedure), pp. 894-896, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition; Minimal Medium ONPG-MUG Test, as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and Escherichia coli from Drinking Water: Comparison with the Standard Multiple Tube Fermentation Method" (Edberg et al), Applied and Environmental Microbiology, Volume 54, pp. 1595-1601, June 1988 (as amended under Erratum, Volume 54, p. 3197, December 1988). (Note: the Minimal Medium ONPG-MUG Test is sometimes referred to as the Autoanalysis Colilert System). Systems may use a five (5) tube test or a ten (10) tube test.

(c) Heterotrophic Plate Count - Method 907A (Pour Plate Method), pp. 864-866, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition.

(d) Turbidity - Method 214A (Nephelometric Method - Nephelometric Turbidity Units), pp. 134-136, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985 American Public Health Association et al, 16th edition.

(e) Residual disinfectant concentration - residual disinfectant concentrations for free chlorine and combined chlorine (chloramines) shall be measured by Method 408C (Amperometric Titration Method), pp. 303-306, Method 408D (DPD Ferrous Titrimetric Method), pp. 306-309, Method 408E (DPD Colorimetric Method), pp. 309-310, or Method 408F (Leuco Crystal Violet Method), pp. 310-313, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition. Residual disinfectant concentrations for free chlorine and combined chlorine may also be measured by DPD colorimetric test kits if approved by the cabinet. Residual disinfectant concentrations for ozone shall be measured by the Indigo Method published in the 17th edition of Standard Methods for the Examination of Water and Wastewater, American Public Health Association et al; the Iodometric Method in the 16th edition shall not be used. Other automated methods which are calibrated in reference to the results obtained by the Indigo method on a regular basis may be approved by the cabinet. Residual disinfectant concentrations for chlorine dioxide shall be measured by Method 410B (Amperometric Method) or Method 410C (DPD Method), pp. 322-324, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition.

(f) Temperature - Method 212 (Temperature) pp. 126-127, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition.

(g) pH - Method 423 (pH Value), pp. 429-437, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association, 16th edition.

(2) Monitoring requirements. A public water system that uses a surface water source or a groundwater source under the influence of surface water shall monitor in accordance with paragraph (a) of this subsection beginning July 1, 1992, and with paragraph (b) of this subsection beginning January 1, 1993, or when filtration is installed, whichever is later.

(a) Turbidity measurements shall be performed by public water systems on representative samples of the system's filtered water at least every four (4) hours that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the cabinet. In addition, a system using continuous monitoring shall submit to the cabinet a schedule of times when the monitoring will be recorded. The schedule shall reflect monitoring at least every four (4) hours the system serves water to the public. If a system uses slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the cabinet may reduce the sampling frequency to once per day if it determines in writing, that less frequent monitoring is sufficient to indicate effective filtration performance. If a system serves 500 or fewer persons, the cabinet may reduce the turbidity sampling frequency to once per day, regardless of the type of filtration treatment used, if the cabinet determines, in writing, that less frequent monitoring is sufficient to indicate effective filtration performance.

(b) The residual disinfectant concentration of the water entering the distribution system shall be monitored by public water systems continuously, and the lowest value shall be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four (4) hours may be conducted in lieu of continuous monitoring, but for no more than five (5) working days following the failure of the equipment, and systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies each day prescribed below:

System Size by Population	Samples/Day
less than 500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

The day's samples shall not be taken at the same time. The sampling intervals shall be subject to cabinet review and approval. If the residual disinfectant concentration falls below the requirements of Section 1(1) of this regulation in a system using grab sampling in lieu of continuous monitoring, the system shall take a grab sample every four (4) hours until the residual disinfectant concentration meets the requirements of Section 1(1) of this regulation.

(c) The residual disinfectant concentration shall be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in 401 KAR 8:200, except that the cabinet may allow a public water system which uses both a surface water source, or a groundwater source under direct influence of surface water, and a groundwater source to take disinfectant residual samples at points other than the total coliform sampling points if the cabinet determines in writing that such points are more representative of treated (disinfected) water quality within

the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in subsection (1)(c) of this section, may be measured in lieu of residual disinfectant concentration.

(d) If the cabinet determines in writing, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by subsection (1)(c) of this section and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (c) of this subsection shall not apply to that system.

Section 4. Disinfection of New and Repaired Water Lines. (1) Disinfection of water lines. A water distribution system, including storage distribution tanks, repaired portions of existing systems or all extensions to existing systems, shall be thoroughly disinfected before being placed in service. A water distribution system shall disinfect with chlorine or chlorine compounds, in amounts as to produce a concentration of at least fifty (50) ppm and a residual of at least twenty-five (25) ppm at the end of twenty-four (24) hours, and the disinfection shall be followed by a thorough flushing. New water distribution lines shall not be placed into service until bacteriological samples taken at the points specified in subsection (2) of this section are examined and are shown to be negative following disinfection. Other methods of disinfection may be used with the written permission of the cabinet.

(2) Water distribution systems shall submit to the cabinet results of bacteriological samples for each new construction project, routine repair (which includes restoration of pressure to lines where pressure is lost), replacement, or extension to existing systems, after the disinfection and flushing. A core zone, which includes up to the first one-half (1/2) mile, shall be established. Two (2) samples shall be taken from the core zone. Additionally, one (1) sample taken from each mile of new distribution line shall be submitted to the cabinet. A new or routine replacement line shall not be placed in service until negative laboratory results are obtained on the bacteriological analyses. Sample bottles shall be clearly identified as "special" construction tests. Notification of analytical results shall be given to the cabinet by the most expedient method. Other disinfection methods and testing procedures may be used if the cabinet grants prior written approval.

(3) If emergency repairs due to breaks or ruptures in distribution system lines are required, public water systems may suspend bacteriological sampling, if appropriate and thorough flushing safeguards, with a chlorine residual present, are taken. If a public water system suspends bacteriological sampling, it shall maintain records of flushing and chlorine residuals for one (1) year, and conduct bacteriological tests immediately after normal disinfectant residuals are detected after returning the line to service. Records of results shall be submitted to the cabinet and shall be maintained for one (1) year. In cases of loss of pressure below twenty (20) pounds per square inch or breaks or ruptures requiring more than eight (8) hours to repair, the public water system shall notify the cabinet immediately pursuant to 401 KAR 8:020, Section 2(7)(c). These emergency reports are not required for a loss of pressure, break or rupture occurring in service lines serving only one (1) single family residence. Community and nontransient noncommunity public water systems shall provide a log of all breaks or ruptures which includes the date and location of the break or rupture, the time it was discovered, the population affected, the length of time required to repair the break or rupture, the date and time disinfectant residuals are detected and the date and time bacteriological samples are taken. The log shall be submitted to the cabinet monthly with the monthly operating report required by 401 KAR 8:020, Section 2(7)(a).

Section 5. Incorporation by Reference. The following items are incorporated by reference and are available for public inspection and copying, subect to copyright law, between the hours of 8 a.m. and 4:30 p.m. eastern standard time, Monday through Friday, at the Division of Water, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Standard Methods for the Examination of Water and Wastewater, 16th edition 1985, and for the purposes of 401 KAR 8:150, Section 3(1)(e), the 17th edition, 1989, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. This publication may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

(2) "National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and Escherichia Coli from Drinking Water: Comparison with the Standard Multiple Tube Fermentation Method" (Minimal Medium ONPG-MUG Method) (Edgerg et al), Applied and Environmental Microbiology, Volume 54, pp. 1595-1601, June 1988 (as amended under Erratum, Applied and Environmental Microbiology, Volume 54, p. 3197, December, 1988), which may be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, Colorado 80235.

(3) "Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems using Surface Water Sources" October, 1989, as published by the United States Environmental Protection Agency, Science and Technology Branch, Criteria and Standards Division, Office of Drinking Water, Washington, D.C., and available from the American Water Works Association, Management Services, 6666 West Quincy Avenue, Denver, Colorado 80235, (303) 794-7711.

Section 6. [3.] Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 13, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1991, at 1 p.m. EDT in the ground floor auditorium of the Capital Plaza Tower,

Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation at any time until the close of business, (4:30 p.m. EDT), October 23, 1991. Send written comments on the proposed administrative regulation to: John T. Smither, Branch Manager, Division of Water, Drinking Water Branch, Department for Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601-1189.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Smither

(1) Type and number of entities affected: This regulation applies to 859 public and 98 semipublic water systems. These numbers may vary slightly from month to month.

(a) Direct and indirect costs or savings to those affected: This regulation will require public water systems to purchase continuous monitoring equipment to test for disinfectant residuals. This represents a capital cost of $2,000 to $2,500 for purchase and installation of the equipment. This purchase must be made by January 1993.

1. First year: The amendments to this regulation do not take effect until July of 1992. At that time monitoring and reporting requirements for turbidity will become effective. These requirements should not create any new costs since equipment and qualified operators sufficient to meet the new requirements should already be in place to comply with current regulations. These requirements will create a small increased drain on the operators time.

2. Continuing costs or savings: By January of 1993 public water systems must have purchased a means of continuously monitoring residual disinfectant. This represents the major cost of these regulatory amendments and will total $2,000 to $2,500.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Should public water systems be unable to meet the maximum contaminant level for turbidity or be unable to assure the required reduction of Giardia cysts or viruses, modification to the filtration system may be required. These costs would vary, depending on the extent of necessary modification.

(b) Reporting and paperwork requirements: The amendments to this regulation will require more extensive reporting of information relating to turbidity and disinfection. However, these reports will still be once a month.

(2) Effects on the promulgating administrative body: These amendments will have little effect on the administrative body since monthly operating reports are currently handled under existing requirements.

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings. Storage space for a slightly increased flow of information may have to be increased somewhat more quickly than under current requirements.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The promulgating administrative body will receive turbidity and disinfectant information in more detail than currently required.

(3) Assessment of anticipated effect on state and local revenues: There will be no effects on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulatory amendment is a direct result of changes in federal requirements. While cosmetic alternatives may be possible, the substance of these amendments must be adopted for the cabinet to retain primacy for the drinking water program.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no duplicative, overlapping, or conflicting regulation, statute, or policy.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This regulation is tiered to reflect differences in the size and type of public water systems.

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 apply to any public or semipublic water system owned by local governments.

3. State the aspect or service of local government to which this administrative regulation relates. Public or semipublic water systems. 40 CFR 141, as amended at 54 Federal Register 27,526 (1989), requires public water systems to meet certain requirements to remove various contaminants from drinking water.

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 will not directly affect revenues. However, some public water systems may need to increase rates to pay for upgrades to the system to meet requirements.

Expenditures (+/-): Most public water systems will have to purchase equipment to continuously monitor for disinfectant at a cost of about $2,000. Some systems may, on a case-by-case basis, have to upgrade filtration to meet requirements.

Other Explanation: The significance of the change in federal regulations which the amendments to this regulation reflect is less pronounced in Kentucky than in many other states since Kentucky has required complete filtration for surface water systems and disinfection for

groundwater systems for many years. However, the specific reduction levels for coliforms, viruses and cysts contained in this regulation may require some systems to upgrade and replace some portion of their filtration/disinfection system. These costs will vary, depending on the significance of the needed upgrade.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141, 142, as amended at 54 Federal Register 27,526 (1989).
2. State compliance standards. All systems must disinfect. All surface water systems shall provide filtration. More stringent turbidity standards will be phased in.
3. Minimum or uniform standards contained in the federal mandate. All systems must disinfect, all surface water systems shall provide filtration. More stringent turbidity standards are imposed.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. Kentucky currently requires all surface water systems to install filtration and groundwater systems to disinfect. These amendments do not change this requirement. In addition, certain timetables are moved up.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Although this regulation does not impose different standards, the monitoring for turbidity is increased earlier than the federal requirements. The reason for this is to give public water systems the opportunity to determine their ability to meet the new requirements prior to a 50 percent reduction in the maximum allowable turbidity. The requirement that continuous monitoring for residual disinfectant begin 6 months before the federal requirement is to make sure the equipment is in place and working before the rule takes effect.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 8:200. Microbiological and turbidity monitoring.

RELATES TO: KRS Chapter 224, 40 CFR Part 141
STATUTORY AUTHORITY: KRS 224.032, 224.033, 40 CFR Part 141, as amended at 54 FR 27,562 (1989), 56 FR 642 (1991), 56 FR 1557 (1991) [PL 93-523, The Safe Drinking Water Act, as amended in 1986, and by the Lead Contamination and Control Act of 1988], 42 USCA 300f, 300g, 300j
NECESSITY AND FUNCTION: KRS 224.032 directs the cabinet to enforce the rules and regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. This regulation sets out a schedule and method for sampling drinking water to test for bacteriological contaminants and establishes maximum contaminant levels for bacteria. This regulation also specifies requirements if tests show maximum contaminant levels have been exceeded, as well as requirements for monitoring turbidity.

Section 1. All suppliers of water operating a public or semipublic water system, including suppliers operating those systems which provide water purchased from another system, shall meet the requirements of this regulation.
(1) Routine monitoring for total coliform bacteria. A public water system shall collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. A public water system shall submit the written sample siting plan to the cabinet in a manner prescribed by the cabinet and obtain the cabinet's approval of the plan. The plan shall contain the following elements: [Sampling frequency. Suppliers of water for all public water systems shall collect samples to be analyzed for total coliform bacteria per 100 milliliters of water. Coliform density samples shall be taken at regular time intervals and in numbers proportionate to the population served by the system. In no event shall the frequency be less than that set forth as follows:]
(a) A complete name, address, city and zip code for each sample site. If a post office box number or rural route number is used, the highway number, rural route number or other information adequate to locate the sampling site shall be included.
(b) The site shall be identified as residential, commercial, industrial, educational, or some other specific type of sampling location.
(c) A map shall be submitted with the siting plan showing the public water system's distribution system and the location of all proposed sites. A duplicate map shall be maintained by the public water system. These maps shall be prepared on Kentucky county maps, scale: 1:62,500 (1 inch = 1 mile) or on city maps. These maps may be obtained from the Kentucky Transportation Cabinet, Map Sales, 419 Ann Street, Frankfort, Kentucky 40622. The cabinet may waive this requirement in writing for systems with less than five (5) service connections or which serve a population of less than 500 people.
(2) The monitoring frequency for total coliforms for public water systems shall be based on the population served by the system as follows:

TABLE 1
TOTAL COLIFORM SAMPLING REQUIREMENTS
BASED ON POPULATION SERVED

Population Served	Minimum Number Samples	Population Served	Minimum Number Samples
25 - 2,500	2	59,001 - 70,000	70
2,501 - 3,300	3	70,001 - 83,000	80
3,301 - 4,100	4	83,001 - 96,000	90
4,101 - 4,900	5	96,001 - 130,000	100
4,901 - 5,800	6	130,001 - 220,000	120
5,801 - 6,700	7	220,001 - 320,000	150
6,701 - 7,600	8	320,001 - 450,000	180
7,601 - 8,500	9	450,001 - 600,000	210
8,501 - 12,900	10	600,001 - 780,000	240
12,901 - 17,200	15	780,001 - 970,000	270
17,201 - 21,500	20	970,001 - 1,230,000	300
21,501 - 25,000	25	1,230,001 - 1,520,000	330

25,001 - 33,000	30	1,520,001 - 1,850,000	360
33,001 - 41,000	40	1,850,001 - 2,270,000	390
41,001 - 50,000	50	2,270,001 - 3,020,000	420
50,001 - 59,000	60	3,020,001 - 3,960,000	450
		3,960,001 or more	480

[MINIMUM NUMBER OF SAMPLES PER MONTH]

Population Served	Minimum Number Samples	Population Served	Minimum Number Samples
25 - 2,500	2	37,001 - 41,000	45
2,501 - 3,300	3	41,001 - 46,000	50
3,301 - 4,100	4	46,001 - 50,000	55
4,101 - 4,900	5	50,001 - 54,000	60
4,901 - 5,800	6	54,001 - 59,000	65
5,801 - 6,700	7	59,001 - 64,000	70
6,701 - 7,600	8	64,001 - 70,000	75
7,601 - 8,500	9	70,001 - 76,000	80
8,501 - 9,400	10	76,001 - 83,000	85
9,401 - 10,300	11	83,001 - 90,000	90
10,301 - 11,100	12	90,001 - 96,000	95
11,101 - 12,000	13	96,001 - 111,000	100
12,001 - 12,900	14	111,001 - 130,000	110
12,901 - 13,700	15	130,001 - 160,000	120
13,701 - 14,600	16	160,001 - 190,000	130
14,601 - 15,500	17	190,001 - 220,000	140
15,501 - 16,300	18	220,001 - 250,000	150
16,301 - 17,200	19	250,001 - 290,000	160
17,201 - 18,100	20	290,001 - 320,000	170
18,101 - 18,900	21	320,001 - 360,000	180
18,901 - 19,800	22	360,001 - 410,000	190
19,801 - 20,700	23	410,001 - 450,000	200
20,701 - 21,500	24	450,001 - 500,000	210
21,501 - 22,300	25	500,001 - 550,000	220
22,301 - 23,200	26	550,001 - 600,000	230
23,201 - 24,000	27	600,001 - 660,000	240
24,001 - 24,900	28	660,001 - 720,000	250
24,901 - 25,000	29	720,001 - 780,000	260
25,001 - 28,000	30	780,001 - 840,000	270
28,001 - 33,000	35	840,001 - 910,000	280
33,001 - 37,000	40	910,001 - 970,000	290
		970,001 - 1,050,000	300]

(3) [(2)] Population-served calculation. For purposes of determining the population served, the applicable method below shall be used:

(a) When the supplier of water serves an area defined by an official census count or a population projection, the most recent census count or official population projection shall be used; or

(b) When no official figures on population are available on the area served by a supplier of water, the population served shall be considered to be a factor of not less than three and three-tenths (3.3) times the number of residential connections or a factor of not less than three (3) times the total number of all connections, whichever is greater.

(4) [(3)] Semipublic systems. Suppliers of water for semipublic water systems shall cause samples to be tested, for the purpose of determining the presence or absence coliforms [density], at least twice per month. If coliforms are present, appropriate repeat samples shall be taken.

(5) [(4)] Sampling schedule. Each public and semipublic water system shall take routine samples to determine the presence or absence of [for the purpose of determining] coliforms [density]. No more than half of the samples shall be taken in one (1) week. Results of the analyses of the samples shall be submitted to the cabinet no later than ten (10) days after the end of the month for which the samples were taken. If the tenth day falls on a Saturday, Sunday or holiday the results shall be submitted on the following working day. A noncommunity water system shall sample for total coliform bacteria per 100 milliliters twice each month of operation. Seasonally operated facilities shall notify the cabinet in writing in advance as to the opening and closing dates covered by the [such] sampling requirements. This frequency may be changed by the cabinet on the basis of subsequent surveys and conditions.

(6) [(5)] Forwarding samples. The cabinet shall, upon request, notify a [any] water supplier as to those commercial or state laboratories, certified in accordance with 401 KAR 8:040, to which samples may be sent for determining the presence or absence of coliforms [density analysis]. The samples shall be forwarded to a certified laboratory by the most expeditious or speedy method available to the water supply.

[(6) Sampling points. The water supply shall sample for coliform analysis shall be taken at representative points throughout the water distribution system. Different sampling points shall be designated by the water supply, including remote points in the distribution system. When the sample is collected, the free chlorine residual shall be determined and recorded on the form provided with the sample container. Bacteriological sampling forms shall be fully and accurately completed or the sample shall be invalid.]

(7) Sample collection. Samples taken by or on behalf of public water systems shall be collected in bottles prepared and sterilized in accordance with "Standard Methods". When the sample is collected, the disinfectant residual shall be determined and recorded on the form provided by the laboratory with the sample container. Bacteriological sampling forms shall be fully and accurately completed or the sample shall be invalid. The [Any] disinfecting agent shall be removed from the sample at the time of its collection. A distributor of water collecting bacteriological samples for analysis in its own certified laboratory may use containers other than bottles, if this practice is approved in writing by the cabinet.

(8) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the MCL for total coliforms set forth in Section 2 of this regulation. Repeat samples taken pursuant to subsection (9)(a) of this section are not special purpose samples, and shall be used to determine compliance with the MCL for total coliforms set forth in Section 2 of this regulation.

(9) Repeat monitoring.

(a) If a routine sample is total coliform-positive, the public water system shall collect a set of repeat samples within twenty-four (24) hours of being notified of the positive result. The system shall collect at least three (3) repeat samples for each total coliform-positive sample found. The cabinet may extend the twenty-four (24) hour limit on a case-by-case basis if the system demonstrates that it has a logistical problem in collecting the repeat samples within twenty-four (24) hours

that is beyond its control. If an extension is granted, the cabinet shall specify how much time the system has to collect the repeat samples.

(b) The public water system shall collect at least one (1) repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one (1) repeat sample at a tap within five (5) service connections upstream and at least one (1) repeat sample at a tap within five (5) service connections downstream of the original sampling site. If a total coliform-positive sample is at the end of the distribution system, or one (1) away from the end of the distribution system, the cabinet may waive the requirement to collect a repeat sample upstream or downstream of the original sampling site, but a total of three (3) repeat samples shall be collected.

(c) The public water system shall collect all repeat samples on the same day.

(d) If one (1) or more repeat samples in the set is total coliform-positive, the public water system shall collect an additional set of repeat samples in a manner specified in paragraphs (a), (b), and (c) of this subsection. The public water system shall collect the additional samples within twenty-four (24) hours of being notified of the positive result, unless the cabinet extends the limit as provided in paragraph (a) of this subsection. The public water system shall repeat this process until either total coliforms are not detected in one (1) complete set of repeat samples or the system determines that the MCL for total coliforms set forth in Section 2 of this regulation has been exceeded and notifies the cabinet, and the public, pursuant to 401 KAR 8:070. The cabinet may require further testing until all samples are total coliform-negative.

(10) If a system collecting fewer than five (5) routine samples per month has one (1) or more total coliform-positive samples and the cabinet does not invalidate the sample pursuant to subsection (13) of this section, the public water system shall collect at least five (5) routine samples during the next month the system provides water to the public.

(11) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample from within five (5) adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample as a repeat sample instead of a routine sample.

(12) Results of routine and repeat samples not invalidated by the cabinet shall be included in determining compliance with the MCL for total coliforms set forth in Section 2 of this regulation.

(13) Invalidation of total coliform samples. A total coliform-positive sample invalidated under this subsection shall not count towards meeting the minimum monitoring requirements of this section.

(a) The cabinet may invalidate a total coliform-positive sample only if the conditions of clause 1, 2, or 3 of this subparagraph are met.

1. The laboratory establishes to the satisfaction of the cabinet that improper sample analysis caused the total coliform-positive result.

2. The cabinet, on the basis of the results of repeat samples collected as required by subsection (9) of this section, determines in writing that the total coliform-positive sample resulted from a domestic or other nondistribution system plumbing problem. The cabinet shall not invalidate a sample on the basis of repeat sample results unless every repeat sample collected at the same tap as the original total coliform-positive sample is total coliform-positive and every repeat sample collected within five (5) service connections of the original tap is total coliform-negative. The cabinet shall not invalidate a total coliform-positive sample on the basis of repeat samples if every repeat sample is total coliform-negative, or if the public water system has only one (1) service connection.

3. The cabinet has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. A decision made by the cabinet to this effect shall be in writing and signed by the Director of the Division of Water upon the written recommendation of the Manager of the Drinking Water Branch. The written decision shall be submitted to the U.S. Environmental Protection Agency and shall be available to the public. The written decision shall state the specific cause of the total coliform-positive sample and shall state what action the public water system has taken, or will take, to correct the problem. The public water system shall, regardless of the cabinet action taken under this clause, take the repeat samples required under subsection (9) of this section. The cabinet shall not invalidate a total coliform-positive sample solely on the grounds that each repeat sample is total coliform-negative.

(b) A laboratory shall invalidate a total coliform sample (unless total coliforms are detected) if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P-A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique). If a laboratory invalidates a sample because of the interference, the public water system shall collect another sample from the same location as the original sample, within twenty-four (24) hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The system shall continue to resample within twenty-four (24) hours and have the samples analyzed until it obtains a valid result. The cabinet may waive the twenty-four (24) hour time limit on a case-by-case basis.

(14) Sanitary surveys.

(a) A public water system which does not collect five (5) or more routine samples per month shall undergo an initial sanitary survey by June 29, 1994, if it is a community public water system, and June 29, 1999, if it is a noncommunity water system. Thereafter, the system shall undergo a sanitary survey at least once every five (5) years except that a noncommunity water system using only disinfected groundwater not under the influence of surface

water, shall undergo a sanitary survey at least once every ten (10) years. The cabinet shall review the results of each sanitary survey to determine whether the existing monitoring frequency is adequate and what additional measures, if any, the system needs to undertake to improve drinking water quality.

(b) Information relating to a source of contamination within a delineated wellhead protection area, which is collected in the course of developing and implementing a U.S. Environmental Protection Agency approved wellhead protection program, may be considered in conducting a sanitary survey of a public water system using groundwater if the information was collected since the last time the public water system was subject to a sanitary survey.

(c) Sanitary surveys shall be performed by the cabinet or an agent approved by the cabinet. Public water systems are responsible for ensuring that required sanitary surveys take place.

(15) Fecal-coliforms – Escherichia coli (E. coli) testing.

(a) If a routine or repeat sample is total coliform-positive, the public water system shall analyze that total coliform-positive culture medium to determine if fecal coliforms are present, except that the public water system may test for E. coli in lieu of fecal coliforms. If fecal coliforms or E. coli are present, the system shall notify the cabinet by the end of the day the system is notified of the test result pursuant to 401 KAR 8:020, Section 2(7)(c).

(b) The cabinet may allow a public water system, on a case-by-case basis, to forego fecal coliform or E. coli testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is fecal coliform-positive or E. coli-positive and notifies the cabinet as specified in paragraph (a) of this subsection and the provisions of Section 2(2) of this regulation apply.

(16) Analytical methodology. The analysis for the presence or absence of total coliforms shall commence within thirty (30) hours of the sample being collected, unless the cabinet waives this requirement in writing.

(a) The standard sample volume required for total coliform analysis, regardless of analytical method used, is 100 ml.

(b) Public water systems shall determine the presence or absence of total coliforms; a determination of total coliform density is not required.

(c) Public water systems shall conduct total coliform analyses in accordance with one (1) of the following analytical methods:

1. Multiple-Tube Fermentation (MTF) Technique, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, Method 908, 908A, and 908B-pp. 870-887, except that ten (10) fermentation tubes shall be used; or Microbiological Methods for Monitoring the Environment, Water and Wastes, U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA-600/8-78-017, December 1978, available from ORD Publications, CERI U.S. EPA, Cincinnati, Ohio 45268), Part III, Section B.4.1-4.6.4, pp. 114-118 (Most Probable Number Method), except that ten (10) fermentation tubes shall be used; or

2. Membrane Filter (MF) Technique, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, Method 909, 909A and 909B-pp. 886-896; or Microbiological Methods for Monitoring the Environment, Water and Wastes, U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA-600/8-78-017, December 1978, available from ORD Publications, CERI, U.S. EPA, Cincinnati, Ohio 45268), Part III, Section B.2.1-2.6, pp. 108-112; or

3. Presence-Absence (P-A) Coliform Test, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, Method 908E-pp. 882-886; or

(d) In lieu of the ten (10) tube MTF Technique specified in paragraph (c)1 of this subsection, a public water system may use the MTF Technique using either five (5) tubes (twenty (20) ml sample portions) or a single culture bottle containing the culture medium for the MTF Technique, I.E., lauryl tryptose broth (formulated as described in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, Method 908A-pp. 872), as long as a 100 ml water sample is used in the analysis;

(e) A public water system shall conduct fecal coliform analysis in accordance with the following procedure: If the MTF Technique or Presence-Absence (P-A) Coliform Test is used to test for total coliforms, shake the lactose-positive presumptive tube or P-A bottle vigorously and transfer the growth with a sterile three (3) millimeter loop or sterile applicator stick into brilliant green lactose bile broth and EC medium to determine the presence of total and fecal coliforms, respectively. For EPA approved analytical methods which use a membrane filter, transfer the total coliform-positive culture by one (1) of the following methods: remove the membrane containing the total coliform colonies from the substrate with a sterile forceps and carefully curl and insert the membrane into a tube of EC medium (the laboratory may first remove a small portion of selected colonies for verification), swab the entire membrane filter surface with a sterile cotton swab and transfer the inoculum to EC medium (do not leave the cotton swab in the the EC medium), or inoculate individual total coliform-positive colonies into EC medium. Gently shake the inoculated tubes of EC medium to insure adequate mixing and incubate in a waterbath at forty-four and five-tenths (44.5) plus or minus two-tenths (0.2) degrees Celsius for twenty-four (24) plus or minus two (2) hours. The production of gas in the inner fermentation tube of the EC medium indicates positive fecal coliform test. The preparation of EC medium is described in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association, 16th edition. Method 908C-p. 879, paragraph 1a. Public water systems shall determine the presence or absence of fecal coliforms; a determination of fecal coliform density is not required.

(f) A public water system shall conduct analysis of Escherichia coli in accordance with one (1) of the following analytical methods:

1. EC medium supplemented with fifty (50) micrograms/ml of 4-methylumbelliferyl-beta-D-

glucuronide (MUG) final concentration). EC medium is described in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, p. 879. MUG may be added to EC medium before autoclaving. EC medium supplemented with fifty (50) micrograms/ml of MUG is commercially available. At least ten (10) ml of EC medium supplemented with MUG shall be used. The inner inverted fermentation tube may be omitted. The procedure for transferring a total coliform-positive culture to EC medium supplemented with MUG shall be as specified in paragraph (e) of this subsection for transferring a total coliform-positive culture to EC medium. Observe fluorescence with an ultraviolet light (366nm) in the dark after incubating tube at forty-four and five-tenths (44.5) plus or minus two-tenths (0.2) degrees Celsius for twenty-four (24) plus or minus two (2) hours; or

2. Nutrient agar supplemented with 100 micrograms/ml 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration). Nutrient agar is described in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al, 16th edition, p. 874. This test is used to determine if a total coliform-positive sample, as determined by the Membrane Filter Technique or any other method in which a membrane filter is used, contains E. coli. Transfer the membrane filter containing one (1) or more total coliform colonies to nutrient agar supplemented with 100 micrograms per milliliter (final concentration) of MUG. After incubating the agar plate at thirty-five (35) degrees Celsius for four (4) hours, observe the colonies under ultraviolet light (366 nm) in the dark for fluorescence. If fluorescence is visible, E. coli are present.

(17) Response to violation.

(a) If a public water system exceeds the MCL for total coliforms set forth in Section 2 of this regulation, it shall report the violation to the cabinet no later than the end of the next business day after it learns of the violation, and notify the public in accordance with 401 KAR 8:070.

(b) If a public water system fails to comply with a coliform monitoring requirement, including the sanitary survey requirement, it shall report the monitoring violation to the cabinet within ten (10) days after the system discovers the violation, and notify the public in accordance with 401 KAR 8:070.

[(8) Analytical techniques and maximum contaminant levels for bacteriological contamination. The analysis for the determination of bacteriological contamination shall be determined by either the membrane filter technique or the multiple tube fermentation technique (MPN procedure). The analysis shall be conducted in accordance with "Standard Methods" except that a standard sample size shall be employed. The standard sample used in the membrane filter procedure shall be 100 milliliters. The standard sample used in the five (5) tube most probable number (MPN) procedure (fermentation tube method) shall be five (5) times the standard portion. The standard portion is either ten (10) milliliters or 100 milliliters, as described herein.]

[(9) Maximum bacteriological contaminant level, membrane filter technique. When the membrane filter technique is used, the number of coliform bacteria shall not exceed any of the following:]

[(a) One (1) per 100 milliliters as the arithmetic mean of all samples examined per month pursuant to subsection (1) of this section except that, at the cabinet's discretion, systems required to take ten (10) or fewer samples per month may be authorized to exclude one (1) positive routine sample per month from the monthly calculation if:]

[1. As approved on a month-to-month basis, the cabinet determines and notifies the public water system that no unreasonable risk to health would exist under the conditions of this modification. A notification may be based upon, but is not limited to, the following:]

[a. The fact that the system provides and maintains an active disinfectant residual in the distribution system;]

[b. The potential for contamination, as indicated by a sanitary survey; and]

[c. The history of water quality at the public water system, including, but not limited to, MCL or monitoring violations;]

[2. The supplier initiates a check sample on each of two (2) consecutive days from the same sampling point, within twenty-four (24) hours after notification that the routine sample is positive, and each check sample is negative; and]

[3. The original positive routine sample is reported to the cabinet and recorded by the supplier pursuant to the provisions of 401 KAR 8:020, Section 2(8). The supplier shall report to the cabinet its compliance with the conditions specified in this subparagraph and a summary of the action taken to correct the prior positive sample result. If a positive routine sample is not used for the monthly calculation, another routine sample shall be analyzed for compliance purposes. This provision may be used only once during two (2) consecutive compliance periods.]

[(b) Four (4) per 100 milliliters in more than one (1) sample when less than twenty (20) are examined per month.]

[(c) Four (4) per 100 milliliters in more than five (5) percent of the samples when twenty (20) or more are examined per month.]

[(10) Maximum bacteriological contaminant level, multiple tube fermentation technique (MPN procedure).]

[(a) Ten (10) milliliter standard tube. When the fermentation tube method and ten (10) milliliter standard tube are used, coliform bacteria shall not be present in any of the following:]

[1. More than ten (10) percent of the tubes in any month except that, at the cabinet's discretion, systems required to take twenty (20) or fewer samples per month may be authorized to exclude one (1) positive routine sample, resulting in one (1) or more positive tubes per month, from the monthly calculation, if:]

[a. As approved on a case-by-case basis, the cabinet determines and notifies the public water system, in writing, that no unreasonable risk to health exists under the conditions of this modification. A notification may be based upon, but not limited to, the following:]

[(i) The provision and maintenance, by the system, of an active disinfectant residual in the distribution system;]

[(ii) The potential for contamination, as indicated by a sanitary survey; and]

[(iii) The history of the water quality at the

public water system (e.g., MCL or monitoring violations);]

[b. The supplier initiates a check sample on each of two (2) consecutive days, from the same sampling point, within twenty-four (24) hours after notification that the routine sample is positive, and each check sample is negative; and]

[c. The original positive routine sample is reported to the cabinet and recorded by the supplier pursuant to the provisions of 401 KAR 8:020, Section 2(8), the supplier reports to the cabinet its compliance with the conditions specified in this paragraph, and reports the action taken to correct the prior positive sample result. If a positive routine sample is not used for the monthly calculation, another routine sample shall be analyzed for compliance purposes. This provision shall be used only once during two (2) consecutive compliance periods;]

[2. Three (3) or more tubes in more than one (1) sample when less than twenty (20) samples are examined per month; or]

[3. Three (3) or more tubes in more than five (5) percent of the samples when twenty (20) or more samples are examined per month.]

[(b) 100 milliliter standard sample. When the fermentation tube method and 100 milliliter standard samples are used, coliform bacteria shall not be present in any of the following:]

[1. More than sixty (60) percent of the tubes in any month;]

[2. Five (5) tubes in more than one (1) sample, when less than five (5) samples are examined per month; or]

[3. Five (5) tubes in more than twenty (20) percent of the samples, when five (5) or more samples are examined per month.]

[(11) Bacteriological check sampling. Check sampling shall begin within twenty-four (24) hours of the time of notification of sample analysis and is the responsibility of the public water system. The following check sampling levels are established:]

[(a) Membrane filter technique. When coliform bacteria occur in a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet, until the results obtained from at least two (2) consecutive check samples show less than one (1) coliform bacterium per 100 milliliters.]

[(b) Multiple tube fermentation technique:]

[1. Ten (10) milliliter tubes. When coliform bacteria occur in three (3) or more ten (10) milliliter tubes of a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet, until the results obtained from at least two (2) consecutive check samples show no positive tubes.]

[2. 100 milliliter tubes. When coliform bacteria occur in all five (5) of the 100 milliliter tubes of a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet, until the results obtained from at least two (2) consecutive daily check samples show no positive tubes.]

[(12) Check sample locations. The location at which the check samples were taken pursuant to this section shall not be eliminated from future sampling without written approval of the cabinet. The results from all coliform bacterial analyses performed pursuant to this section, except those obtained from check samples and special purpose samples, shall be used to determine compliance with the maximum contaminant level for coliform bacteria. Check samples shall not be included in calculating the total number of samples taken each month to determine compliance with subsection (1) of this section.]

[(13) Check sample reporting. When the presence of coliform bacteria in water taken from a particular sampling point has been confirmed by any check samples examined as directed by this section, the supplier of water shall report that to the cabinet within twenty-four (24) hours pursuant to the provisions of 401 KAR 8:020, Section 2(8)(b).]

[(14) When a maximum contaminant level set forth in this section is exceeded, the supplier of water shall report that to the cabinet and notify the public as prescribed in 401 KAR 8:070, Section 1. The cabinet may conduct an on-site inspection to assist the operator in determining the cause of the contamination and may issue an order which includes a time period during which all causes of the contamination shall be corrected.]

[(15) Special purpose samples. Special purpose samples, such as those taken to determine whether disinfection practices following pipe placement, replacement, or repair have been sufficient, shall not be used to determine compliance with subsection (1) of this section.]

Section 2. Maximum Contaminant Levels (MCLs) for Microbiological Contaminants. (1) The MCL is based on the presence or absence of total coliforms in a sample.

(a) If a public water system collects at least forty (40) samples per month and no more than five and zero-tenths (5.0) percent of the samples collected during a month are total coliform-positive, the system is in compliance with the MCL for total coliforms.

(b) If a public water system collects fewer than forty (40) samples per month, and no more than one (1) sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliforms.

(2) A fecal coliform-positive repeat sample or E. coli-positive repeat sample, or a total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in 401 KAR 8:070, this violation may pose an acute risk to health.

(3) A public water system shall determine compliance with the maximum contaminant level for total coliforms set forth in subsections (1) and (2) of this section for each month in which it is required to monitor for total coliforms.

(4) The following technologies are the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for total coliforms set forth in subsections (1) and (2) of this section:

(a) Protection of wells from contamination by coliforms by appropriate placement and

construction;

(b) Maintenance of a disinfectant residual throughout the distribution system;

(c) Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of positive water pressure in all parts of the distribution system;

(d) Filtration or disinfection of surface water, as described in 401 KAR 8:150, or disinfection of groundwater using strong oxidants such as chlorine, chlorine dioxide, or ozone; or

(e) The development and implementation of an EPA-approved State Wellhead Protection Program under section 1428 of the Safe Drinking Water Act, as amended, PL 93-523.

Section 3. Variances and Exemptions. Variances or exemptions from the maximum contaminant level for total coliform set forth in Section 2 of this regulation shall not be permitted unless the public water system demonstrates to the cabinet's satisfaction that the violation of the total coliform maximum contaminant level is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. In making the demonstration, the public water system shall meet all the requirements of 401 KAR 8:060, including submission of a compliance schedule acceptable to the cabinet. In addition, the public water system shall demonstrate to the cabinet's satisfaction that the following criteria have been met before the cabinet may consider a variance:

(1) Over the past thirty (30) days, water entering the distribution system:

(a) Is free from fecal coliform or E. coli occurrence based on at least daily sampling;

(b) Contains less than one (1) total coliform per 100 milliliters of influent water in at least ninety-five (95) percent of all samples based on at least daily sampling;

(c) Complies with the total turbidity requirements of 401 KAR 8:150, Section 2; and

(d) Contains a continuous disinfection residual consistent with 401 KAR 8:150, Section 1;

(2) The public water system has had no waterborne disease outbreak while being operated in its present configuration;

(3) The public water system maintains biweekly contact with the cabinet and local health departments to assess illness possibly attributable to microbial occurrence in the public drinking water system;

(4) The public water system has evaluated, on a monthly basis, at least the number of samples specified in Section 1(2) of this regulation and has not had an E. coli-positive compliance sample within the last six (6) months, unless the system demonstrates to the cabinet that the occurrence is not due to contamination entering the distribution system;

(5) The public water system has undergone a sanitary survey conducted by a party approved by the cabinet within the past twelve (12) months;

(6) The public water system has a cross connection control program acceptable to the cabinet and performs an audit of the effectiveness of the program;

(7) The public water system agrees to submit a biofilm control plan to the cabinet within twelve (12) months of the granting of the first request for a variance;

(8) The public water system monitors general distribution system bacterial quality by conducting heterotrophic bacteria plate counts on at least a weekly basis at a minimum of ten (10) percent of the number of total coliform sites specified for that system's size in Section 1(2) of this regulation preferably using the R2A medium in Method 907A, 907B, or 907C, as set forth in the 16th edition of Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association, et al; and

(9) The public water system conducts daily monitoring at distribution system sites approved by the cabinet and maintains a detectable disinfectant residual (measured as specified in 401 KAR 8:150, Section 3(1)(e)) at a minimum of ninety-five (95) percent of those points and a heterotrophic plate count of less than 500 colonies per ml (measured as specified in 401 KAR 8:150, Section 3(1)(c)) at sites without a disinfectant residual.

Section 4. [2.] Turbidity Sampling, Analytical Techniques and Maximum Contaminant Levels. This section is effective until July 1, 1992, when monitoring shall be in accordance with 401 KAR 8:150, Section 3(2)(a), and reporting shall be in accordance with 401 KAR 8:020, Section 2(7)(a)1, although maximum turbidity limits and measurement techniques contained in subsections (4) and (5) of this section shall remain in effect until June 29, 1993, after which the provisions of this section are totally repealed.

(1) Who shall [must] sample. [All] Producers of water for public water systems who use surface water sources, in whole or in part, and those groundwater sources which demonstrate a variable turbidity, shall comply with this section. Semipublic systems and systems that purchase water from other systems or obtain their water from turbidity free groundwater sources are not subject to this section.

(2) Sampling frequency. At least one (1) sample per day for the determination of turbidity shall be taken at the producing facility. Turbidity level determinations shall be made within one (1) hour after sample collection.

(3) Sampling point. Samples for the determination of turbidity shall be taken at a representative entry point to the distribution system. Where water is produced by more than one (1) treatment plant for a single system, each plant shall be considered a separate sampling point.

(4) Maximum turbidity limit. The maximum contaminant level for turbidity is one (1) turbidity unit (TU), as determined by a monthly average of daily samples, and no more than five (5) turbidity units, based on an average for two (2) consecutive days.

(5) Measurement technique. The measurement for turbidity shall be by the Nephelometric Method, as set forth in "Standard Methods," or by an alternate method approved in writing by the cabinet.

(6) Excessive turbidity. If the result of a turbidity analysis indicates that the maximum allowable limit has been exceeded, the sampling

and measurement shall be confirmed by resampling as soon as practicable and no later than one (1) hour thereafter. If the repeat sample exceeds the maximum allowable limit, the supplier shall report the excess to the cabinet within twenty-four (24) hours. The repeat sample shall be the sample used for the purpose of calculating the monthly average. If the monthly average of the daily samples exceeds the maximum allowable limit, or if the average of two (2) samples taken on consecutive days exceeds five (5) TU, the supplier of water shall report the excess to the cabinet within twenty-four (24) hours and notify the public pursuant to 401 KAR 8:070.

(7) Exceptions. Up to five (5) turbidity units may be allowed, if the supplier of water demonstrates to the cabinet that the higher turbidity does not:

(a) Interfere with disinfection;

(b) Prevent the maintenance of an effective disinfectant agent throughout the distribution system; or

(c) Interfere with microbiological determinations.

Section 5. [3.] Analysis for microbiological contamination and turbidity shall be in accordance with methods approved for drinking water by the U.S. Environmental Protection Agency or by the cabinet. The following documents are hereby incorporated by reference and are available for public inspection and copying between 8 a.m. and 4:30 p.m., Monday through Friday, at the Division of Water, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Standard Methods for the Examination of Water and Wastewater, 16th edition, 1985, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. This publication is printed, distributed and may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

(2) "Manual for the Certification of Laboratories Analyzing Drinking Water," EPA 570/9-90/008, April 1990, may be obtained by contacting U.S. EPA, Office of Drinking Water, Washington, D.C., 20460.

(3) Microbiological Methods for Monitoring the Environment, Water and Wastes may be obtained from ORD Publications, December 1978, U.S. EPA, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268.

(4) Copies of the MMO-MUG Test as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and Escherichia coli from Drinking Water: Comparison with the Standard Multiple-Tube Fermentation Method: (Edberg, et al) may be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, CO 80235.

Section 6. [4.] Severability. If any provision of this regulation is set aside by a court of competent jurisdiction, the remainder of this regulation remains in effect.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 12, 1991 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1991, at 1 p.m. EDT in the ground floor auditorium of the Capital Plaza Tower, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation at any time until the close of business, (4:30 p.m. EDT), October 23, 1991. Send written comments on the proposed administrative regulation to: John T. Smither, Branch Manager, Division of Water, Drinking Water Branch, Department for Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601-1189.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Smither

(1) Type and number of entities affected: The amendment to this regulation applies to 859 public and 98 semipublic water systems. These numbers may vary slightly from month to month.

(a) Direct and indirect costs or savings to those affected: Public water systems must submit a testing plan to the cabinet. The amendments to this regulation will reduce the number of monthly bacteriological tests which some public water systems must run. Each test costs about $8. As a result of these amendments some public water systems will realize a reduction of costs due to fewer tests being required.

1. First year: Any savings realized due to a reduction of required tests will be realized immediately. However, due to a change in regulatory policy in determining the positive presence of coliform bacteria, it is likely that more bacteriological samples will be positive, and therefore require testing for fecal coliforms or E. coli as well as check samples. Consequently, some public water systems may realize an overall increase in testing and the costs related to the testing, again about $8 per test.

2. Continuing costs or savings: Any costs or savings will continue since testing must be done monthly for as long as the water system serves water.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No other factors will increase or decrease costs. Most public water systems are monopolies so there is no effect or competition.

(b) Reporting and paperwork requirements: Public water systems must report the results of bacteriological tests. Reporting is required under current regulation.

(2) Effects on the promulgating administrative body: There will be no effect on the administrative body. Paperwork and other supervision for bacteriological testing is already required.

(a) Direct and indirect costs or savings: There are no direct or 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: Public water systems must submit a map of testing sites to the cabinet. In addition, more check samples will be submitted since this regulation will require 3 check samples for each positive test.

(3) Assessment of anticipated effect on state and local revenues: This regulation will have no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This amendment is a direct result of changes in federal requirements. Although cosmetic changes may be possible, the substance of this regulation must be adhered to in order for the cabinet to retain primacy for the drinking water program.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no duplicative, overlapping, or conflicting regulation, statute, or policy.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This regulation is tiered to reflect differences in the size and type of public water systems.

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 apply to any public or semipublic water system owned by local governments.

3. State the aspect or service of local government to which this administrative regulation relates. Public or semipublic water systems. 40 CFR 141, as amended at 54 FR 27,562 (1989) and 56 FR 642 and 1557 (1991), requires that certain changes be made in the way public water systems monitor and analyze for microbiological contaminants.

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 should have little or no effect on revenues.

Expenditures (+/-): In some cases expenditures may go down since some public water systems will not run as many tests as in the past.

Other Explanation: There is a possibility that under the presence/absence scheme for testing microbiological samples, more results will test positive, triggering increased repeat monitoring. Each test costs about $8. Depending on the size of the system and results of tests, a particular system may have a decrease or increase in expenditures. Regardless, the increase or decrease should be negligible.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141, as amended at 54 FR 27,562 (1989) and 56 FR 642 and 1557 (1991).

2. State compliance standards. Microbiological testing must be conducted monthly with at least 2 samples taken per month in all systems with the number specified for the size of the system. Turbidity must be tested once per day, but this will be increased under 401 KAR 8:150 which is being phased in.

3. Minimum or uniform standards contained in the federal mandate. Microbiological testing must be conducted monthly except for small systems which may be allowed to test quarterly at the state's option. At least 2 samples must be taken per month with the number increasing with the size of the system. Turbidity must be tested once per day, but this will be increased under 401 KAR 8:150 which is being phased in.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. Small systems will be required to take at least 2 microbiological tests per month other than 1, and at least 3 repeat samples must be taken in 1 day.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky has required semipublic water supplies to take at least 2 samples per month for many years and believes this number to be necessary to provide adequate safeguards. It would be inconsistent to allow small public systems to require fewer than this number, even though federal law might allow it. Requiring repeat samples be taken in 1 day will streamline the reporting and tracking process for the cabinet, the public water systems and the laboratories.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These 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, revised September 13, 1991, are incorporated by reference [on May 15, 1991] and shall be [hereinafter should be] referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at

the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

NTC 01-03-01 Organization and Assignment of Responsibilities
NTC 01-05-01 Extraordinary Occurrence Reports [(Amended 05/15/91)]
NTC 01-10-01 Legal Assistance for Staff [(Amended 05/15/91)]
NTC 01-11-01 Political Activities of Merit Employees [(Amended 05/15/91)]
NTC 01-15-01 Establishment of the Warden as Chief Executive Officer [(Amended 05/15/91)]
NTC 01-17-01 Relationships with Public, Media and Other Agencies [(Amended 05/15/91)]
NTC 02-02-02 Warden's Participation in the Agency Budgeting Process
NTC 02-03-01 Fiscal Management: Audits
NTC 02-04-01 Internal Control and Monitoring of Accounting Procedures
NTC 02-07-02 Chapel Fund
NTC 02-08-01 Inmate Canteen
NTC 02-10-01 Insurance Coverage
NTC 02-12-01 Inmate Personal Accounts
NTC 04-01-01 Training and Staff Development (Amended 9/13/91)
NTC 04-04-01 Firearms and Chemical Agents Training (Amended 9/13/91)
NTC 06-01-01 Offender Records (Amended 9/13/91)
NTC 06-01-02 Records - Release of Information (Amended 9/13/91)
NTC 06-01-03 Taking Offender Record Folders onto the Yard (Amended 9/13/91)
NTC 08-05-01 The Fire and Safety Officer (Amended 9/13/91)
NTC 08-05-02 Fire Procedures (Amended 9/13/91)
NTC 08-05-03 Fire Prevention (Amended 9/13/91)
NTC 08-05-04 Storage of Flammables and Dangerous Chemicals and Their Use (Amended 9/13/91)
NTC 08-07-01 Safety Standards (Amended 9/13/91)
NTC 10-01-01 Special Management Inmates (SMU)
NTC 10-02-01 Security Guidelines for Special Management Inmates
NTC 10-03-01 Protective Custody
NTC 11-03-01 Food Services: General Guidelines
NTC 11-04-01 Food Service: Meals
NTC 11-04-02 Menu, Nutrition and Special Diets
NTC 11-05-02 Health Standards/Regulations for Food Service Employees
NTC 11-06-01 Inspections and Sanitation
NTC 11-07-01 Purchasing, Storage and Farm Products
NTC 12-01-01 Institutional Inspections
NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens
NTC 12-02-02 Issuance of Personal Hygiene Products
NTC 13-01-01 Emergency Medical Care Plan
NTC 13-01-02 Emergency and Specialized Health Services
NTC 13-02-01 Administration and Authority for Health Services
NTC 13-03-01 Sick Call and Pill Call
NTC 13-04-01 Utilization of Pharmaceutical Products
NTC 13-05-01 Dental Services
NTC 13-05-02 Health Maintenance Dental Services
NTC 13-05-03 Dental Radiation Levels
NTC 13-05-04 Attest Steam Incubator
NTC 13-06-01 Licensure and Training Standards
NTC 13-07-01 Provisions for Health Care Delivery
NTC 13-08-01 Medical and Dental Records
NTC 13-09-01 Special Diets
NTC 13-11-01 Inmate Health Screening and Evaluation
NTC 13-12-01 Special Health Care Programs
NTC 13-17-01 Inmates Assigned to Health Services
NTC 13-19-01 Mental Health Care Program
NTC 13-19-03 Suicide Prevention and Intervention Program
NTC 13-20-01 Infectious Disease
NTC 13-20-02 Infection Control
NTC 13-20-03 Disposal of Biohazard Waste
NTC 13-21-01 Vision Care/Optometry Services
NTC 13-22-01 Informed Consent
NTC 13-23-01 Special Needs Inmates
NTC 14-01-01 Legal Services Program
NTC 14-01-02 Receiving and Viewing of Video Tapes
NTC 14-02-01 Inmate Grievance Procedure
NTC 14-03-01 Inmate Rights and Responsibilities
NTC 14-03-02 Board of Claims
NTC 14-04-01 Inmate Search Policy
NTC 15-01-01 Restoration of Forfeited Good Time
NTC 15-02-01 Due Process/Disciplinary Procedures
NTC 15-02-02 Extra Duty Assignments
NTC 15-02-03 Hearing Officer
NTC 15-03-01 Rules for Inmates Assigned to Outside Detail
NTC 15-03-02 Rules and Regulations for General Population Dormitories
NTC 15-03-03 Rules and Regulations for Protective Custody Dormitories
NTC 15-04-01 Inmate Identification
NTC 16-01-01 Mail Regulations [(Amended 05/15/91)]
NTC 16-02-01 Visiting
NTC 16-02-02 Extended and Special Visits
NTC 16-02-03 Honor Dorm Visiting
NTC 16-03-01 Inmate Furloughs
NTC 16-05-01 Telephone Use and Control
NTC 17-01-01 Personal Property Control
NTC 17-01-02 Authorized Inmate Personal Property [(Amended 05/15/91)]
NTC 17-01-03 Unauthorized Inmate Property [(Amended 05/15/91)]
NTC 17-01-04 Disposition of Unauthorized Property
NTC 17-01-05 State Issue and Required Inmate Clothing
NTC 17-03-01 Assessment/Orientation
NTC 18-01-01 Preparole Progress Report
NTC 18-02-01 Classification
NTC 18-02-02 Classification - 48 Hour Notification
NTC 18-03-01 Special Notice Form
NTC 18-05-01 Transfers of Inmates
NTC 18-05-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 19-01-01 Inmate Work Program
NTC 19-01-03 Temporary Leave from Job Assignment
NTC 19-02-01 Correctional Industries
NTC 19-02-02 Guidelines for Correctional Industries
NTC 20-01-01 Academic School Program
NTC 20-02-01 Vocational School
NTC 20-02-02 Live Work Projects in Vocational School Classes
NTC 21-01-01 Library Services
NTC 22-03-01 Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01 Religious Services
NTC 23-03-01 Marriage of Inmates
NTC 24-04-01 Honor Status
NTC 24-05-01 Unit Management
NTC 25-01-01 Release Preparation Program

NTC 25-01-02	Temporary Release/Community Center Release
NTC 25-01-03	Graduated Release
NTC 25-02-01	Funeral Trips and Bedside Visits
NTC 25-03-01	Inmate Release Procedure
NTC 26-01-01	Citizen Involvement and Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: September 13, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 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: 289 employees of the Northpoint Training Center, 880 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 6:090. Frankfort Career Development Center.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These 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, revised September 13 [July 15], 1991, are incorporated by reference [on April 15, 1991] and [hereinafter] shall be referred to as Frankfort Career Development Center Policies and Procedures, July 15, 1991. 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.

FCDC 01-04-01	Confidentiality of Information Roles and Services of Consultant, Contract Personnel, Governmental Services Supervisors and Volunteers
FCDC 01-05-01	Duties and Responsibilities of FCDC Duty Officer
FCDC 01-09-01	Organization and Assignment of Responsibilities
FCDC 02-02-01	Inventory of Nonexpendable Personal Property
FCDC 02-09-01	Inmate Account Draw and Savings Deposit Transactions Between Inmates
FCDC 02-10-01	Fiscal Management and Control
FCDC 02-11-01	Fiscal Management: Accounting Procedures
FCDC 02-12-01	Fiscal Management: Checking Accounts
FCDC 02-13-01	Purchasing and Receiving
FCDC 06-02-01	Inmate Records (Revised 9-13-91)
FCDC 08-01-01	Fire Safety Practices
FCDC 09-01-02	Institutional Entry/Exit Surveillance and Perimeter Security Procedures
FCDC 09-03-01	Control and Accountability of Flammable Toxic, Caustic and Other Hazardous Materials (Revised 9-13-91)
FCDC 09-06-08	Searches and Contraband Control (Revised 9-13-91)
FCDC 11-03-01	Food Service [(Amended 7/15/91)]
FCDC 12-03-01	Laundry, Clothing, Hygiene and Grooming Services (Revised 9-13-91)
FCDC 12-04-01	Sanitation Practices and Inspections (Revised 9-13-91)
FCDC 13-01-01	Use of Pharmaceutical Products [(Amended 7/15/91)]
FCDC 13-01-02	Medical Emergencies [(Amended 7/15/91)]
FCDC 13-01-03	Informed Consent [(Amended 7/15/91)]
FCDC 13-02-01	Inmate Medical Screenings and Health Evaluations [(Amended 7/15/91)]
FCDC 13-03-01	Psychiatric and Psychological Services [(Amended 7/15/91)]
FCDC 13-03-02	Parental Administration of Medications and Use of Psychotropic Drugs [(Amended 7/15/91)]

FCDC 13-05-01	Family Notification: Serious Illness, Injury, Major Surgery or Death [(Amended 7/15/91)]
FCDC 13-06-01	Chronic and Convalescent Care [(Amended 7/15/91)]
FCDC 13-08-01	Sick Call/Physician's Weekly Clinic [(Amended 7/15/91)]
FCDC 13-09-01	Management of Serious and Infectious Diseases [(Amended 7/15/91)]
FCDC 13-10-01	Treatment Protocol Regarding First-Aid Procedures, Routine Health Care [(Amended 7/15/91)]
FCDC 13-11-01	Health Education: Provision of Special Health Care Needs [(Amended 7/15/91)]
FCDC 13-12-01	Elective Services [(Amended 7/15/91)]
FCDC 13-13-01	Physicians Referrals [(Amended 7/15/91)]
FCDC 13-14-01	Health Records [(Amended 7/15/91)]
FCDC 13-15-01	Routine and Emergency Dental Appointments [(Amended 7/15/91)]
FCDC 13-16-01	Routine and Emergency Eye Examinations [(Amended 7/15/91)]
FCDC 13-17-01	Inmate Death
FCDC 14-01-01	Prohibiting Inmate Authority Over Other Inmates (Revised 9-13-91)
FCDC 14-02-01	Inmate Grievance System
FCDC 14-03-01	Inmates Shall [Are] Not Be Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap or Political Beliefs and Are Protected Against Corporal Punishment (Revised 9-13-91)
FCDC 14-04-01	Legal Services Program (Revised 9-13-91)
FCDC 15-01-01	Good Time - Credits (Revised 9-13-91)
FCDC 15-03-01	Conduct of Adjustment [Committee] Hearings (Chairperson) (Revised 9-13-91)
FCDC 15-04-01	[Prehearing] Detention Orders and Protective Custody Requests (Revised 9-13-91)
FCDC 16-01-01	Inmate Visiting
FCDC 16-02-01	Mail Policy
FCDC 16-03-01	Inmate Access to Telephones
FCDC 17-01-01	Inmate Property Control
FCDC 17-02-01	Inmate Reception, Orientation, and Discharge
FCDC 18-01-01	Inmate Classification
FCDC 18-02-01	Reclassification Document
FCDC 18-03-01	Instructions for Six Month Review
FCDC 19-01-01	Security and Operation of the Governmental Services Program
FCDC 19-02-01	Inmate Work Program
FCDC 20-01-01	Academic and Vocational Education
FCDC 22-01-01	Privilege Trips
FCDC 22-01-02	Activity Trips
FCDC 22-02-01	Recreation and Inmate Activities
FCDC 23-01-01	Religious Activities
FCDC 24-01-01	Social Service Program
FCDC 24-02-01	Substance Abuse Programs
FCDC 25-01-01	Escorted Leaves
FCDC 25-02-01	Temporary Release/Community Center Program
FCDC 25-03-01	Release Preparation Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: September 13, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 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, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 45 employees of the Frankfort Career Development Center, 180 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 September 13, 1991 [on August 15, 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
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
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 (Revised 9-13-91)
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 (Amended 9-13-91)
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: September 13, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 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.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Chief State School Officer
(Proposed Amendment)

701 KAR 5:020. Elementary and secondary education hearing officer.

RELATES TO: KRS [156.031,] 156.070
STATUTORY AUTHORITY: KRS 156.070
NECESSITY AND FUNCTION: [KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and] KRS 156.070 requires the State Board for Elementary and Secondary Education to provide for appeals from decisions of the Kentucky High School Athletic Association. This regulation establishes relevant hearing procedures.

Section 1. There is hereby established within the Department of Education the position of hearing officer for the State Board for Elementary and Secondary Education. The State Board for Elementary and Secondary Education shall appoint, upon the recommendation of the chief state school officer, a person or persons to serve at the pleasure of the board in that capacity.

Section 2. A [The] hearing officer shall conduct a hearing, or a review on the law as appropriate, of all appeals from the Kentucky High School Athletic Association.

Section 3. Any aggrieved party may appeal the [written] ruling of the Kentucky High School Athletic Association within ten (10) days of the date of the Kentucky High School Athletic Association hearing, or its written decision if no ruling is made at the hearing, [such ruling] to the State Board for Elementary and Secondary Education, by filing notice with [by certified mail to] the Secretary of the State Board for Elementary and Secondary Education and by mailing a copy of the same [by certified mail to] the Commissioner of the Kentucky High School Athletic Association. Appeals not timely filed shall not be heard. The secretary of the board shall immediately notify the commissioner of the Kentucky High School Athletic Association of the appeal and the commissioner shall forthwith send the record of the matter, including a transcript or tape recording of the hearing before the association [Board of Control], to the secretary.
(1) The notice of appeal need not be in any prescribed form, but shall clearly state reasons for the appeal. If the appellant requests to present additional evidence to a hearing officer, the notice also shall set forth the nature of such evidence and reasons it has not been previously introduced.
(2) The notice of appeal may also request oral argument before a hearing officer, and if it does, it shall also state the reasons for such request.
(3) Written arguments (or briefs) may [shall] be filed [by certified mail] with the secretary within ten (10) days after notice of the appeal has been filed, with a copy sent by [certified] mail to the Commissioner of the Kentucky High School Athletic Association.
(4) The Commissioner of the Kentucky High

School Athletic Association may [shall] respond to the written argument within five (5) days but may have one (1) extension of an additional five (5) days for good cause shown. The response shall be made by [certified] mail to the appellant with a copy sent [by certified mail] to the secretary of the state board.

(5) Unless the hearing officer grants the motion to introduce additional evidence or the request for an oral argument, the appeal shall be considered on the written record alone. Only in extraordinary cases where additional evidence is allowed to be introduced shall the appeal be considered de novo in nature.

Section 4. The hearing officer shall make findings of fact, conclusions of law and recommendations to the parties and to the State Board for Elementary and Secondary Education, and such[, if practicable,] shall allow ten (10) days [sufficient time] for written exceptions and responses to the state board. Except in cases of clear and compelling justification, [If time for written exceptions and responses cannot be allowed,] the parties shall not have a right to make oral argument [such] in person to the state board.

Section 5. The board may accept or reject the submission of the hearing officer in total or in part, may return the matter to the hearing officer for further proceedings or may have the parties appear before the board for further proceedings and ultimate decision. In any event, the board, in making its final decision, shall adopt or incorporate appropriate findings and conclusions.

Section 6. Because of the varied nature of the matters that may from time to time be assigned to a [the] hearing officer, and because time may be of the essence, in order for the submission of the hearing officer to be presented to the board at a scheduled meeting of the board, the hearing officer is hereby authorized, consistent with the limitations of the assignment, to set such time frames and other procedural matters as will assure due process to the parties and allow the submission to the board within the time prescribed.

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: September 12, 1991

FILED WITH LRC: September 12, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1991, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 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: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: J. Gary Bale

(1) Type and number of entities affected: 292 member schools of KHSAA and their student athletes.

(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: Written exceptions to hearing officer's recommendation may be required as opposed to oral presentation to state board.

(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: Oral argument before state board results in time-consuming, emotional rehearing of case.

(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: These amended regulations attempt to impose a manageable time frame upon KHSAA eligibility appeals and to allow state board to decide cases upon a fully-developed record, but without time consuming, emotional oral argument.

TIERING: Was tiering applied? Yes. Hearing procedure needs to be standardized, but there is language for exceptions where warranted.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Proposed Amendment)

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

RELATES TO: KRS [156.031,] 156.070

STATUTORY AUTHORITY: KRS 156.070

NECESSITY AND FUNCTION: [KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be

reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and] KRS 156.070 gives the State Board for Elementary and Secondary Education the management and control of the common schools, including interscholastic athletics therein, and allows the state board to designate an agency to manage athletics pursuant to rules approved by the state board. This regulation designates such an agent for high school athletics and adopts the constitution, bylaws, procedures and rules of that agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) is hereby designated as the State Board for Elementary and Secondary Education's agent to manage interscholastic athletics at the high school level in the common schools, including any private schools desiring to associate with KHSAA and to compete with the common schools.

Section 2. The constitution, bylaws, tournament rules, due process procedures, and officials' rules of the KHSAA Handbook, 1991-92, as revised, adopted, and approved on September 4, 1991 [1990-91], are hereby [approved, adopted, and] incorporated [herein] by reference. This material may be inspected and copied at the Office of Legal Services Department of Education, First Floor, Capital Plaza Tower, Frankfort, 8 a.m. through 4:30 p.m., Monday through Friday.

Section 3. (1) Any pupil who is retained in the sixth, seventh or eighth grade for documented academic deficiencies, in compliance with a local school district's adopted grading and retention policy, may appeal any year of ineligibility under KHSAA's By-Law 4, Section 1(a), pursuant to KHSAA's due process procedures incorporated by reference as a part of this regulation.

(2) The burden of proof that retention was based upon bona fide academic deficiencies, and not any desire for athletic advantage, shall rest with the pupil.

(3) In no event shall any waiver be available to allow a pupil eligibility once he has been enrolled in grades nine (9) through twelve (12) for eight (8) semesters.

(4) Any appeal under this section may be pursued either immediately after the pupil's retention or at any time prior to the year of ineligibility.

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: September 12, 1991

FILED WITH LRC: September 12, 1991 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1991, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 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: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: J. Gary Bale

(1) Type and number of entities affected: 292 member schools of KHSAA and their student athletes.

(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: Written exceptions to hearing officer's recommendation may be required as opposed to oral presentation to state board.

(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: Oral argument before state board results in time-consuming, emotional rehearing of case.

(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: These amended regulations attempt to impose a manageable time frame upon KHSAA eligibility appeals and to allow state board to decide cases upon a fully-developed record, but without time consuming, emotional oral argument.

TIERING: Was tiering applied? Yes. Hearing procedure needs to be standardized, but there is language for exceptions where warranted.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(Proposed Amendment)

704 KAR 4:020. Comprehensive school health.

RELATES TO: KRS [156.031,] 156.160, HJR 124 (1990 RS)
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: [KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and] KRS 156.160 requires the State Board for Elementary and Secondary Education to adopt regulations governing medical inspection, physical education and recreation, and other rules and regulations deemed necessary or advisable for the protection of the physical welfare and safety of the public school children; and HJR 124 (1990 RS) directs the Cabinet for Human Resources, in conjunction with the Department of Education, to develop a policy to promote appropriate and early diagnosis and treatment of scoliosis by licensed members of the healing arts. This regulation implements the duty of the State Board relative to medical inspections and the physical welfare and safety of public school children; and it formalizes the appropriate interagency agreement on scoliosis detection and treatment.

Section 1. School employee medical examinations shall be required as follows for the protection of the physical welfare and safety of the public school children.

(1) All local boards of education shall require a medical examination of each teacher upon initial employment which shall include a tuberculin skin test. All positive reactors shall be required to comply with the recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required medical examinations for initial employment and any subsequent examinations as may be required for positive tuberculin reactors, each teacher shall submit to the local school superintendent a statement indicating his or her medical status.

(2) All local boards of education shall require upon initial employment and each year thereafter a medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and events related to such schools. The medical examination shall include test for hearing and vision disorders, emotional instability, and for serious medical conditions including diabetes, epilepsy, heart disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician. The initial examination shall include tests for tuberculosis and other items mandated by 702 KAR 5:080. All positive reactors shall be required to comply with the recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required medical examination for initial employment and any subsequent examinations, as may be required for positive tuberculin reactors, each bus driver shall submit to the local school superintendent a statement indicating his or her medical status. All medical examinations of the school bus drivers shall be reported on a form prescribed by the State Department of Education and entitled, "Medical Examination Report for School Bus Drivers and Substitute School Bus Driver," which is incorporated herein by reference, and submitted to the local school superintendent.

(3) All local boards of education shall require a medical examination of each custodian, cafeteria worker, and other classified school employees not specifically covered by subsection (2) of this section upon initial employment. The medical examination shall include tests for tuberculosis, hearing and vision disorders, emotional instability, and for serious medical conditions including diabetes, epilepsy, heart disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician. All positive tuberculin reactors shall be required to comply with the recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required evaluation, each employee shall submit to the local school superintendent a statement indicating his or her medical status. Medical examinations shall be reported on forms prescribed by the State Department of Education and entitled, "Medical Examination of School Employees," which is incorporated herein by reference.

(4) The local board of education shall require all school personnel exhibiting symptoms of chronic respiratory disease to be examined for tuberculosis. The evaluation and any required treatment for tuberculosis infection shall be based upon the recommendations of the local board of health and the standards developed by the Cabinet for Human Resources.

(a) Any personnel exposed to infectious tuberculosis shall be tested and, if necessary, treated for tuberculosis infection according to the recommendation of the local board of health.

(b) In counties with high incidence rates for tuberculosis infection defined as equal to or greater than one (1) percent, the local board of health may, with the approval of the Cabinet for Human Resources, exercise its legal sanction to require more extensive testing for tuberculosis than outlined above.

Section 2. (1) All local boards of education shall require a medical examination of each child within six (6) months prior to, or one (1) month following, his or her initial admission to school, and, effective with the 1992-93 school year, a second examination shall be required within six (6) months prior to entry into the sixth grade. The initial medical examination, performed and signed for by a physician, shall be reported on forms prescribed by the Department of Education and entitled, "School Medical Examination Form," which is incorporated herein by reference, and shall include a medical history; record of immunizations and tuberculosis testing; assessment of growth and development and general appearance; physical assessment including hearing and vision screening; and recommendations to the school regarding health problems that may require special attention in classroom or physical education activities. A valid immunization certificate shall be presented prior to school

enrollment. The second student physical may be performed and signed for by an advanced registered nurse practitioner (ARNP) or by a health care provider in the Early Periodic Screening Diagnosis and Treatment (EPSDT) Program and shall be reported on forms prescribed by the Department of Education and entitled, "School Medical Examination Form," which is incorporated herein by reference, and shall include the same medical information as described for the initial student physical.

(2) All boards of education shall adopt a program of continuous health supervision for all school enrollees; [such] supervision shall include scheduled, appropriate screening tests for vision, hearing and scoliosis. The need for any further tuberculin skin test shall depend on the risk of exposure of the child and prevalence of tuberculosis in the community, and the [such] need is to be determined pursuant to KRS KRS 214.034. Local spinal screening programs for scoliosis shall include:

(a) Training sessions for teachers or lay volunteers who will be doing the screening;

(b) Obtaining parental permission for scoliosis screening;

(c) Established screening times, at least in grades six (6) and eight (8) and appropriate procedures and referral criteria, with the Department of Education to provide technical advice on these areas;

(d) Mandated education of students regarding scoliosis screening; and

(e) Required referral of all children with abnormal screening results for appropriate diagnosis and treatment and follow-up on these referrals. Local referral and follow-up procedures shall include:

1. Notification of parents of students who need further evaluation by a physician;

2. Tracking referrals to assure that all children with abnormal screening results receive appropriate diagnosis and treatment; and

3. Reporting of data on screening, referral and follow-up tracking to the Department of Education.

(3) The Department of Education shall appropriately monitor the spinal screening and referral programs provided by local boards of education, provide consultation and technical assistance to local boards of education concerning spinal screening, referral and follow-up for appropriate diagnosis and treatment, and encourage local school systems to work cooperatively with local health departments and local Commission for Handicapped Children offices to plan, promote and implement scoliosis screening programs.

(4) [(1)] An effective mechanism for referral and appropriate follow-up of any apparent abnormality noted by screening assessment or teacher observation shall be recorded on school health records within nine (9) weeks of screening program or detection of abnormality.

(5) [(2)] Each school shall have emergency care procedures. The emergency care procedures shall include first aid facilities, at least two (2) adults in each school who have completed and been certified in a standard first aid course, parents' telephone number, name of family physician, and means of transportation.

(6) [(3)] Local boards of education shall require all vaccinations and immunizations and tuberculosis testing as required by law or regulations:

(a) Except as otherwise provided by law, all children shall be required to present a valid immunization certificate upon enrollment in school, and a valid up-to-date immunization certificate shall be on file for all children at all times. All children shall also present a tuberculin test certificate or the school medical examination form to the public or private school showing tuberculin skin test administration within one (1) year prior to initial enrollment in school. The governing body of private and public schools shall enforce the provisions of this subsection in accordance with the established laws.

(b) Children transferring into any school district shall comply with the above requirements.

Section 3. (1) Each elementary and secondary school shall initiate a cumulative health record for each pupil entering school. Such record shall be maintained throughout the pupil's attendance. Such record shall be uniform and shall be on forms prescribed by the Department of Education and entitled "Pupil's Cumulative Health Record," which is incorporated herein by reference. Such record shall include screening tests related to growth and development, vision and hearing; teacher observations of general appearance and behavior; and findings and recommendations of physician and dentist including immunization record. A follow-up by the proper health or school authorities shall be made on each defect noted and the result shall be recorded.

(2) Local school authorities shall report all known or suspected cases of communicable disease immediately to the local health department.

Section 4. All boards of education shall, in relation to each school under its jurisdiction, provide and maintain a physical environment that is conducive to the health and safety of school children. It shall be the responsibility of all local boards of education to comply with current laws and regulations applicable to all public buildings pertinent to health, sanitation, and safety. In accordance with current regulations and standards by authorities having jurisdiction, it shall be the responsibility of all local boards of education to establish:

(1) An adequate supply of water of safe, potable, sanitary quality.

(2) A state-approved sanitary disposal of sewage, other water carried waste, and solid waste.

(3) Adequate toilet and lavatory facilities and other sanitary fixtures.

(4) Adequate heating, lighting, and ventilation in all school buildings.

(5) Adequate facilities and equipment for cafeterias and lunchrooms.

(6) Supervision of general sanitation and safety of the school buildings, grounds, and playground equipment.

(7) Adequate first aid facilities.

(8) Adequate control of air pollutants.

Section 5. Each board of education shall designate a person to serve as school health coordinator. The [Such] person designated shall meet the minimum qualifications required of this position. The school health coordinator shall work in cooperation with all school personnel, the local board of education, the State

Department for Elementary and Secondary Education, and the local health department in planning, promoting, and implementing a school health services program that meets the regulations adopted by the State Board of Education.

Section 6. Each local board of education shall require an annual medical examination of each child as a prerequisite for eligibility in interscholastic athletics. A local board of education may require the [such] examination to be paid by the parent of the child.

Section 7. All forms incorporated herein by reference may be inspected, copied, and obtained from the Division of Student Services, Department of Education, 17th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

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: September 6, 1991
FILED WITH LRC: September 12, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 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: Vicki Phillips, Chief Executive Assistant, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.
CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Teeey Vance
(1) Type and number of entities affected: Sixth grade students for physicals. Sixth-ninth for scoliosis screening.
(a) Direct and indirect costs or savings to those affected:
1. First year: Cost to parents for student physicals.
2. Continuing costs or savings: Savings in reduction of health problems, improve attendance.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Must file in student's cumulative folder.
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: Improved student attendance.
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: Must file in student's cumulative folder.
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Health regulations need to be uniform across the state.

LABOR CABINET
Department for Workplace Standards
(Proposed Amendment)

803 KAR 1:070. Executive, administrative, supervisory or professional employees; salesmen.

RELATES TO: KRS 337.275, 337.285
STATUTORY AUTHORITY: KRS 337.295
NECESSITY AND FUNCTION: KRS 337.010(2)(a)(2) [(ii)] exempts any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as such terms are defined by administrative regulations of the commissioner from both the minimum wage and overtime requirements set forth in KRS 337.275 and 337.285. The function of this regulation is to define what constitutes an individual employed in a bona fide executive, administrative, supervisory or professional capacity, or in the capacity of an outside salesman and outside collector.

Section 1. The term "individual employed in a bona fide executive capacity" shall mean any employee:
(1) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof;
(2) Who customarily and regularly directs the work of two (2) or more other employees therein;
(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;
(4) Who customarily and regularly exercises discretionary powers;
(5) Who does not devote more than twenty (20) percent of his hours of work in the workweek to activities which are not directly and closely

related to the performance of the work described in subsections (1) through (4) of this section; provided, that this subsection shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a twenty (20) percent interest in the enterprise in which he is employed; and

(6) Who is compensated for his services on a salary basis at a rate of not less than $155 per week, exclusive of board, lodging, or other facilities; provided, that an employee who is compensated on a salary basis at a rate of not less than $250 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two (2) or more other employees therein, shall be deemed to meet all of the requirements of this section.

Section 2. The term "individual employed in a bona fide administrative capacity" shall mean any employee:

(1) Whose primary duty consists of either:

(a) The performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers; or

(b) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein;

(2) Who customarily and regularly exercises discretion and independent judgment;

(3)(a) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity; or

(b) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or

(c) Who executes under only general supervision special assignments and tasks; and

(4) Who does not devote more than twenty (20) percent of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in subsections (1) through (3) of this section;

(5)(a) Who is compensated for his services on a salary or fee basis at a rate of not less than $155 per week, exclusive of board, lodging, or other facilities; or

(b) Who, in the case of academic administrative personnel, is compensated for his services as required by subsection (5)(a) of this section, or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which he is employed; provided, that an employee who is compensated on a salary or fee basis at a rate of not less that $250 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of work described in subsection (1) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

Section 3. The term "individual employed in a bona fide professional capacity" shall mean any employee:

(1) Whose primary duty consists of the performance of:

(a) Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

(b) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(c) Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher certified or recognized as such in the school system or educational establishment or institution by which he is employed.

(2) Whose work requires the consistent exercise of discretion and judgment in its performance;

(3) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;

(4) Who does not devote more than twenty (20) percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in subsections (1) through (3) of this section; and

(5) Who is compensated for his services on a salary or fee basis at a rate of not less than $170 per week, exclusive of board, lodging, or other facilities; provided, that this subsection shall not apply in the case of an employee who is engaged in the practice of a physician or a lawyer who is the holder of a valid license permitting such practice, nor in the case of an employee who is the holder of the requisite academic degree to practice as a physician and is engaged in an internship or resident program pursuant to the practice, nor in the case of an employee employed and engaged as a teacher as provided in subsection (1)(c) of this section; and provided further, that an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in subsection (1)(a) or (c) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

Section 4. The term "individual employed in a bona fide supervisory capacity" shall mean any employee:

(1) Who customarily and regularly directs the work of two (2) or more other employees where he

is employed;

(2) Who does not devote more than twenty (20) percent of his hours of work in the workweek to activities of the same nature as the employees under his supervision; and

(3) Who is compensated for his services on a salary basis at a rate of not less than $155 per week, exclusive of board, lodging, or other facilities; provided, that an employee who is compensated on a salary basis at a rate of not less than $250 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of customarily and regularly directing the work of two (2) or more other employees, shall be deemed to meet all of the requirements of this section.

Section 5. The term "individual employed in the capacity of outside salesman" shall mean any employee:

(1) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:

(a) Making sales, which shall mean the transfer of title to both tangible and intangible property; or

(b) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer;

(2) Whose hours of work of a nature other than those described in subsection (1) of this section do not exceed twenty (20) percent of the hours worked in the workweek by nonexempt employees of the employer; provided, that work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

Section 6. The term "individual employed as an outside collector" shall mean any employee:

(1) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:

(a) Collecting money for goods or services previously or presently furnished by his employer; or

(b) Collecting money for an account placed in the hands of his employer for collection; and

(2) Whose hours of work of a nature other than those described in subsection (1) of this section do not exceed twenty (20) percent of the hours worked in the workweek by nonexempt employees of the employer; provided, that work performed incidental to and in conjunction with the employee's own outside collections, shall not be regarded as nonexempt work.

Section 7. Salary Basis. (1) An employee will be considered to be paid "on a salary basis" within the meaning of this regulation if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided below, the employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule that an employee need not be paid for any workweek in which he performs no work.

(a) An employee will not be considered to be "on a salary basis" if deductions from his predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(b) Deductions may be made, however, when the employee absents himself from work for a day or more for personal reasons, other than sickness or accident. Thus, if an employee is absent for a day or longer to handle personal affairs, his salaried status will not be affected if deductions are made from his salary for such absences.

(c) Deductions may also be made for absences of a day or more occasioned by sickness or disability, if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer's particular plan, policy or practice provides compensation for such absences, deductions for absences of a day or longer because of sickness or disability may be made before an employee has qualified under such plan, policy, or practice, and after he has exhausted his leave allowance thereunder. It is not required that the employee be paid any portion of his salary for such day or days for which he receives compensation for leave under such plan, policy or practice. Similarly, if the employer operates under a state sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of a working day or longer if benefits are provided in accordance with the particular law or plan. In the case of an industrial accident, the "salary basis" requirement will be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer, provided, the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents.

(d) Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(e) The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employee on a salary basis. In such a case the exemption would not be applicable to him during the entire period when such deductions were being made. On the other hand, where a deduction not permitted by these interpretations is inadvertent, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employee for such deductions and promises to comply in the future.

(2) It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In

other words, additional compensation besides the salary is not inconsistent with the salary basis of payment.

(3) Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. In such weeks the payment of a proportionate part of the employee's salary for the time actually worked will meet the requirement. However, this should not be construed to mean that an employee is on a salary basis within the meaning of the regulation if he is employed occasionally for a few days and is paid a proportionate part of the weekly salary when so employed.

Section 8. Fee Basis. (1) The requirements for exemption as a professional or administrative employee may be met by an employee who is compensated on a fee basis as well as by one who is paid on a salary basis.

(2) Little or no difficulty arises in determining whether a particular employment arrangement involves payment on a fee basis. Such arrangements are characterized by the payment of an agreed sum for a single job regardless of the time required for its completion. These payments in a sense resemble piecework payments with the important distinction that generally speaking a fee payment is made for the kind of job which is unique rather than for a series of jobs which are repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis.

(3) The adequacy of a fee payment, whether it amounts to payment at a rate of not less than $170 per week to a professional employee or at a rate of not less than $155 per week to an administrative employee, can ordinarily be determined only after the time worked on the job has been determined. In determining whether payment is at the rate required in this regulation, the amount paid to the employee will be tested by reference to a standard workweek of forty (40) hours. Thus compliance will be tested in each case of a fee payment by determining whether the payment is at a rate which would amount to at least $170 per week to a professional employee or at a rate of not less than $155 per week to an administrative employee if forty (40) hours were worked.

Section 9. Special Provision for Employees in Computer Systems Analysis and Programming Work. (1) The requirements of Sections 2 and 3 of this regulation shall not apply to computer systems analysts, computer programmers, software engineers, and other similarly skilled employees who meet the requirements of subsection (2) of this section and who are paid a regular hourly rate of pay that exceeds six and one-half (6 1/2) times the minimum wage set forth in KRS 337.275.

(2) Employees who qualify for the exemption in subsection (1) of this section are highly skilled in computer systems analysis or programming; and, because of the wide variety of job titles applied to such work, job titles alone are insufficient to make this determination. To qualify for exemption as an individual employed in a bona fide administrative or professional capacity the employee's primary duty shall consist of one (1) or more of the following:

(a) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware and software functional specifications;

(b) The design of computer systems based on and related to user specifications;

(c) The creation or modification of computer programs based on and related to system design specifications;

(d) The creation or modification of computer programs related to machine operating systems; or

(e) A combination of the aforementioned duties, the performance of which requires the same level of skills.

(3) Whether or not an employee's regular hourly rate of pay exceeds six and one-half (6 1/2) times the minimum wage set forth in KRS 337.275 shall be determined by dividing the amount of compensation earned in the workweek by the number of hours worked in the workweek.

CHARLES E. McCOY, Acting Commissioner
OTIS REED, JR., Secretary
APPROVED BY AGENCY: September 13, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1991, at 10 a.m., at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 24, 1991, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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. Charles E. McCoy, Kentucky Labor Cabinet, Department of Workplace Standards, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles E. McCoy

(1) Type and number of entities affected: Only a limited number of employers who use these highly professional employees. No actual number available.

(a) Direct and indirect costs or savings to those affected: No costs or savings involved. The regulation clarifies the enforcement position of the department regarding administrative and professional employees.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: No conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Not necessary.

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 benefit local government if they have individuals employed in this capacity.
3. State the aspect or service of local government to which this administrative regulation relates. None
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 only benfit local government by allowing them to continue to exempt bona fide administrative and professional employees from overtime provisions.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 19:030. Refunds, unearned premium; computation.

RELATES TO: KRS 304.19-090
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable [rules and] regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.19-090 provides that if indebtedness is terminated prior to maturity date, unearned premium shall be refunded to the debtor according to a formula approved by the Commissioner of Insurance. This regulation specifies how an unearned premium is to be computed under credit life[, accident] or health insurance.

Section 1. (1) Credit life insurance. Refunds under credit life [and accident and health] insurance where the loan [is] on a level basis shall be computed on a pro rata basis. Where the loan secured by credit life [such] insurance is on a regular (gross) monthly decreasing basis, refunds shall be computed by Rule of 78's (sum of the digits) method. Where the loan secured by the credit life insurance is on a regular (net) monthly decreasing basis, refunds shall be computed by the actuarial method.

(2) Credit health insurance. Where the loan secured by credit health insurance is on a regular (net or gross) decreasing basis, refunds shall be computed by the Rule of 78's (sum of the digits) method.

(3) In calculating refunds pursuant to this regulation, the month in which the loan is terminated shall not be recognized unless the loan is terminated after the 16th day following the last installment due date.

(4) [(2)] When a refund of unearned premium is requested, the minimum refund of premium required by KRS 304.19-090 shall be one (1) dollar and insurers shall not [; provided, however, that no insurer shall] be required to refund any amount when the amount to be returned is less than one (1) dollar.

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: August 21, 1991
FILED WITH LRC: August 27, 1991 at noon
PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for October 22, 1991, at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Elizabeth P. Wright, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 9 a.m. (ET), on October 22, 1991, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance in writing at least five (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 update the regulation to recognize new refund calculation methods and that some calculation methods are appropriate for credit life insurance while others are appropriate for credit health insurance. The proposed regulation further prohibits insurers from the unfair practice of reducing refunds by counting a single day as an entire month. Various technical changes are also made so that the regulation will comply with the current requirements of KRS Chapter 13A.
(1) Type and number of entities affected: The regulation will affect 88 insurers transacting credit life or health insurance in Kentucky. The regulation will affect an unknown number of policyholders and certificate holders.
(a) Direct and indirect costs or savings to those affected:
1. First year: Insurers will have to stop treating a time period as a month unless a majority of the number of days in that month have passed. Insureds will realize savings

because insurers will be prohibited from treating a time period as a month for the purposes of calculating a refund unless a majority of the number of days of the month have passed.

2. Continuing costs or savings: The cost or savings mentioned in item number one will continue in succeeding years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: The proposed regulation will result in savings by making clear the authority of the Commissioner of Insurance to require certain methods of calculating credit life or health insurance refunds. It will also make it clear that the commissioner has the authority to prohibit insurers from treating a single day as a whole month in calculating a refund.

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: In requiring other refund methods or restricting the ability of insurers to treat certain time periods as an entire month, the department has no alternative other than to amend the regulation to specify the new requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Tiering is recognized in that different methods of calculating refunds are recognized for credit life insurance and credit health insurance and that different calculation methods are appropriate for credit life insurance issued in connection with certain types of loans. Also, small refunds are not required to be paid.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Building Codes Enforcement
(Proposed Amendment)

815 KAR 7:010. Administration and enforcement.

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, and parts thereof, which shall establish standards for construction of all buildings in the state. This regulation establishes the administration and enforcement sections of the Kentucky Building Code. This amendment is necessary to clarify or relocate various provisions of the code, most importantly including a statement of records retention requirements and the effect of installation of fire walls in buildings. [in order to refine the language so as to be more concise and more consistent with other laws governing existing buildings and the required level of safety to be provided therein. The regulation shall replace Article 1 of the BOCA National Building Code as adopted in 815 KAR 7:025.]

Section 1. Definitions Used in Title 815, Chapter 7. (1) "Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "BOCA" means Building Officials and Code Administrators International, Inc.

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

(4) "Building code official" means an inspector certified by the department in accordance with 815 KAR 7:070 and designated by the department or by a local government as an enforcement official for the Kentucky Building Code pursuant to KRS Chapter 198B.

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

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

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

(8) "Industrialized building system" or "building system" as defined in KRS 198B.010(18) and applies to a building of any size or for any use, all or any component parts of which are [is] of closed construction made from precast concrete panels, or precut wood sections fabricated to individual specifications in an off-site manufacturing facility and assembled in accordance with the manufacturer's instructions.

(9) "KAR" means Kentucky Administrative Regulations.

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

(11) "KRS" means Kentucky Revised Statutes.

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

(13) "Major structural change" means structural alterations and structural repairs made within any twelve (12) month period costing in excess of fifty (50) percent of the physical value of the structure, as determined by comparison of the value of the alterations involved and the replacement value of the structure at the time the plans for the alterations are approved, using the BOCA Chart for Construction Cost.

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

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

(16) "Single family dwelling" means a single [one (1)] unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and

which is not connected to any other unit or buildings.

(17) "Trade-name or brand-name house" means any single structure made of precut or prefabricated panels, sections or individual pieces which [that] are sold or prefabricated under a name that identifies both the manufacturer and a particular type of structure that the manufacturer [he] makes, and which [that] are assembled on a permanent foundation by conventional home-building and electrical and plumbing installation techniques.

Section 2. Scope. This regulation shall supersede any and all other conflicting administration and enforcement provisions which may be incorporated by reference within the KBC.

(1) General. The provisions of this regulation apply to:

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

(b) Additions to buildings and structures; and

(c) Appurtenances to buildings and structures; whether hereafter erected or, where expressly stated in this regulation, existing; and whether on land, over water, or on water, permanently moored to land, and substantially a land structure.

(2) Prefabricated components. Trade-name or brand-name houses shall be constructed in accordance with the applicable provisions of the KBC.

(3) Single-family dwellings. The provisions of the KBC relating to single-family dwellings that are not trade-name or brand-name houses or industrialized building systems, shall be mandatory only after a local government, by ordinance, extends the application of the KBC to those units. However, the state plumbing code and the national electrical code shall be applicable to these units, whether or not the local government passes an ordinance. A local government shall not enforce any building code other than the KBC on such units.

(4) Application of references. Unless otherwise specifically provided for within the KBC, all references to article or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of the KBC.

(5) Exemptions. The provisions of this code relating to the construction, repair, alteration, enlargement, restoration and moving of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local government authority as historic buildings, subject to the approval of the board of appeals when the [such] buildings are judged by the [building] code official to be safe and in the interest of public health, safety and welfare regarding any proposed construction, alteration, repair, enlargement, restoration and relocation. The [building] code official may require submission of architectural and engineering plans and specifications bearing the professional seal of the designer prior to this determination.

(6) Code remedial. The KBC shall be construed to secure its expressed intent which is to secure public safety, health and welfare insofar as they are affected by building construction quality, adequate means of egress, light and ventilation, electrical systems, plumbing, energy, boiler safety, handicapped accessibility, life safety from hazards of fire and explosion and other disasters. It is the further expressed intent of this code to avoid duplicative plan review and inspection of new construction and to gather together in one (1) set of regulations all the requirements relating to the construction of buildings in the state to enable builders, owners and [building] code officials to be adequately informed.

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

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

Section 3. Applicability. (1) General. The provisions of the KBC shall apply to all matters affecting or relating to buildings and structures as set forth in [Section 2 of] this regulation.

(2) Exemptions. No person shall construct a building or structure, extend, repair, remove or alter in violation of these provisions, except for ordinary repairs and except further that the raising, lowering or moving of a building or structure as a unit necessitated by a change in legal grade or widening of a street shall be permitted provided the building or structure is not otherwise altered or its use or occupancy changed.

(3) Alternative regulations. Any requirement essential for structural, fire or sanitary safety of a building which is essential for the safety of the occupants thereof, and which is not specifically covered by this code, shall be determined by other regulations of the department or other applicable law.

(4) Violation. Any person who violates any provision of this regulation or any other provision of the Kentucky Building Code shall be subject to the penalties provided in Section 19 of this regulation.

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

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

(2) Maintenance. All buildings and structures and all parts thereof, both existing and new,

shall be maintained in a safe and sanitary condition. All service equipment, means of egress, devices and safeguards which are required by this code in a building or structure, or which were required by a previous code in a building or structure, when erected, altered or repaired, shall be maintained in good working order.

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

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

Section 5. Installation of Service Equipment; Unlawful Use. When the installation, extension, alteration or repair of an elevator, moving stairway, mechanical equipment, refrigeration, air conditioning or ventilating apparatus, plumbing, gas piping, electrical wiring, heating system or other equipment is specifically controlled by the provisions of this code, it shall be unlawful to use this [such] equipment until a certificate of approval has been issued [therefor] by the [building] code official or other agency having jurisdiction.

Section 6. Existing Structures. (1) Continuation of existing use. The legal use and occupancy of any structure existing on the date of adoption of this code or for which it has been heretofore approved may be continued without change, except as is [may be] specifically covered in this code and deemed necessary by the [building] code official for the general safety and welfare of the occupants and the public, or as may be required by the Kentucky Standards of Safety (Fire Prevention Code) or an [the] existing structures code adopted by local ordinance. Application of this code to existing buildings shall not apply unless alterations, additions or changes in use as set forth in subsections (2) through (5) of this section are proposed or occur.

(2) Change in use. It shall be unlawful to make any change in the use of any structure, or portion thereof, with the potential to cause a greater hazard to the public because of increased structural or fire loading or inadequate exits for the number of occupants without approval of the building code official. If the building code official determines that the structure meets the intent of the provisions of the code governing building construction for the proposed new use and occupancy and the proposed change does not result in any greater hazard to public safety or welfare, the building code official [he] shall approve the change. In making this [his] decision, the building code official may require a written opinion from a design professional.

(3) Additions, alterations or repairs. Additions, alterations or repairs may be made to any structure without requiring the existing structure to comply with all of the requirements of this code, if the [provided such] work conforms to that required of a new structure. Additions, alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building. Any building plus new additions shall not exceed the height, number of stories and area specified for new buildings.

(4) Nonstructural repairs. Alterations or repairs to an existing structure which are nonstructural and do not adversely affect any structural member of any part of the structure having a required fire resistance rating may be made with the same materials of which the structure is constructed.

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

Section 7. Department[s] of Building Inspection. (1) Building code official. Each local government singularly or by association with other local governments shall employ a building code official or inspector and other code enforcement personnel as necessary to enforce this code within its jurisdiction. The department shall be responsible for the enforcement of this code as it pertains to the buildings assigned by law to it.

(2) Appointment. All local building code officials shall be appointed by the chief appointing authority for the respective jurisdictions and shall meet the qualifications for the position which may be established by the appointing authority, in addition to the requirements for certification of Kentucky building code inspectors as detailed in 815 KAR 7:070.

(3) Official records. Official records shall be kept of all business and activities of the various local building departments or state building departments specified in provisions of the KBC, and all of these [such] records shall be open to the public for inspection at all appropriate times under the terms and conditions of KRS Chapter 61.

(4) Retention of records. The building code official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections and notices and orders issued. These records shall be retained in accordance with state retention regulations promulgated by the Kentucky Department of Libraries and Archives pursuant to KRS 171.450.

(5) Building size includes firewall. For purposes of determining plan review jurisdiction and necessity for design professionals, the calculation of the total square footage and occupant load for any project shall include areas on both sides of any firewalls.

Section 8. Duties and Powers of the Local Building Code Official. (1) General. The local building code official shall be responsible for the examination and approval of plans and specifications and the inspections necessary to determine compliance for the buildings cited in KRS 198B.060(2).

(2) Jurisdiction of Commonwealth. Buildings owned by the Commonwealth are not subject to local plan review, inspection or approval, regardless of size, occupant load or occupancy classification.

(3) Preemptive authority. The board may withdraw or preempt authority for plan review

and inspection for code compliance under this code from a local building department where it finds, upon petition of the department, that the local inspection agency is not adequately performing any portion of its program and, thereafter, allow the department to preempt that portion of a local program.

Section 9. Duties and Powers of the Department. (1) General. It shall be the responsibility of the department to review plans and specifications, issue permits, make inspections and to determine compliance with the KBC for the following buildings:

(a) All buildings classified as assembly occupancies having a capacity in excess of 100 persons, except churches having a capacity of 400 or less persons and 6,000 or less square feet of total floor area;

(b) All buildings classified as educational occupancies;

(c) All buildings classified as institutional occupancies;

(d) All buildings classified as business and mercantile occupancies having a capacity in excess of 100 persons;

(e) All buildings classified as industrial and factory occupancies having a capacity in excess of 100 persons;

(f) All frozen food locker plants;

(g) All buildings classified as high hazard occupancies;

(h) All other buildings containing in excess of three (3) stories or 20,000 square feet of floor area;

(i) All industrialized building systems regardless of occupancy classification; and

(j) All buildings owned by the Commonwealth regardless of occupancy classification or size.

(2) Additional responsibility. Any local government may petition to the department for additional plan review responsibility in accordance with KRS 198B.060(5) and (6).

(3) Required inspections. The appropriate official shall make all the required inspections, or he may accept reports of inspection by authoritative and recognized services or individuals; and all inspection reports [of such inspections] shall be in writing and certified by a responsible officer of an [such] authoritative service or by the responsible individual.

(4) Credentials. The [Each] building code official and [or his] authorized representatives shall carry proper credentials of their [his] respective office for the purpose of inspecting buildings and premises and the performance of duties [his duty] under this code.

(5) Rule-making authority. The board shall have the power[s] as [may be] necessary in the interest of public health, safety[, health] and general welfare, to adopt and promulgate amendments to the code and other rules and regulations which are necessary to implement the provisions of this code and, by means of the appeals board procedures, to issue interpretations which shall be binding upon the appellee and the building code officials. The building code official shall implement the provisions of this code to secure the intent thereof.

(6) Accepted engineering practice. In the absence of provisions not specifically contained in this code or final decisions of the appeals board, the regulation, specifications and standards listed in Appendix A "Referenced Standards" of the 1990 Edition of BOCA National Building Code filed by reference in 815 KAR 7:025, shall be deemed to represent accepted engineering practice with respect to materials, equipment, system or method of construction therein specified, and shall therefore be acceptable and enforceable where referred to by a specific section of the code.

Section 10. New Materials and Modifications. (1) Alternative materials and equipment. The provisions of this code are not intended to prevent the use of any material or method of construction not specifically prescribed by this code, if an [provided that any such] alternative has been approved. An alternative material or method of construction shall be approved when the building code official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire-resistance, durability and safety.

(2) Supporting data. [The] Building code officials may accept supporting data from the following sources to assist them [him] in their [his] determinations: duly authenticated research reports from BOCA or from other approved authenticated sources for all materials or assemblies proposed for use which are not specifically provided for in the KBC.

(3) Used materials and equipment. Used materials, equipment and devices may be used if [provided] they have been retested and placed in good and proper working condition and approved for use by the building code official.

(4) Modifications. Where [When] there are practical difficulties involved in carrying out structural or mechanical provisions of this code, the building code official having plan review responsibility shall allow variance or modification to a provision upon application of the owner or the owner's [his] representative, only if [he finds that] the spirit and intent of the law is observed and public health, safety and welfare is [are] not jeopardized. The application for modification and the final decision of the building code official shall be in writing. When a modification is granted by a local building code official, a copy of the application and the decision shall be forwarded to the department and the local fire code official.

[(5) The board may withdraw authority for plan review and inspection for code compliance under this code from a local building department where it finds, upon petition of the department, that the local inspection agency is not adequately performing any portion of its program and, thereafter, allow the department to preempt that portion of a local program.]

Section 11. [Preliminary] Inspections. (1) Preliminary inspections. Before issuing a permit, the appropriate [building] code official shall, if deemed necessary, examine or cause to be examined all buildings, structures and sites for which an application has been filed for a permit to construct, enlarge, alter, repair, remove, or change the use thereof. No construction shall begin on buildings covered by this regulation until a local [building] code

official has issued a permit for [such] construction and an official representing the department has issued a letter releasing the plans for construction (if the department has plan review responsibility).

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

(3) Approved inspection agencies. The building code official may accept reports of approved inspection services and agencies which satisfy the requirements of the appropriate governmental entity.

(4) Trade-name dwelling inspections. Inspections for KBC compliance of trade-name or brand-name homes shall be the responsibility of the local building code official.

(5) Off-site construction. In-plant inspections in production and manufacturing facilities for industrialized building systems as well as on-site inspection shall be conducted by the department or its authorized agent pursuant to 815 KAR 7:025. The local building code official shall be responsible to inspect these [such] systems [only] for zoning, water supply and sewage disposal, and other applicable local ordinance[s] purposes.

(6) Final inspection. Upon completion of the building, the owner or agent of the facility shall request a final inspection. [;] The building code official shall set a time for said inspection and notify the owner or agent. If substantial compliance with the approved plans and permit has been achieved, a certificate of occupancy shall be issued, as described in Section 17 of this regulation. If compliance has not been achieved, any violations shall be noted and immediately communicated to the owner, agent or other person holding the permit and the fire code official. It shall be the owner's responsibility to fulfill any compliance deficiencies noted.

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

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

Section 12. Right of Entry. (1) Implied consent. Applicants for building permits shall be deemed to consent to inspection during construction and upon completion of construction for the purpose of determining that the [such] building is constructed in compliance with the Kentucky Building Code[, and] The inspector may enter upon the premises during any reasonable hour.

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

Section 13. Application for Permit Required. (1) When permit required. It shall be unlawful to construct, enlarge or alter a structure; or to change to another use as prescribed [described] by Section 6(2) of this regulation; or to install or alter any equipment for which provision is made or the installation of which is required by KBC, without first filing an application with the appropriate building code official in writing and obtaining the required permit therefor; except that ordinary repairs which do not involve any violation of the KBC shall be exempted from this provision.

(2) Form of application. The application for a permit shall be submitted in writing and in a [such] form [as] the [building] code official [may] prescribes and shall be accompanied by the required fee.

(3) Description of work. The application shall contain a general description of the proposed work, the [its] location of the proposed work, the use and occupancy of all parts of the building or structure and of all portions of the site or lot not covered by the building or structure, and any [such] additional information [as may be] required by the [building] code official.

(4) By whom application is made. Application for all permits shall be made by the owner or lessee of the building or structure, or agent of either, or by the licensed engineer or architect employed in connection with the proposed work. If the application is made by a person other than the owner in fee, it shall be accompanied by a verified written statement by the person making the application that the proposed work is authorized by the owner in fee and that the applicant is authorized to make [such] application. The full names and addresses of the owner, lessee, applicant and of the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application.

(5) Plans and specifications. The application for the permit shall be accompanied by specifications and plans drawn to scale, with sufficient clarity and detail dimensions to show the nature and character of the work to be performed. The building code official shall cooperate with the fire code official by allowing the fire code official to review all plans. Any recommendations made by the fire code official relating to fire safety in construction of a building shall be considered by the building code official and he shall report his decision to the fire official at once. When

quality of materials is essential for conformity to the KBC, specific information shall be given to establish such quality; and the KBC shall not be cited, or the term "legal" or its equivalent be used as a substitute for specific information. The building code official may waive the requirement for filing plans when the work involved is of a minor nature.

(6) Site plan. There shall also be a site plan showing to scale the size and location of all the new construction and all existing structures on the site and the [,] distances from lot lines, the established street grades and the proposed finished grades; and it shall be drawn in accordance with an accurate boundary line survey.

(7) Engineering details. The [building] code official may require adequate details of structural, mechanical and electrical work, including computations, stress diagrams and other essential technical data to be filed. All engineering plans and computations shall bear the signature of the responsible design professional. Plans for buildings more than two (2) stories in height shall indicate how the required structural and fire resistance rating integrity shall be maintained, and where a penetration will be made for electrical, mechanical, plumbing and communication conduits, pipes and systems.

(8) Time limitation of [limits for] application. An application for permit for any proposed work should be deemed to have been abandoned six (6) months after the date of filing, unless the [such] application has been diligently prosecuted or a permit shall have been issued; except that the building code official shall grant one (1) or more extensions of time for additional periods not exceeding ninety (90) days each if there is reasonable cause.

(9) Amendments to application. Subject to the limitations of other provisions of this section, amendments to a plan, application or other records accompanying the same may be filed at any time before completion of the work for which the permit is sought or issued. The [; and such] amendments shall be deemed a part of the original application and shall be filed therewith.

(10) Revocation of permit. The building code official may revoke a permit or approval issued under the KBC in case of any false statements or misrepresentation in the application or on the plans.

Section 14. Permit Required. (1) Action on application. The building code official shall examine or cause to be examined all applications for permits and amendments thereto within a reasonable time after filing. If the application or the plans do not conform to the requirements of all pertinent laws, the building code official [he] shall reject such application in writing, stating the reasons therefor. If the building code official [he] finds that the proposed work conforms to the requirements of this code and all laws and ordinances applicable thereto, he shall issue a permit therefor as soon as practicable.

(2) Suspension of permit. Any permit issued shall become invalid if the authorized work is not commenced within one (1) year after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six (6) months after the time of commencing the work.

(3) Previous approvals. The KBC shall not require changes in the plans, construction or designated use of a building for which a lawful permit has been heretofore issued or otherwise lawfully authorized by approved plans, so long as the substantial construction on the project has commenced within one (1) year from the date the permit was issued.

(4) Signature to permit. The building code official shall attach his signature to every permit, or the building code official [he] may authorize a subordinate to affix the [such] signature thereto.

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

(6) Approval of part. The building code official is authorized to [may] issue a permit for the construction of foundations or any other part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted, if [provided] adequate information and detailed statements have been filed complying with all the pertinent requirements of this code. The holder of the [such] permit for the foundations or other parts of a building or structure shall proceed at the holder's [his] own risk with the building operation and without assurance that a permit for the entire structure shall be granted.

(7) Approved plans. The building code official shall stamp or endorse in writing the corrected plans approved, and that set shall be available at the building site, open to inspection of the building code official or an [his] authorized representative at all reasonable times.

(8) Posting of permit. A true copy of the building permit shall be available on the site of operation open to public inspection during the entire time of prosecution of the work and until the completion of the same.

Section 15. Conditions of Permit. (1) Payment of fees. A permit shall not be issued until the fees have been paid as prescribed by Section 16 of this regulation. The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of the KBC, except as specifically stipulated by modification or legally granted variation as described in the permit.

(2) Compliance with code and other laws. All work shall conform to the appropriate application and plans for which the permit has been issued and any approved amendments thereto, and shall be located strictly in accordance with the approved plot plan and any local ordinances governing the location of the building. The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of this code, except as specifically stipulated by modification or legally granted variation as described in the application.

(3) Change in site plan. A lot shall not be changed, increased or diminished in area from that shown on the official plot site plan, unless a revised plan showing the [such] changes accompanied by the necessary affidavit of owner or applicant shall have been filed and approved; except that the [such] revised plan shall not be required if the change is caused by reason of an

official street opening, street widening or other public improvement.

Section 16. Fees. (1) General. A permit to begin work for new construction, alteration, removal or other building operation[s] shall not be issued until the fees prescribed by law shall have been paid to the department, if applicable, and to the local building department, nor shall an amendment to a permit necessitating an additional fee because of an increase in the estimated cost of the work involved be approved until the additional fee has [shall have] been paid.

(2) Special fees. The payment of the fee for construction, alteration, and for all work done in connection with or concurrently with the work contemplated by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that may be prescribed by law or ordinance for water taps, sewer connections, electrical permits, erection of signs and display structures, marquees or other appurtenant structures, or fees of inspections, certificates of [use and] occupancy or other privileges or requirements, both within and without the jurisdiction of building inspection.

(3) New construction and alterations. The fees for plan review and inspection and other functions performed by the department pursuant to KRS Chapter 198B shall be paid in accordance with 815 KAR 7:013. Each local government shall adopt reasonable fees for building permits and the performance of functions performed by it pursuant to this code. The fees shall be designed to comply with KRS 198B.060(18).

Section 17. Certificate of [Use and] Occupancy. (1) New buildings. A building or structure hereafter erected shall not be used or occupied in whole or in part until the appropriate building code official has issued a certificate of occupancy in accordance with this regulation; except that[:] a building for which a permit was legally granted prior to the effective date of this regulation may be constructed and occupied under the provisions of relevant regulations in force at the time the permit was issued, if [provided that] substantial construction has commenced within one (1) year from the date the permit was issued.

(2) Alterations. A building or structure hereafter enlarged, extended or altered to change from one (1) use group to another as described in Section 6(2) of this regulation, in whole or part, shall not be occupied or used under that new use until a certificate shall have been issued by the building code official, certifying that the work has been completed in accordance with the provisions of the approved permit.

(3) Change in use and occupancy. After a change of use has been made in a building or structure, the reestablishment of a prior use that would not have been legal in a new building of the same type of construction is prohibited unless the building complies with all applicable provisions of this code. A change from one (1) prohibited use, for which a permit has been granted to another prohibited use shall be deemed a violation of this code.

(4) Temporary occupancy. Upon the request of the holder of a permit, the building code official shall [may] issue a temporary certificate of occupancy for a building or structure, or part thereof, before the entire work covered by the permit has [shall have] been completed, provided that [such] portion or portions can [may] be occupied safely prior to full completion of the building or structure without endangering life or public welfare.

(5) Certificate information. When a building or structure is entitled thereto, the building code official shall issue a certificate of [use and] occupancy within ten (10) days after written application. The certificate shall certify compliance with the provisions of this code and the purpose for which the building may be used in its several parts. The certificate of [use and] occupancy may specify the following information: the use group, in accordance with the provisions of Article 3 of the KBC; the maximum live load on all floors as prescribed in Article 11 of the KBC; the occupancy load in the building and all parts thereof as defined in Article 3 and Article 8 of the KBC; and any special stipulations and conditions of the building permit.

Section 18. Posting Structures. (1) Posted use and occupancy. Every building and structure and part thereof designed for business, factory and industrial, high hazard, mercantile, or storage use (use group[s] B, F, H, M, or [and] S) as defined in Article 3 of the KBC shall be posted on all floors by the owner, with a suitably designed placard in a form designated by the department. The placard [, which] shall be securely fastened to the structure in a readily visible place, stating[:] the use group[,] and the occupant load.

(2) Posted occupant load. Every room constituting a place of assembly shall have the occupancy load of the room posted in a conspicuous place, near the main exit from the room. Approved signs shall be installed and maintained in a legible manner by the owner or an [his] authorized agent. The signs shall be durable and shall indicate the number of occupants permitted for each room use. Place of assembly rooms or spaces which have multiple-use capabilities shall be posted for all such uses.

(3) Replacement of posted signs. All posted [posting] signs shall be furnished by the owner and shall be of permanent design. The signs [; they] shall not be removed or defaced and, if lost, removed or defaced, shall be immediately replaced.

Section 19. Violations and Remedies. (1) Unlawful acts. It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, remove, use or occupy any building or structure or equipment regulated by the KBC, or cause same to be done, contrary to or in conflict with or in violation of any of the provisions of this code.

(2) Notice of violation. The building code official shall serve a notice of violation or order on the person responsible for erection, construction, alteration, extension, repair, removal, demolition, use or occupancy of a building or structure in violation of this code or in violation of a detailed statement or a plan approved [approval] thereunder, or in violation of a permit or certificate issued under the provisions of this code. The [; and such] order shall direct the discontinuance of the illegal action or condition and the

abatement of the violation.

(3) Prosecution of violation. If the notice of violation is not complied with promptly, the building code official shall request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate the [such] violation or to require the removal or termination of the unlawful use of the building or of the order or direction made pursuant thereto.

(4) Penalties. Any person who shall violate a provision of the KBC or shall fail to comply with any of the requirements thereof or who shall erect, construct, alter or repair a building or structure in violation of an approved plan or proper direction of the [building] code official, or of a permit or certificate issued under the provisions of the KBC, shall be subject to the [such] penalties as may be provided by KRS 198B.990 and other applicable law.

(5) Injunctive relief. The department or any local agency enforcing the uniform state building code may obtain injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, delivery, use, occupancy or construction of any building on which construction was begun after the effective date of said code, upon an affidavit of the department or the local government agency specifying the manner in which the construction, or if a building existed [existing] prior to the effective date of said code, the reconstruction, alteration, repair or conversion does not conform to the requirements of the KBC.

(6) Hindering an inspection. No person shall hinder an inspector enforcing any of the provisions of this code in the performance of [his] lawful duties under this chapter.

Section 20. Emergency Measures. (1) Vacating structures. When, during construction on a building for which a permit is required, in the opinion of the building code official, there is actual and immediate danger of failure or collapse of a building or structure or any part thereof which would endanger life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the building or structure, the building code official is hereby authorized and empowered to order and require the inmates and occupants to vacate the same forthwith. The building code official shall cause to be posted at each entrance to the [such] building a notice reading as follows: "This structure is unsafe and its use or occupancy has been prohibited by the building code official." It shall be unlawful for any person to enter the [such] building or structure except for the purpose of making the required repairs or of demolishing the same.

(2) Temporary safeguards. When, in the opinion of the building code official, there is actual and immediate danger of collapse or failure of a building or structure (over which the building code official [he] has jurisdiction) which would endanger life, pursuant to KRS Chapter 198B and this regulation, the building code official shall order the necessary work or special inspection to be done to render the [such] building or structure or part thereof temporarily safe.

Section 21. Stop Work Order. (1) Notice to owner. Upon notice from the building code official that work on any building or structure is being prosecuted contrary to the provisions of this code or in an unsafe and dangerous manner, the [such] work shall be immediately stopped. The stop-work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work may be resumed.

(2) Unlawful continuance. Any person who shall continue any work in or about the structure after having been served with a stop-work order, except such work as that person [he] is directed to perform to remove a violation or unsafe condition[s], shall be liable to the restraints provided in Section 19 of this regulation.

Section 22. Local Board of Appeals; General. Local appeals boards may be appointed to hear appeals from the decisions of the local [building] code official in accordance with the provisions of KRS 198B.070.

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

(2) Appeal by fire code official. Decisions rendered by the building code official with respect to enforcement of the Kentucky Building Code on any building may be appealed by the local fire code official of the jurisdiction if the fire code official [he] is aggrieved by that decision.

(3) Application procedure. Appeals to the board shall be in writing and shall be addressed to the Commissioner of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601; Attention: Appeals Board. [Such] Appeals shall include citations of those provisions of the Kentucky Building Code which are at issue, an explanation of why the decision of the state building code official or local building code official relative to those provisions is being contested and a copy of the decision rendered by the local appeals board, if any.

Section 24. Professional Architectural and Engineering Services. (1) General. All design for new construction work, alteration, repair, expansion, addition or modification work involving the practice of professional architecture or engineering, as defined by KRS Chapters 322 and 323 shall be prepared by Kentucky-licensed professional architects or engineers and all plans, computations and specifications required for a building permit application for the [such] work shall bear the required signature and seals thereof by the design professionals, as required by law.

(2) Special inspections. When construction on a building began prior to approval by the building code official or the construction does not conform to the approved plans or the standards required by the code, the building code official may require special inspections and reports thereof if necessary to assure safety.

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

Section 25. Proof of Insurance. (1) Compliance with law. The issuance of a building permit shall be contingent upon presentation of an affidavit, as required by KRS 198B.060(10).

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

Section 26. Alternative Codes; Applicable Federal Codes. Whenever the department has entered into a contractual obligation requiring enforcement of applicable federally approved codes, the department shall approve plans and make inspections; using those federal codes as an alternative to other applicable provisions of the KBC, so long as equivalent safety is maintained. Any facility of an occupancy type subject to review by the federal codes may use this section.

Section 27. Day Care Centers; Fire Safety Requirements. Family child day care homes, group day care homes, day nurseries and child day care centers which comply with the provisions of the Life Safety Code, NFiPA Phamphlet #101, shall be deemed to have satisfied all the fire safety requirements of the Kentucky Building Code.

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

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on October 22, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by October 17, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Contractors, architects, engineers, users of the Kentucky Building Code.

(a) Direct and indirect costs or savings to those affected: No costs or savings because this regulation establishes the administration and enforcement section of the Kentucky Building Code (815 KAR 7:025).

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): No competition; KBC is statewide code.

(b) Reporting and paperwork requirements: None to persons using the KBC.

(2) Effects on the promulgating administrative body: None to agency as this regulation merely provides the administration and enforcement section to 815 KAR 7:025, KBC.

(a) Direct and indirect costs or savings: Cost of printing the KBC (this regulation constitutes Article 1 of the KBC) but this money is recouped by the sale of the Code book.

1. First year: See (a) above.

2. Continuing costs or savings: Cost of printing revised or updated pages.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was rejected. Board of Housing reviews code sections for adoption or amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. The administration and enforcement depends on the category of the building and the amount of alteration and change that is involved.

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 a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the KBC.

4. 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: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this regulation.

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

815 KAR 7:025. Kentucky Building Code.

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, which establishes standards for construction of buildings in the state. This regulation establishes the Kentucky Building Code basic provisions relating to construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation and electrical systems. This regulation includes the substance of 815 KAR 7:020, which is being repealed. This amendment is necessary in order to clarify, define or explain other provisions of the code and to put into enforceable law in accordance with KRS Chapter 13A official interpretations of the department.

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

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

Section 2. Article 2, Definitions. Amend Article 2 by adding the following definitions: [, is hereby adopted in its entirety.]

(1) "Alarm verification" means a feature of automatic fire detection systems to reduce unwanted alarms wherein automatic fire detectors report alarm conditions for a minimum period of time, or confirm alarm conditions within a given period, after being automatically reset to be accepted as a valid alarm initiation signal.

(2) "Detector, heat" means an alarm-initiating device that detects abnormally high temperature or rate-of-temperature rise.

(3) "Exit discharge, level of" means the horizontal plane located by the point at which an exit terminates and an exit discharge begins.

(4) "Fire alarm box, manual" means a manually operated alarm-initiating device that activates a fire protective signaling system.

(5) "Fire command station" means the principal location where the status of the detection, alarm, communications and control systems is displayed and from which the system has the capability for manual control.

(6) "Heated slab" means slab-on-grade construction in which the heating elements or hot air distribution system is in contact with or placed within the slab or the subgrade.

(7) "Infiltration" means the uncontrolled inward air leakage through cracks and interstices in any building element and around windows and doors of a building caused by the pressure effects of wind or the effect of differences in the indoor and outdoor air density.

(8) "Multiple single-family dwelling" means a building or portion thereof containing more than two (2) dwelling units.

(9) "Opaque areas" means all exposed areas of a building envelope which enclose conditioned space, except openings for windows, skylights, doors and building service systems.

(10) "Overall thermal transfer value (OTTV)" means the thermal transfer into a building through the walls or roof due to solar heat gain and outdoor-indoor temperature differences as determined by Equations 3 and 4 (see Article 31).

(11) "Shading coefficient (SC)" means the solar heat gain of fenestration divided by the solar heat gain of one-eighth (1/8) inch clear glass.

$$SC = \frac{\text{solar heat gain of fenestration}}{\text{solar heat gain of 1/8-inch clear glass}}$$

(12) "Smoke detector, multiple station" means single-station smoke detectors which are capable of being interconnected so that actuation of one (1) causes all integral or separate audible alarms to operate.

(13) "Smoke detector, single station" means an assembly incorporating the detector, control equipment and the alarm-sounding device in one (1) unit, which is operated from a power supply either in the unit, or obtained at the point of installation.

(14) "Supervisory device" means an initiating device used to monitor the conditions that are essential for the proper operation of automatic fire suppression systems (i.e., switches used to monitor the position of gate valves, a low air-pressure switch on a dry-pipe sprinkler system, etc.)

(15) "Voice/alarm signaling system" means a system that provides, to the occupants of a building, dedicated manual or automatic facilities, or both, for originating and distributing voice instructions, as well as alert and evacuation signals pertaining to a fire emergency.

(16) "Wireless initiating device" means an

initiating device which communicates with associated control or receiving equipment by means of wireless transmission medium.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Amend subsection 504.2, Exterior walls, by adding one (1) sentence at the end of the paragraph to read as follows: "The entire perimeter of one (1) story unlimited area buildings shall have a minimum fire separation distance of thirty (30) feet (9144 mm)."

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

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

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

(5) [(4)] Delete subsection 513.1, Approval, in its entirety.

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

(1) Amend subsection 602.2, Maintenance and inspection, to read as follows: "602.2 Maintenance and inspection: All fire protection systems shall be maintained in an operative condition at all times and shall be periodically inspected and tested in accordance with the fire prevention code listed in Appendix A."

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

(3) [(2)] Create a new subsection 623.1.1 to read as follows: "623.1.1 New facilities: The Cabinet for Human Resources, Department for Health Services, shall regulate the design and construction of new facilities as related to water distribution and treatment systems for public swimming pools and the proper operation and maintenance of all pool facilities. See 902 KAR 10:120, Kentucky public swimming and bathing facilities regulation."

Section 7. Article 7, Interior Environmental Requirements. Amend Article 7 by making the following additions, deletions or changes:

(1) Create a new subsection 701.2 to read as follows: "701.2 Alternative Mechanical System: HVAC systems in occupancies reviewed under NFiPA

101 pursuant to Section 126.1 of this code shall be installed in accordance with NFiPA 90A or NFiPA 90B in lieu of the mechanical code listed in Appendix A."

(2) [(1)] Delete subsections 702.1 through 702.3 in their entirety.

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

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

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

(1) Delete subsection 804.2.1 in its entirety.

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

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

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

TABLE 809.3
BUILDINGS WITH ONE EXIT

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

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

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

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

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

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

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

(6) Amend Table 810.4, Corridor Fire-resistance Rating, to read as follows:

TABLE 810.4
CORRIDOR FIRE-RESISTANCE RATING

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

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

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

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

Note d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1, [or] 1004.2.2 or 1004.2.3.

Note e. NP = Not Permitted.

Note f. In R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler

system listed in Appendix A, the required fire resistance [resistive] rating shall be one-half (1/2) hour."

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

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

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

(b) Create an exception to subsection 813.4.2 to read as follows: "Exception: Panic hardware for Use Group A3 shall not be required for principal entrance/exit doors if:

1. They are free-swinging; and

2. The calculated occupant load does not exceed 150; and

3. The latch/lock device is a thumb latch/lock or a key operated lock device in which the key cannot be removed from the side from which egress is to be made when it is locked."

(9) Amend subsection 816.3, Maximum slope, to read as follows: "816.3, Maximum slope: The maximum slope of means of egress ramps shall be one (1) unit vertical in eight (8) units horizontal (1:8); except ramps required in accordance with Article 33 for persons with physical handicaps, in which case the maximum slope shall be: one (1) unit vertical in eight (8) units horizontal (1:8) if the rise is limited to three (3) inches (76 mm); one (1) unit vertical in ten (10) units horizontal (1:10) if the rise is limited to six (6) inches (152 mm); or one (1) unit vertical in twelve (12) units horizontal (1:12) otherwise."

(10) Amend subsection 817.12, Exterior Stairways, by deleting the first sentence to read as follows: "817.12 Exterior stairways: Exterior stairways shall not be accepted as an exit in the following cases:

1. Buildings of Use Group I-2 which exceed four (4) stories or fifty (50) feet in height.

2. Buildings of Use Group I-3.

3. Floors that exceed five (5) stories or sixty-five (65) feet in height above the level of exit discharge."

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

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

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

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

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

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

(6) Create a new subsection 910.3.1, Through-Penetration System, to read as follows: "910.3.1 Through-Penetration System: Combustible cable trays, conduits, tubes or pipes shall be allowed to penetrate a rated assembly if they are protected with an approved through penetration protection system that has been tested in accordance with ASTM E-814 listed in Appendix A. Exception: In buildings of Use Groups R-1 and R-2 [Use Groups] when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) level below the highest level of exit discharge, the through penetrations shall not be required to be protected with an ASTM E-814 system, if equipped with an NFiPA sprinkler system listed in Appendix A [D]".

(7) Amend subsection 913.4, Penetration protection, by creating an additional exception to read as follows: "4. In all buildings of Use Group R-2, vertical noncombustible ducts shall not be required to have a one (1) hour enclosure if the following conditions exist:

(a) The cross-sectional area does not exceed thirty-five (35) square inches (22581 mm^2; and

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

(c) The duct does not serve more than one (1) dwelling unit and shall not join other ducts except above the top level for the purpose of utilizing a single roof penetration; and

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

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

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

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

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

[(d) These ducts shall be restricted for use

as a bathroom or kitchen exhaust, and combustion air supply and relief."]

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

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

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

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

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

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

(a) [Two (2) Story Buildings with Basements:] In buildings of Use Group R-2 if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (i.e., a two (2) story building with a basement).

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

(c) In Use Group R-1 occupancies complying with Section 1002.8."

(4) Amend subsection 1005.6.3, Domestic connection, to read as follows: "1005.6.3 Domestic connection: Two (2) check (one (1) way) valves, one (1) of which may be an alarm check valve, shall be provided at the point where the suppression system piping is connected to the domestic water piping. Shutoff valves shall not be permitted in the suppression system piping. Water supply shall be controlled by the riser control valve to the domestic water piping.

Exception: Shutoff valves in the sprinkler system piping are permitted if the valves are supervised in accordance with Section 1020.0."

(5) [(4)] Amend subsection 1015.1, Yard [Fire] Hydrants, to read as follows:

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

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

(6) Amend subsection 1016.4.1, Use Group A-4 or E, by creating an additional exception to read as follows: "Exception 2. Church buildings which do not exceed 10,000 square feet and in which single station smoke detectors are installed as follows:

a. Smoke detectors may be single station and wired in series so as to sound alarm in sanctuary.

b. Smoke detectors shall be installed in fellowship hall and more hazardous areas such as furnace rooms, mechanical rooms and storage rooms, but shall not be as required in Sunday school classrooms.

c. Detector spacing shall be thirty (30) feet on center in corridors and 900 square feet per detector in open spaces, or in accordance with the manufacturer's specifications."

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

(8) Amend subsection 1020.2, Fire protection signaling systems, to read as follows: "1020.2 Fire protection signaling systems: All required fire protective signaling systems in the following occupancies shall transmit alarm and trouble signals to an approved central-station system, proprietary system or remote-station system.

1. Day care centers with more than 100 clients.

2. Health care facilities licensed by the Cabinet for Human Resources."

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

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

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

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

Earthquake Risk Zone #1

Adair	Elliott	Laurel	Oldham
Allen	Estill	Lawrence	Owen

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

Earthquake Risk Zone #2
Bell
Caldwell
Calloway
Crittenden
Harlan
Henderson
Hopkins
Letcher
Lyon
Trigg
Union
Webster

Earthquake Risk Zone #3
Ballard
Carlisle
Fulton
Graves
Hickman
Livingston
Marshall
McCracken

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

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

Section 13. Article 13, Materials and Tests. Amend Article 13 by making the following additions, deletions or changes:
(1) Delete subsection 1301.3 in its entirety.
(2) Delete subsections 1308.1 through 1308.8 in their entirety.

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

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

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

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

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

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

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

Section 21. Article 21, Exterior Walls. Amend Article 21 by making the following additions, deletions or changes: Create a new subsection to read a follows: "2100.2 Approval of plans: Plans showing compliance with Section 2101.6.1 through 2101.6.11.3 shall be submitted to the Kentucky Division of Water pursuant to KRS 151.250 and 260. Approval of plans by or through that agency together with their final approval of construction shall constitute compliance with these sections."

Section 22. Article 22, Vertical and Sloped Glass and Glazing. Amend Article 22 by making the following additions, deletions or changes:
(1) Create a new subsection 2201.1.1 to read as follows: "2201.1.1 Labeling requirements: Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in [such] a location within the Commonwealth of Kentucky shall be permanently labeled by [such means as] etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of American National Standards Institute, Inc. (ANSI) Standard Z-97.1 and Z-97.1a listed in Appendix A and [such] further requirements as may be adopted by the Department of Housing, Buildings and Construction. The label shall be legible and visible after installation. Safety glazing labeling shall not be used on materials other than safety glazing materials."
(2) Amend Paragraph 7 of subsection 2203.2, Specific Hazardous Locations, to read as follows: "Glazing in fixed panels having a glazed area in excess of nine (9) square feet (0.84 m^2) with the lowest edge less than eighteen (18) inches (457 mm) above the finish floor level or walking surface within thirty-six (36) inches (914 mm) of the glazing, and the finish floor or walking surface is [are] extended on both sides of said glazing. In lieu of safety glazing, glazed panels may be protected with a horizontal member not less than one and one-half (1 1/2) inches (38 mm) in width when located between twenty-four (24) inches (610 mm) and thirty-six (36) inches (914 mm) above the walking surface."

Section 23. Article 23, Roofs and Roof Coverings, is hereby adopted in its entirety except subsection 2308.2 is amended to read as

follows: "2308.2 Structural and construction loads: The roof covering system and the material and equipment loads that will [shall] be encountered during installation of the roof covering system shall not exceed the capacity of the structural roof components."

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

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

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

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

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

(a) Create a new subsection 2500.4.1 to read as follows: "2500.4.1 Mechanical ventilation: Mechanical ventilating systems may be designed in accordance with the provisions of ASHRAE Standard 62-1989 listed in Appendix A as an equivalent alternative to the BOCA National Mechanical Code/1990."

(b) Create a new subsection 2500.4.2 to read as follows: "2500.4.2 Design of mechanical systems: The building code official may use the actual occupant load in lieu of Table 806.1.2 in the design of mechanical ventilating systems. This applies to both the BOCA National Mechanical Code/1990 and ASHRAE 62-1989 listed in Appendix A."

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

(5) Create a new subsection, 2511.2, Commercial Exhaust System not Required, to read as follows: "2511.2 Commercial Exhaust System not Required: In churches and in other occupancies where the range is merely a convenience for occasional use and where there is minimal or nonexistent grease laden vapors, commercial exhaust systems shall not be required."

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

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

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

(3) Amend subsection 2607.4 to read as follows: "2607.4 Location of vents: Vents shall be located at the top of the hoistway, and shall open either directly to the outer air or through noncombustible ducts to the outer air. Holes in the machine room floors for the passage of ropes, cables or other moving elevator equipment shall be limited so as not to provide greater than two (2) inches (51 mm) of clearance on all sides."

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

(5) [(4)] Amend subsection 2607.5 to read as follows: "2607.5 Area of vents: Except as provided for herein, the area of the vents shall not be less than three and one-half (3 1/2) percent of the area of the hoistway nor less than three (3) square feet (0.28 m^2) for each elevator car, and not less than three and one-half (3 1/2) percent nor less than one-half (1/2) square foot (0.047 m^2) for each dumbwaiter car in the hoistway, whichever is greater. Of the total required vent area, not less than one-third (1/3) shall be of the permanently open type unless all vents activate upon detection of smoke from any of the elevator lobby smoke detectors. Where mechanical ventilation conforming to the mechanical code listed in Appendix A provides equivalent venting, the required vent area shall be reduced if compliance with subsection 2607.4.1 is met."

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

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

1. The platform shall be fully enclosed on the top and any side which is not used as an exit or entrance. Enclosures shall conform to the requirements of ASME A17.1 listed in Appendix A.

2. The runway shall be fully enclosed from the floor to the ceiling on all floors conforming with the requirements of Section 2608.0.

3. All runway entrances shall be protected by a door of unperforated construction conforming to the requirements of Section 2611.0.

4. All runway entrance doors shall be equipped with approved interlocks conforming to the requirements of ASME A17.1 listed in Appendix A."

(7) Create a new section 2613.0 entitled "Machine Rooms and Related Construction for Passenger and Freight Elevators and Dumbwaiters" to read as follows: "2613.1 General: The construction of machine rooms and related construction for passenger and freight elevators and dumbwaiters shall be protected from the weather, and shall be enclosed with fire resistive enclosures. Enclosures and access doors thereto shall have a fire endurance at least equal to that required to the hoistway enclosure in Table 401."

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

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

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

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

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

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

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

Section 30. Article 30, Precautions During Building Operations. Amend subsection 3005.2 by deleting the words, "Section 2805.4" and insert in lieu thereof the words, "Article 28, 815 KAR 20:090 and Article 9, respectively."

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

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

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

(2) Amend subsection 3202.1.5 to read as follows: "3202.1.5 Handicapped requirements: All portions of the buildings proposed for change in use shall conform to the provisions of Article 33 as required by Section 3302.1. Federal regulations issued by the Department of Justice may be more stringent than this Code."

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

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

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

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

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

Aircraft Hangars	#409
Pyroxylin Plastics	#40C
Flammable Liquids	#30
Laboratories	#45
Fireworks	#1124
L.P. Gas Storage	#58
High Piled Storage in Excess of 12 ft. in height	#231
Rubber Tire Storage	#231D
Baled Cotton Storage	#231E
Rolled Paper Storage	#231F
Rangehoods	#96
Computer Rooms	#75
Archives and Record Centers	#232AM
L.P. Gas Storage and Handling	#59A
Explosion Prevention Systems	#69
Code for the Manufacture and Storage of Aerosol Products	#30B
Installation of Closed-head Foam Water Sprinkler Systems	#16A
Fur Storage	#81
Cooling Towers	#214
Marinas and Boatyards	#303"

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

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

(6) Amend Appendix A by adding reference to

"NFiPA Pamphlet Number 13D Sprinkler Systems for 1 & 2 Family Dwellings and Mobile Homes, 1989 Edition."

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation shall be held on October 22, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by October 17, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: Contractors, architects, engineers, users of the Kentucky Building Code.
(a) Direct and indirect costs or savings to those affected: No costs or savings because regulation only establishes clarification of standards as interpreted by the department.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): No competition; KBC is statewide code.
(b) Reporting and paperwork requirements: None to persons using KBC.
(2) Effects on the promulgating administrative body: None to agency because the regulation merely provides accepted standards in construction.
(a) Direct and indirect costs or savings: Cost of printing KBC but this is recouped by the sale of the Code books.
1. First year: See above.
2. Continuing costs or savings: Printing of revised or updated pages.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.
(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenue.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method of construction was rejected. Board of Housing reviews code sections for adoption or amendment within limits defined.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Different classifications of buildings and different sizes and different construction types call for different standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)
2. State what unit, part or division of local government this administrative regulation will affect. This regulation will affect a part of local government.
3. State the aspect or service of local government to which this administrative regulation relates. This regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the KBC.
4. 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: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this regulation.

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

815 KAR 7:080 Licensing of fire protection sprinkler contractors.

RELATES TO: KRS Chapter 198B
STATUTORY AUTHORITY: KRS 198B.555
NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required to adopt regulations for the administration of a Fire Protection Sprinkler Contractor's Law. This regulation establishes the qualifications, responsibilities, procedures and fees for licensing those [such] contractors. This amendment is to specify certain equivalent examinations for chemical systems. [This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A and to more fully define the term "inspection".]

Section 1. Definitions. (1) "Department" as defined by KRS 198B.550(1).
(2) "Certificate of competency" means [is] the certificate of registration issued by the department to an individual who has satisfied the requirements of the department as set forth

in KRS 198B.550 through 198B.605 which authorizes a fire protection sprinkler contractor to obtain a license to engage in business pursuant to KRS 198B.550(3).

(3) "Certificate holder" as defined by KRS 198B.550(5).

(4) "Commissioner" as defined by KRS 198B.550(2).

(5) "Fire protection sprinkler contractor" as defined by KRS 198B.550(3).

(6) "Fire protection sprinkler system" as defined by KRS 198B.550(6).

(7) "Inspection" means a physical and visual examination of a sprinkler system or portion thereof to verify that it conforms with the Kentucky Building Code and the standards adopted thereunder. Examinations of existing systems, including the actual operation of valves, devices or appliances and returning them to their normal service condition for purposes of determining whether a system is operating properly are not covered by this definition, although any certificate holder shall be [is] deemed qualified to make these examinations.

(8) "Installation" means the initial placement of a system or its extension or alteration after initial placement.

Section 2. Responsibilities of the Commissioner. The commissioner shall review applications, accept fees and issue certificates and licenses to qualified persons and firms pursuant to this regulation. He shall conduct investigations upon complaints which allege that a certificate holder or licensed fire protection sprinkler contractor has acted in violation of KRS Chapter 198B or this regulation.

Section 3. Applicability. (1) This regulation applies to all firms and persons who engage in he business of design and preparation of technical drawings, installation, repair, alteration, extension, maintenance or inspection of any fire protection sprinkler system.

(2) Exceptions. This regulation shall not apply to:

(a) Professional engineers in the preparation of plans or construction inspections pursuant to KRS Chapter 322;

(b) Building officials, fire marshals or fire inspectors and insurance inspectors;

(c) Persons installing limited area sprinkler systems served by a domestic water supply consisting of ten (10) sprinkler heads or less in one (1) structure;

(d) Persons working under the direct supervision of a certificate holder.

(e) Persons performing routine examination of existing suppression systems for purposes of determining if the system is operational.

Section 4. Application for Certificate of Competency. (1) All persons seeking to become certificate holders shall comply with the examination requirements set forth in KRS 198B.570(2) for the [particular] type of system for which the applicant wishes to be certified competent shall also be issued as follows: [.]

(a) For range hood suppression system competency, a manufacturer's current certification shall be acceptable as an alternative to the foregoing test.

(b) For pre-engineered chemical system competency, the manufacturer's current certification for the particular system(s) shall be acceptable as an alternative to the foregoing test.

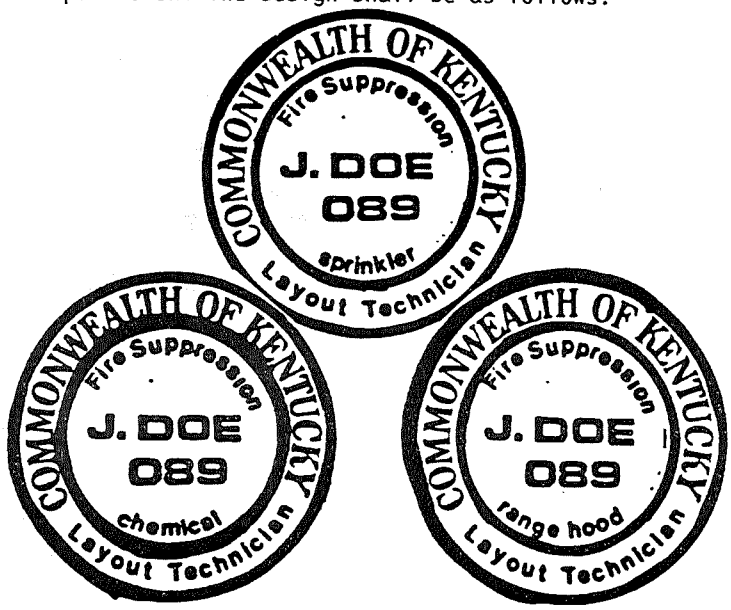
(c) The National Institute for Certification in Engineering Technologies (NICET) examination entitled, "Fire Protection Special Hazards System Layout Level III" shall be acceptable for certification to install all types of chemical systems.

(2) Each application for a certificate of competency shall be made on the department's form entitled "Application for Certificate of Competency." The application shall be accompanied by all required documents and a nonrefundable certificate fee of $100, which shall be prorated on a quarterly basis upon the first renewal.

Section 5. Application for Licensed Fire Protection Sprinkler Contractors. (1) An [Any] applicant for licensure shall have a certificate holder in his employ and shall show proof of financial responsibility as required by KRS 198B.595.

(2) The applicant shall submit a license fee in the amount of $200. The initial license fee shall be prorated on a quarterly basis upon the first renewal.

Section 6. Certificate Holder Seal. Each certificate holder shall obtain and use a seal for all work prepared by him or under his direct supervision. The design shall be as follows:



Section 7. Certification/Licensure. (1) Upon completion of the requirements of KRS 198B.595, the certificate of competency shall be issued by the commissioner in the name of the certificate holder applicant.

(2) All fire protection sprinkler contractor licenses shall be issued in the name of the firm as set forth on the application and state the name of certificate holder on the face of the license.

(3) Each license and certificate shall expire on June 30 of each year and shall be renewed by refiling the necessary application together with a fee of $100 for each certificate and $200 for each license, prior to June 30.

Section 8. Duties and Responsibilities of Licensed Contractor and Certificate Holder. (1)

A [No] person shall not represent himself [oneself] as a fire protection sprinkler contractor without first being licensed by the department in accordance with this regulation.

(2) The design of systems shall be prepared and submitted by either a licensed professional engineer or licensed fire protection sprinkler contractor as required by KRS 198B.565.

(3) A [No] person other than a certificate holder shall not engage in any activity listed in Section 3(1) of this regulation unless he is supervised by or has in his employ a lawfully authorized certificate holder.

Section 9. Procedures for Administrative Disciplinary Hearings. Disciplinary action authorized by KRS 198B.620 shall conform to the following procedures:

(1) Upon written complaint that a licensee or certificate holder has engaged in any prohibited behavior or failed to satisfy his responsibilities as set forth in this regulation, the commissioner shall cause an investigation to be made of the matter.

(2) If the commissioner determines that there is probable cause to believe the charges alleged, the commissioner or his designated representative, acting for the department, shall conduct a hearing as provided herein.

(3) In conducting the hearing, the commissioner or his designee shall have the authority to administer oaths and affirmatives, issue subpoenas authorized by law, rule upon offers of proof and receive relevant evidence, take or cause depositions to be taken, regulate the course of any hearings they may schedule and hold conferences for the settlement or simplification of the issues by consent of the parties.

(4) Any order to suspend or revoke a license or certificate and any order firing a licensee or certificate holder shall be signed by the commissioner or approved by him. The commissioner shall issue an order within thirty (30) days of the completion of any hearing subject to this regulation.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: September 12, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 17, 1991, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Affects those persons and companies who install chemical systems that are not designed for rangehoods and who have not passed NICET Level III or IV examinations.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this amendment except the fee for licensure and certification.

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: To be licensed, the company must verify their competency by manufacturer's documentation.

(2) Effects on the promulgating administrative body: The only effect is to clarify the type of examination needed to be shown that is different from NICET Level III or IV.

(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: There is no local or state revenue impact. State fee for licensure covers cost of administration.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The department rejected being absolutely tied to NICET because flexibility serves public purpose just as well and statute provides discretion.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This is a clarification to avoid conflicting policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? The regulation as a whole is tiered because it has different competency testing depending on the activity.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS Chapter 13A, 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation will allow the department to permit the use of new parts and materials without amending specific regulations for each new item. This regulation will eliminate the repetitious amending of the Plumbing Code now required to

include new materials item by item. This amendment adds new products approved by the Plumbing Code Committee on July 17, 1991 [March 13, 1991].

Section 1. Definitions as used in this regulation. (1) "APML" shall mean the "Approved Parts or Materials List."
(2) "ABS" means acrylonitrile-butadiene-styrene pipe.
(3) "ASTM" means American Society for Testing Materials.
(4) "Parts or materials" shall mean all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.
(5) "Committee" shall mean the State Plumbing Code Committee.
(6) "Code" shall mean the State Plumbing Code.
(7) "Department" shall mean the Department of Housing, Buildings and Construction.
(8) "Person" shall mean any individual, public or private corporation, political subdivision, government agency, municipality, copartnership, association, firm, trust, estate, or other entity.
(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). The use of any part or material in any drainage or plumbing system, other than those currently authorized by the code, is prohibited unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person desiring to have the APML amended shall petition, in writing, for an opportunity to be heard by the committee no later than fourteen (14) days prior to the next scheduled meeting of the committee. The request shall include a description of the part or material for which approval is sought, available technical data, and a listing of other authorities which have approved the use of the part or material, and any other pertinent information requested by the committee.
(2) The committee will consider all parts or materials for which approval is sought and will forward thirty (30) days thereafter its recommended disposition to the department. A hearing shall be held before the committee if requested, within thirty (30) days following the determination of the committee, by a person having an interest in the subject matter. Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this regulation.

Section 4. Custody of the APML. It shall be the responsibility of the Director, Division of Plumbing, to maintain an up-to-date APML and to make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.
(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.
(2)(a) Flushmate water closet tank.
(b) Microphor company. Two (2) quart flush toilets.
(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.
(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.
(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.
(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.
(3) Tubular traps with gasket in trap seal.
(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and be provided with a sump cover.
(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.
(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.
(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.
(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval is limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.
(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.
(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.
(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.
(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.
(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.
(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.
(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.
(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by

J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

15. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

16. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of

ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

(33) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: August 7, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 17, 1991, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky Plumbing Code.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings because the regulation only establishes acceptability of previously unapproved products. Provides ability of manufacturer to market his product in state.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): Enhances competition for products in state.

(b) Reporting and paperwork requirements: Paperwork requirements and recordkeeping needs remain the same; no costs or savings involved.

(2) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedures for acceptability of new products in the State Plumbing Code.

(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: Unchanged by this amendment.

(3) Assessment of anticipated effect on state and local revenues: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This is the only known law or policy dealing with this product.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:050. Installation permits.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.010, 318.134
NECESSITY AND FUNCTION: The department is

directed by KRS 318.134 to adopt a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. This regulation is to assure uniformity of fees and charges for plumbing installation permits throughout the state. This amendment is necessary to clarify the fee requirements as they relate to new plumbing installation permits. [This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.]

Section 1. Issuance of Permits. (1) Permits to construct, install or alter plumbing, sewerage or drainage shall be issued only to licensed master plumbers except as provided by subsection (3) of this section.

(2) Journeyman plumbers shall not construct, install or alter plumbing, sewerage or drainage unless the work is performed under the supervision of a licensed master plumber.

(3) Permits to construct, install or alter plumbing, sewerage or drainage may be issued to homeowners who desire to install plumbing in homes actually occupied by them or in a home to be constructed by them for their own personal residential use, if all the following requirements are met:

(a) Application is made for the permit prior to the beginning of the work; and

(b) The homeowner files with his application an affidavit stating that he will abide by the terms of this section; and

(c) All work shall be performed in compliance with the state plumbing code; and

(d) All the work shall be personally performed by the owner; and

(e) Only one (1) homeowner permit for construction of a new home shall be issued to an individual in a five (5) year period. This requirement may be waived by the department if the applicant is actually installing the plumbing for his own use.

(4) No permit shall be required for the repairing of leaks, cocks, valves, or for cleaning out waste or sewer pipes; however, a permit shall be required for the addition of a backflow prevention device to an existing potable water supply.

Section 2. When a Permit is Required. A plumbing installation permit shall be required for the following:

(1) For all new plumbing installations.

(2) For all existing plumbing installations if a fixture, soil or waste opening or conductor is to be moved or relocated.

(3) For each individual unit of a multistory building if there is more than one (1) unit.

(4) For each individual building. (Buildings shall be deemed separate if the connection between them is not a necessary part of the structure of either building, or if they are not under a continuous roof.)

(5) For a new house sewer and for a house sewer that is to be replaced.

(6) For a new water service and for a water service that is to be replaced, or for the addition of a backflow prevention device to an existing water service.

(7) For a new water heater installation and for a water heater installation that is to be replaced.

(8) For taking over a plumbing installation originally permitted to another master plumber or for assuming responsibility to correct and test an installation made by someone else. [For any other installation which constitutes "plumbing" within the meaning of KRS Chapter 318 and the state plumbing code.]

Section 3. Plumbing Installation Permit Fees. (1) The base fee for each plumbing installation permit for residential, one (1) and two (2) family units, shall be fifteen (15) dollars plus:

(a) Four (4) dollars for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances.

(b) Four (4) dollars for each domestic water heater.

(c) Four (4) dollars for each separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(2) The base fee for each plumbing installation permit for other than residential, one (1) and two (2) family units, shall be fifteen (15) dollars plus;

(a) Five (5) dollars for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances;

(b) Five (5) dollars for each domestic water heater.

(c) Five (5) dollars for each conductor opening.

(d) Five (5) dollars for each separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(3) If only one (1) [a] new domestic water heater is installed or replaced within a single building, the only fee for the plumbing installation permit shall be ten (10) dollars. Alternatively, if more than one (1) water heater is replaced within a building, a permit shall be issued under Sections 1 or 2 of this regulation.

(4) If the application for permit does not include any new installation but is to make corrections to or provide testing for an installation made by someone else, the permit fee shall be the base fee of fifteen (15) dollars only. [If only a new water service is constructed or replaced, the fee for the plumbing installation permit shall be fifteen (15) dollars.]

[(5) If only a new house sewer is constructed or replaced, the fee for a plumbing installation permit shall be fifteen (15) dollars.]

(5) [(6)] All persons securing plumbing permits shall be entitled to three (3) plumbing inspections at no additional cost. All plumbing inspections in excess of three (3), shall be charged at the rate of three (3) dollars per inspection.

(6) [(7)] All plumbing installation permits issued under this regulation shall expire one (1) year after date of issuance. If construction is begun within one (1) year after date of issuance, the permit shall not expire until completion of the planned plumbing installation.

[(8) Plumbing fixtures may be replaced without procuring a plumbing installation permit if the county plumbing inspector is notified of the installation.]

Section 4. Plumbing Inspection Fees for Public Buildings. The schedule of fees for inspection

of the construction, installation or alteration of plumbing in public buildings shall be the same as specified in Section 3 of this regulation.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: September 10, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 17, 1991, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: All licensed master and journeyman plumbers.
(a) Direct and indirect costs or savings to those affected: No costs or savings involved with the implementation of this amendment.
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 created by this amendment.
(2) Effects on the promulgating administrative body: None beyond requirements of updating State Plumbing Code with approved amendments to regulations.
(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: State or local revenue will not be affected by amendment.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment approved by Plumbing Code Committee on July 17, 1991.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Tiering has been applied by charging different fees based upon the complexity and time involved.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:066. Operation and services; day health care programs.

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 Kentucky Cabinet for Human Resources [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 day health care programs and the services to be provided by day health care programs.

[Section 1. Scope of Operations and Services. Day health care programs provide, during specified daytime hours, continuous supervision of the patient to assure that health care needs are being met, supervision of self-administration of medications, personal care services, self-care training, and social and recreational activities. This program serves persons of all ages who may be frail, moderately handicapped, slightly confused or have incapacitating chronic conditions, who need organized health care during the day.]

Section 1. [2.] Definitions. (1) "Administrator" means a person who:
(a) Has a minimum of two (2) years college, or equivalent training with at least two (2) years of clinical experience, a degree, or a license in a health related profession; or
(b) Is licensed as a nursing home administrator pursuant to KRS 216A.080.
(2) "Physical therapist" means a person who is currently licensed by the Kentucky State Board of Physical Therapy.
(3) "Speech pathologist" means a person who:
(a) Meets the educational and experience requirements for a certificate of clinical competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or
(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.
(4) "Personal care services" 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.
(5) "Program" means a day health care program.

Section 2. Scope of Operations and Services. Day health care programs provide, during

specified daytime hours, continuous supervision of the patient to assure that health care needs are being met, supervision of self-administration of medications, personal care services, self-care training, and social and recreational activities. This program serves persons of all ages who may be frail, moderately handicapped, slightly confused or have incapacitating chronic conditions, who need organized health care during the day.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the operation of the program and for compliance with federal, state and local laws and regulations pertaining to the operation of the program.

(b) The licensee shall establish policies, consistent with state laws and regulations, for the administration and operation of the service, including:

1. A description of services included in the program.

2. A procedure for providing first aid and making arrangements for medical care with a physician or hospital in case of accidents or medical emergencies.

3. A procedure for transporting patients to a physician or hospital in case of an accident or a medical emergency.

4. Procedures for admission, evaluation of patient's needs, and discharge.

(2) Administrator. All programs 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) All patients shall be evaluated upon admission to determine their program needs. A care plan shall be developed for each patient.

(4) Personnel.

(a) The program shall employ or have access to a sufficient number of qualified personnel as may be required to provide the services required by this regulation, and indicated by the need of the program's patients.

(b) Written job descriptions and standards of qualifications shall be developed for each category of personnel. Job descriptions shall include necessary qualifications, lines of authority and specific duty assignments. Job descriptions shall be reviewed annually and revised as necessary.

(c) Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records and evaluation of performance, along with employee's name, address, and social security number.

(d) Supportive personnel, assistants and volunteers shall be supervised and shall function within the policies and procedures of the program.

(e) All employees shall have a test for tuberculosis either prior to or within the first week of employment and annually thereafter. Any employee contracting an infectious disease shall not appear at work until the infectious disease can no longer be transmitted.

(f) The program shall conduct an orientation for all new employees.

(g) A planned in-service training program shall be provided to all employees covering all policies and procedures pertinent to their roles within the program.

(h) The administrator shall attend educational programs appropriate to the responsibilities of the position and arrange for other professional personnel to attend appropriate educational programs on supervision and subjects related to personal care, activities, nutrition, and other pertinent subjects.

(i) Staffing. The administrator shall designate the person who will be primarily responsible for the coordination and provision of dietary and activity service(s).

(5) Patient's records.

(a) The facility shall maintain an individual record for each patient and shall develop a system of identification and filing to insure prompt location of each patient's record. Records shall be treated with confidentiality, shall be in ink or typed and shall be legible. The record shall include: the patient's name, address, and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, telephone number, address of next of kin or other responsible person; and date of admission and discharge.

(b) A progress record shall be maintained stating goals for each patient and shall indicate any changes in the patient's condition, behavior, responses, attitude, appetite, and other changes as noted by staff, and shall include a discharge summary. Each entry in the record shall be signed and dated.

(c) If the patient has been referred on orders of a physician, the record shall contain a dated and signed medical summary and care plan including orders for special diet, contraindications for specific types of activities, and other special procedures required for the safety and well-being of the patient.

(d) If consultants are involved in the program, they shall make a written report of their findings and recommendations at the time of their visits to be included in the patient's record.

(e) If a medication must be administered to a patient during the period of time he is in the program, a medication sheet shall be maintained which contains the date, time given, name of medication, dosage, name of prescribing physician and by whom administered.

(f) A full written report of any incident or accident involving a patient or employee shall be made and signed by the administrator or his designee and shall include the names of any witnesses.

(g) 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.

(6) Registry. The program shall maintain a permanent chronological patient registry book showing date of admission, name of patient, and date of discharge.

(7) Equipment. The program shall have equipment of sufficient quality and quantity to meet patients' needs.

Section 4. Services. (1) Health services.

(a) Health care services shall include:

1. Supervision and monitoring of the patients to assure that health care needs are being met including supervision of self-administration of

medications.

2. Providing first aid and making arrangements for medical care with a physician or hospital in case of accidents or medical emergencies.

3. Arranging for the transportation of patients in case of accidents or medical emergencies.

4. Storage of medicines. All medicines kept by the program shall be 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. Those medicines that require refrigeration must be kept in the refrigerator. All medicines kept by the program shall be kept under lock.

(b) Medical therapeutic services such as physical therapy or speech therapy shall be administered only upon written order of the physician and shall be provided by a physical therapist or a speech pathologist or under the supervision of a physical therapist or a speech pathologist.

(2) Self-care training. The program shall provide a training program for self-care to assist the patients to gain independent living status.

(3) Personal care. Personal care services shall be provided.

(4) Activity program.

(a) The day health care program shall include a balanced activity program for all ages served. Patients shall choose and plan, when feasible, a variety of activities that they desire, and the involvement of the staff shall be advisory. There shall be a written activity program with activities planned to fill patient needs with sufficient variety for choice including:

1. Recreation and physical exercise;

2. Diversion, games, music, and crafts;

3. Intellectual and educational stimulation, current events, and educational films; and

4. Participation in planning menus and preparation of food.

(b) Activities shall be group or individually oriented aimed at participation at all levels of capability.

(c) A specific period of the day shall be set aside for rest. There shall be appropriate accommodations for rest.

(5) Transportation. If transportation of the patient to and from the program is provided by the day health care program:

(a) Special provision shall be made for patients who use wheelchairs; and

(b) An escort or assistant to the driver shall be provided when necessary.

(6) Dietary services.

(a) Food service and preparation.

1. The program shall offer one (1) or more hot meals providing no less than one-third (1/3) of the daily nutritional requirements per meal;

2. Foods shall be prepared by appropriate methods to conserve their nutritive value and enhance their flavor and appearance.

3. Nutritional needs shall be met in accordance with the current Recommended Dietary Allowance of the Food and Nutrition Board of the National Research Council, adjusted for age, sex and activity and in accordance with physician's orders.

4. Food shall be cut, chopped or ground to meet individual needs.

5. Effective equipment shall be provided and procedures established to maintain food at proper temperature during service.

6. Patients requiring help in eating shall be assisted.

7. Adaptive self-help devices shall be provided where required in such a manner as to contribute to the patient's independence in eating.

(b) Maintenance of sanitary condition.

1. The dietary department 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). When the program contracts for food service, the catering service shall comply with the applicable requirements of the Food Service Code and the applicable requirements of this regulation.

2. All perishable foods shall be refrigerated at the appropriate temperature and in an orderly and sanitary manner. All leftover food items shall be covered and dated when refrigerated.

(7) Housekeeping and maintenance services.

(a) The facility shall be maintained in a safe and clean manner, free from offensive odors, safety hazards and accumulations of dirt, rubbish and dust.

(b) Deodorizers shall not be used to conceal odors caused by unsanitary conditions or poor housekeeping practices.

(c) The grounds shall be kept free from refuse and litter. Areas around buildings, sidewalks, gardens and patios shall be kept clear of dense undergrowth.

(d) The facility shall be maintained free from insects and rodents.

(e) Windows and doors shall be screened.

(f) Harborages and entrances for insects and rodents shall be eliminated.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 9, 1991
FILED WITH LRC: August 22, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 16, 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: Eric Friedlander, Ralph Von Derau, David Crane

(1) Type and number of entities affected: 22

(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 20:072. Operation and services; ambulatory care clinics.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 216B.042, 216B.105
NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Human Resources regulate health facilities and health services. This regulation provides licensure requirements for the operation of and services provided by ambulatory care clinics.

Section 1. Definitions. "Clinic" means ambulatory care clinic.

Section 2. Scope of Operations and Services. An ambulatory care clinic is an establishment with organized medical staffs, permanent facilities and medical services to provide diagnosis and treatment for patients who have a variety of medical conditions and do not currently require inpatient care.

Section 3. Administration and Operation. (1) Licensee.
(a) The licensee shall be legally responsible for the clinic and for compliance with federal, state and local laws and regulations pertaining to the operation of the clinic.
(b) The licensee shall establish written policies for the administration and operation of the clinic.
(c) The licensee shall establish lines of authority and designate the person who will be principally responsible for the daily operation of the clinics.
(2) Policies.
(a) Administrative policies. The clinic shall have written administrative policies covering all aspects of the clinic's operation, including:
1. A description of organizational structure, staffing and allocation of responsibility and accountability;
2. A description of referral linkages with inpatient facilities and other providers;
3. Policies and procedures for the guidance and control of personnel performances;
4. A description of services included in the clinic's program;
5. A description of the administrative and patient care records and reports;
6. Procedures to be followed in the storage, handling and administration of drugs and biologicals; and
7. A policy to specify the provision of emergency medical services.
(b) Patient rights policies. The clinic shall adopt written policies regarding the rights and responsibilities of patients. These patients' rights policies shall assure that each patient:
1. Is informed of these rights and of all rules and regulations governing patient conduct and responsibilities, including a procedure for handling patient grievances.
2. Is informed of services available at the clinic and of related charges including any charges not covered under Medicare, Medicaid, or other third-party payor arrangements.
3. Is informed of his medical condition, unless medically contraindicated (as documented in his medical record), and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research.
4. Is encouraged and assisted to understand and exercise his patient rights; to this end he may voice grievances and recommend changes in policies and services. Upon the patient's request the grievances and recommendations will be conveyed within a reasonable time to an appropriate decision making level within the organization which has authority to take corrective action.
5. Is assured confidential treatment of his 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.
6. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in the care of his personal health needs.
(3) Personnel.
(a) The clinic shall have at least one (1) licensed physician[(s) and at least one (1) registered nurse(s)] present during operating hours <u>and at least one (1) registered nurse on an on-call basis</u>. A licensed physician shall be designated as medical director.
1. Physician. The physician shall be in active practice, and shall be responsible for all medical aspects of the center, and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. Physicians employed by or having an agreement with the clinic to perform direct medical services shall be qualified to practice general medicine (e.g., general practitioners, family practitioners, obstetrician/gynecologists, pediatricians, and internists). Physicians employed by or having an agreement with the clinic to perform direct medical services should be members of the medical staff, or hold at least courtesy staff privileges, at one (1) or more hospitals with which the clinic has a formal linkage agreement.
2. Nurse. The registered nurse(s) shall

provide services within their respective scope of practice pursuant to KRS Chapter 314.

(b) In-service training. All clinic 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, regular in-service training programs, emphasizing professional competence, and the human relationship necessary for effective health care.

(c) At least one (1) person, in addition to the physician, shall be on duty who has current certification in cardiopulmonary resuscitation.

(4) Medical records.

(a) The clinic shall maintain medical records to contain at least the following:

1. Medical and social history, including data obtainable from other providers;

2. 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;

3. Reports of all physical examinations, laboratory, x-ray, and other test findings; and

4. Documentation of all referrals made, to include 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 the longest.

(5) Linkage agreements.

(a) The clinic 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 clinic. These linkages shall include:

1. Hospitals; and

2. Emergency medical transportation services in the service area.

(b) Linkage agreements with inpatient care facilities shall incorporate provisions for appropriate referral and acceptance of patients from the clinic, provisions for appropriate coordination of discharge planning with clinic staff, and provisions for the clinic to receive a copy of the discharge summary for each patient referred to the clinic.

(6) Utilization review and medical audit. In order to determine the appropriateness of the services delivered there shall be a written plan for utilization review developed by the clinic which specifies the frequency of reviews and composition of the body conducting the review.

(7) Quality assurance program. The clinic shall have a written quality assurance program designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating patient care, and that provides for appropriate response to findings. The written quality assurance plan shall be approved by the licensee and shall:

(a) Assign responsibility for the monitoring and evaluation activities;

(b) Delineate scope of care provided by the clinic;

(c) Identify the aspects of care that the clinic provides;

(d) Identify indicators, and appropriate clinical criteria that can be used to monitor these aspects of care;

(e) Collect and organize data for each indicator;

(f) Evaluate the care in order to identify problems or opportunities to improve care;

(g) Take actions to correct identified problems or to improve care;

(h) Assess the effectiveness of the actions taken and document the improvement in care; and

(i) Communicate relevant information to other individuals, departments, or services as to the quality assurance program.

Section 4. Provision of Services. (1) Hours of operation and coverage. Scheduled hours of the clinic's operation shall reasonably accommodate the various segments of the population served. Provisions shall be made for scheduled evening hours and/or weekend hours.

(2) Basic services. The clinic shall provide directly (except as noted) at least the following services:

(a) Medical diagnostic and treatment services of sufficiently broad scope to accommodate the basic health needs (including prenatal and postnatal care) of all age groups;

(b) Emergency services.

1. The clinic shall provide emergency medical services during the regularly scheduled hours for treatment of injuries and minor trauma.

2. The clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic, the hours that emergency medical services will be available in the clinic and where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled hours of operation.

(c) Preventive health services of sufficiently broad scope to provide for the usual and expected health needs of persons in all age groups;

(d) Education in the appropriate use of health services and in the contribution each individual can make to the maintenance of his own health;

(e) Chronic illness management; and

(f) Laboratory, x-ray and treatment services provided directly or arranged through other providers.

(3) Telephone screening and referral. The clinic shall provide telephone screening and referral services for prospective patients after regularly scheduled hours of operation.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 27, 1991
FILED WITH LRC: September 5, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 16, 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: Eric Friedlander, Ralph Von Derau, David Crane
(1) Type and number of entities affected: 7
(a) Direct and indirect costs or savings to those affected:
1. First year: Staffing expenses will be reduced by costs of registered nurse to be present during operating hours.
2. Continuing costs or savings: Staffing expenses.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: A written quality assurance program will result in an increase of these requirements.
(2) Effects on the promulgating administrative body: Since these are amendments to the existing regulation, any effects should be minimal.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings: None since reprinting of regulation is part of this agency's continuing budget.
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: KRS Chapter 216B requires that the cabinet promulgate licensure standards for all health care facilities.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. These are minimum licensure standards and as such apply equally to all facilities.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:270. Mobile health services.

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 mobile health services.

[Section 1. Scope of Operation and Services. Mobile health services provide medical services in various locations and in some instances utilize a specially equipped vehicle such as a van, trailer or mobile home. These services include mobile diagnostic imaging and examination services, mobile treatment services, and any other medical or dental services provided through the use of a mobile vehicle or performed at various locations.]

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 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 mobile health services.
[(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)] "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 mobile health service's governing authority.
(6) [(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.
(7) [(10)] "Computed Tomography (C.T.) Scanning" means a radiological diagnostic imaging procedure that shows cross sectional images of internal body structures.
(8) [(11)] "Lithotripter" means a noninvasive treatment technique that utilizes shock waves to shatter kidney stones.
(9) [(12)] "Registered nurse" means a nurse who is licensed to engage in registered nursing practice pursuant to KRS 314.041.
(10) [(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 mobile health service's governing authority.

Section 2. Scope of Operation and Services. Mobile health services provide medical services in various locations and in some instances utilize a specially equipped vehicle such as a van, trailer or mobile home. These services include mobile diagnostic imaging and examination services, mobile treatment services,

and any other medical or dental services provided through the use of a mobile vehicle or performed at various locations.

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 will be principally responsible for the daily operation of the service. In the case of a service whose governing authority is comprised of more than one (1) licensed hospital, a separate administrator may be designated from each hospital to serve as the administrator of the service when it is being provided at the hospital where the designee is employed.

(2) Policies. There shall be written administrative policies which the service follows 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) Medical director. The service shall have a medical director. The medical director shall be a licensed physician or dentist with specialized training and experience in, and responsibility for, all medical aspects of the service. In the case of a service whose governing authority is comprised of more than one (1) licensed hospital, a separate medical director may be designated from each hospital's medical staff to serve as the medical director of the service when it is being provided at the hospital where the physician is on staff. If a service operates only diagnostic examination equipment, and if the service is offered only to licensed hospitals, and if the employees of the service makes no medical assessment of the diagnostic patient data collected, then the service shall be exempt from the requirements of this paragraph.

(b) The service shall employ, or provide for through a written contractural agreement, sufficient number of qualified personnel to provide effective patient care and all other related services. The licensee shall provide written personnel policies which shall be available to all employees, reviewed on an annual basis, and revised as necessary. 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.

(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 and social history relevant to the service(s) provided, including data obtainable from other providers;
2. Names of referring physician, if any, and physician's orders for special diagnostic services such as x-ray or CT scans;
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 service(s) 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 establish 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 mobile health service for the maintenance and storage of the service's medical records.

(f) Provisions for storage of medical records in the event the mobile health 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. Vehicle Requirements. (1) All vehicles used in the provision of a health service, as provided by the service's certificate of need, shall be kept, in optimum order with clean interiors and equipment.

(2) The following standards shall apply only to those vehicles which the patient enters.

(a) There shall be adequate heating and air-conditioning capability in both the driver and patient compartments.

(b) There shall be a minimum of two (2) potential power sources for the vehicle. To insure an immediately available source of power

in the event of a power failure, one (1) must be self-contained on the vehicle. The other source must be an exterior source of power hookup.

(c) The vehicle shall be accessible to the handicapped either through the use of a wheelchair lift or a ramp which complies with applicable American National Standards Institute (ANSI) requirements.

(d) The vehicle shall have adequate and safe space for staff and examination procedures, as determined by the cabinet.

(e) Equipment. Vehicles used in the provision of a health service, as provided by the service's certificate of need, shall have the following essential equipment:

1. One (1) five (5) pound dry chemical fire extinguisher;
2. One (1) first aid kit;
3. Suction apparatus;
4. Oxygen equipment (portable) including:

a. One (1) "D" size oxygen cylinder;

b. One (1) pressure gauge and flow rate regulator;

c. Adaptor and tubing; and

d. Transparent masks for adults and children. Nasal cannulas may be substituted.

(f) Personnel. Each mobile health service vehicle shall at a minimum be staffed by one (1) person, who may also be the driver of the vehicle, who shall have the following qualifications:

1. Red Cross Advanced and Emergency Care Certification, each with supplemental CPR instruction certified by the American Red Cross or the American Heart Association; or
2. EMT-first responder certification; or
3. EMT-A certification; or
4. Licensure as a registered nurse, physician or dentist.

Section 5. Provision of Services. A licensed mobile health service shall comply with the requirements listed in Sections 3, 4, and 6 of this regulation, the service's program narrative, and the additional requirements of this section which relate to the particular service(s) offered by the licensee.

(1) Diagnostic services. Diagnostic services are those services which are performed to ascertain and assess an individual's physical health condition.

(a) Diagnostic services shall be performed only on the order of a physician except for mammography services.

(b) The 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, the name of the person performing the procedure, the date and the name of the physician to whom the results were sent.

(c) Diagnostic imaging services.

1. 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:

a. X-ray;
b. MRI;
c. CT scanning;
d. Ultrasound;
e. Mammography;
f. Fluoroscopy; and
g. Xerography.

2. Any mobile health service which provides diagnostic imaging services shall comply with the following:

a. Equipment used for direct patient care shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;

b. There shall be a written preventive maintenance program which the service follows to ensure that imaging equipment is operative, properly calibrated, and shielded to protect the operator, patient, environment, and the integrity of the images produced;

c. Diagnostic imaging services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of the specific imaging technique for diagnostic purposes;

d. Imaging services shall have a current license or registration pursuant to applicable Kentucky statutes and any regulations promulgated thereunder;

e. All personnel engaged in the operation of imaging equipment shall have adequate training and be currently licensed or certified in accordance with applicable Kentucky statutes and regulations;

f. There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the imaging equipment;

g. 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 number of images to be obtained and the views needed, and a statement concerning the condition of the patient which indicates why mobile imaging services are necessary; and

h. There shall be sufficiently trained on duty personnel with adequate equipment to provide emergency resuscitation services in the event of a patient emergency.

(d) Other diagnostic services.

1. Other diagnostic services are those services which are provided through the use of diagnostic equipment, and physical examination. These services include:

a. Electrocardiogram services;
b. Electroencephalogram services;
c. Holter Monitor services;
d. Disability determination services;
e. Pulmonary function services;
f. Aphresis services;
g. Blood gas analysis services;
h. Echosonography services; and
i. Doppler services.

2. Equipment used for direct patient care 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 or certified in accordance with applicable Kentucky 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.

3. Physical examination services shall be nonabusive and provided in a manner which ensures the greatest amount of safety and security for the patient.

a. Protocols for diagnostic examinations shall be developed by the medical director.

b. Personnel performing physical examinations shall have adequate training and be currently

licensed or certified in accordance with applicable Kentucky statutes and regulations.

c. Personnel performing physical examinations shall be limited by the relevant scope of practice of Kentucky licensure.

(2) Treatment services. Treatment services are 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.

(a) Mobile health clinic. A mobile health clinic is a health service providing both diagnostic and treatment services through the use of a mobile vehicle. A mobile health clinic may provide a wide range of diagnostic and treatment services on an outpatient basis for a variety of physical health conditions.

1. 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 advanced registered nurse practitioners. At least one (1) member shall not be a member of the mobile health clinic staff. The policies shall include:

a. A description of the services the mobile health clinic provides directly and those provided through agreement;

b. 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

c. Procedures for review and evaluation of the services provided by the clinic at least annually.

2. Personnel. The mobile health clinic shall have a staff that includes at least one (1) physician and at least one (1) advanced registered nurse practitioner. The clinic shall employ such other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

a. The physician shall:

(i) 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;

(ii) In conjunction with the advanced registered nurse practitioner(s), participate in developing, executing, and periodically reviewing the mobile health clinic's written policies and services;

(iii) Periodically review the mobile health clinic's patient records, provide medical orders, and provide medical care services to patients of the mobile health clinic; and

(iv) Be present for consultation weekly, and be available within one (1) hour, through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

b. The advanced registered nurse practitioner shall:

(i) Participate in the development, execution and periodic review of the written policies governing the services the mobile health clinic provides;

(ii) Participate with the physician in periodic review of patient health records;

(iii) Provide services in accordance with mobile health 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 mobile health clinic; and

ii. Assure that adequate patient health records are maintained and transferred when patients are referred.

3. The mobile health clinic shall have linkage agreements or arrangements with each of the following:

a. Inpatient hospital care;

b. Physician services in a hospital, patient's home, or long-term care facility;

c. Additional and specialized diagnostic and laboratory services that are not available at the mobile health clinic;

d. Home health agency;

e. Emergency medical services;

f. Pharmacy services; and

g. Local health department.

4. The mobile health 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:

a. The utilization of clinic services including at least the number of patients served and the volume of services;

b. A representative sample of both active and closed clinical records; and

c. The mobile health clinic's health care policies.

5. The mobile health clinic shall develop and maintain written protocols, i.e., standing orders, rules of practice, and medical directives, which apply to services provided by the clinic 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 rationale for each decision made. The protocols shall be signed by the staff physician.

6. The mobile health clinic staff shall furnish those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

7. The mobile health clinic shall provide basic laboratory services essential to the immediate diagnosis and treatment of the patient, including:

a. Chemical examinations of urine by stick or tablet methods or both (including urine ketones);

b. Microscopic examinations of urine sediment;

c. Hemoglobin or hematocrit;

d. Blood sugar;

e. Gram stain;

f. Examination of stool specimens for occult blood;

g. Pregnancy tests;

h. Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and

i. Test for pinworms.

8. The mobile health clinic shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and have available the drugs and biologicals commonly used in lifesaving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids.

9. The clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic, the hours that emergency medical services will be available in the clinic, the clinic's next scheduled visit, and where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled visits and hours of operation.

(b) Mobile dental clinic. A mobile dental clinic is a health service providing both diagnostic and dental treatment services at different locations through the use of a mobile vehicle or equipment.

1. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes at least one (1) licensed dentist. These policies shall include:

a. Guidelines which identify the dental problems which may not be performed in the mobile unit, and provisions for patient referral;

b. Guidelines for the review and evaluation of the services provided by the clinic at least annually; and

c. Guidelines for procedures to be followed in the event a patient has a medical emergency.

2. Personnel. The mobile dental clinic shall have a staff that includes at least one (1) licensed dentist and at least one (1) dental assistant.

a. The dentist shall:

(i) Be responsible for all aspects of patient care in accordance with KRS Chapter 313 and any regulations promulgated thereunder;

(ii) Be present in the clinic at all times that a patient is receiving dental care; and

(iii) Provide direct supervision to all staff involved in the delivery of services.

b. The dental assistant shall:

(i) Provide services in accordance with the mobile dental clinic policies and established protocols, KRS Chapter 313, and any regulations promulgated thereunder; and

(ii) Provide services only under the direct supervision of a licensed dentist.

3. Equipment. The mobile dental clinics shall have the following equipment:

a. X-ray units;

b. Sterilizer;

c. High speed suction;

d. Dental lights; and

e. Emergency kit with the following drug types:

(i) Antiallergenic;

(ii) Vasodilators;

(iii) Anticonvulsives; and

(iv) Vasopressors.

(c) Mobile lithotripter service. A mobile lithotripter service is a health service which provides for a noninvasive technique for removing kidney or ureteral stones through the use of a lithotripter at various hospital locations.

1. Mobile lithotripter services may only be delivered on the grounds of the hospital utilizing the mobile lithotripter service.

2. Lithotripsy services shall be performed only on the order of a physician.

3. Lithotripsy services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of lithotripsy treatment.

4. The 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.

5. 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.

6. Policies. A mobile 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 mobile lithotripter service staff. The policies shall include:

a. A description of how a patient will be transported between the hospital and the mobile lithotripter service;

b. Procedures to be followed in the event a patient has a medical emergency;

c. Guidelines for the review and evaluation of the service on an annual basis; and

d. Policies and protocols governing the utilization and responsibilities of hospital staff in the delivery of lithotripter services.

7. Personnel. The mobile lithotripter service shall employ at least one (1) lithotripter technician, and shall employ or make arrangements with the hospital utilizing the service for at least one (1) registered nurse, one (1) qualified urologist to be present in the unit during the delivery of lithotripsy services, and (1) qualified anesthetist to be available for procedures requiring anesthesia;

8. Lithotripsy equipment used for direct patient care shall comply with the following:

a. Lithotripsy equipment shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;

b. The licensee shall establish and 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 diagnostic equipment shall have adequate training and be currently licensed, certified or registered in accordance with applicable Kentucky 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; and

e. There shall be sufficiently trained on duty personnel with adequate equipment to provide emergency resuscitation in the event of a patient emergency.

(d) Other treatment services shall include in home intravenous (I.V.) therapy services.

1. Other treatment services shall be performed only on the order of a physician.

2. In home I.V. therapy services shall only be performed by a registered nurse.

3. All in home I.V. therapy services shall have a written agreement with a licensed home health agency outlining the responsibilities of both parties.

4. All services provided shall be under the supervision of a licensed physician who may be associated with the home health agency.

5. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes one (1) or more physician(s) and one (1) or more registered nurse(s). At least one (1) member shall not be a member of the service's staff.

The policies shall include:

a. A description of the services provided.

b. 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

c. Procedures for review and evaluation of the services provided at least annually.

6. Personnel. The service shall have a staff that includes at least one (1) registered nurse. The service shall employ such other staff or ancillary personnel that are necessary and essential to the service's operation. The registered nurse shall:

a. Participate in the development, execution and periodic review of the written policies governing the services provided;

b. Participate with the physician in periodic review of patient health records;

c. Provide services in accordance with established policies, 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 by the service; and

(ii) Assure that adequate patient health records are maintained and transferred when patients are referred.

7. The service 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:

a. The utilization of the service including at least the number of patients served and the volume of services;

b. A representative sample of both active and closed records; and

c. The service's health care policies.

Section 6. Waste Processing. (1) 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 into a rigid container. The rigid containers of sharp wastes shall either be incinerated or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020.

(2) The mobile health service 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 mobile health service from which the waste is being removed, shall be attached to the bag in a conspicuous manner.

(b) All unpreserved tissue specimens shall be incinerated off site.

(c) The following waste shall be sterilized before disposal or be disposed of by incineration if they are combustible:

1. Dressings and materials from open or contaminated wounds;

2. Waste materials and disposable linens from isolation rooms;

3. Culture plates;

4. Test tubes;

5. Sputum cups; and

6. Contaminated sponges and swabs.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: August 9, 1991

FILED WITH LRC: August 22, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 16, 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: Eric Friedlander, Ralph Von Derau, David Crane

(1) Type and number of entities affected: 55

(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 Community Safety
(Proposed Amendment)

902 KAR 55:060. Requirements for distribution of small amounts of controlled substances without manufacturer's or wholesaler's licenses.

RELATES TO: KRS Chapter 218A
STATUTORY AUTHORITY: KRS 194.050, 218A.250
NECESSITY AND FUNCTION: KRS 218A.250 directs the Cabinet for Human Resources to adopt rules and regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. KRS 218A.170(2) provides that all sales and distributions of controlled substances shall be in accordance with the federal controlled substances laws, including the requirements governing the use of order forms. The purpose of this regulation is to provide for the distribution of small amounts of controlled substances by pharmacies to practitioners or other pharmacies, without the necessity of obtaining a state license as a manufacturer or a wholesaler, in accordance with applicable federal laws and regulations.

Section 1. Distribution of Controlled Substances by Pharmacy to Practitioner or other Pharmacy. A pharmacy licensed in Kentucky and registered with the U.S. Drug Enforcement Administration may distribute, without being licensed as a manufacturer or wholesaler in Kentucky, a quantity of a controlled substance to a practitioner or another pharmacy <u>if</u> [provided that]:

(1) The practitioner or pharmacy to whom the controlled substance is to be distributed is registered with the U.S. Drug Enforcement Administration;

(2) The distribution is recorded by the distributing pharmacy and by the receiving practitioner or pharmacy in accordance with KRS 218A.200;

(3) If the substance is listed in Schedule II, DEA Order Form 222C shall be utilized and copy one [thereof] shall be completed [and filed in the Schedule II prescription file] and copy two (2) [thereof] shall be completed and forwarded to U.S. Drug Enforcement Administration;

(4) If the substance is listed in Schedule III, IV or V, a written record of the substance distributed shall be maintained [in the appropriate prescription file] showing: the date of the transaction, the name, form and quantity of the substance, the name, address and registration number of the purchaser;

(5) The total number of dosage units of all controlled substances distributed by the pharmacy pursuant to this regulation during a twelve (12) month period shall not exceed five (5) percent of the total number of dosage units of all controlled substances distributed and dispensed by <u>the</u> [such] pharmacy during the twelve (12) month period. In the event the five (5) percent limitation is expected to be exceeded, the pharmacy shall obtain a license to distribute controlled substances in accordance with KRS 218A.160 and 218A.170;

(6) No prescription shall be issued by a practitioner to obtain any controlled substance for the purpose of general dispensing, administering or office use; <u>and</u>

(7) All distributions shall be in accordance with applicable federal and state laws and regulations.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 10, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor, CHR Building, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 16, 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 Crews
(1) Type and number of entities affected: 3,000 pharmacists in the Commonwealth are affected by this regulation.
(a) Direct and indirect costs or savings to those affected:
1. First year: There are no direct or indirect costs or savings to pharmacists because this administrative regulation conforms to federal regulation which permits the sale of small quantities of controlled substances without the necessity of obtaining a license.
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 additional reporting or paperwork required by this regulation.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the administrative agency.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this regulation.
(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because of possible drug diversion and nonconformity with federal regulation would result.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not applied because the exemption applies to all pharmacies regardless of speciality, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law and regulations are 84 Stat. 1242; 21 USC 801 and 21 CFR 1307.11.
2. State compliance standards. A license is not required to distribute controlled substances to a practitioner or another pharmacy if the total amount distributed in any twelve month period is less than five percent of the total amount of controlled substances dispensed by the pharmacy during the twelve month period.
3. Minimum or uniform standards contained in the federal mandate. A license is not required to distribute controlled substances to a practitioner or another pharmacy if the total amount distributed in any twelve month period is less than five percent of the total amount of controlled substances dispensed by the pharmacy during the twelve month period.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

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

RELATES TO: KRS 205.200(2), 205.210(1), 42 CFR 435.831, 45 CFR 233, 250.33, 250.73, 255, [256,] PL 101-508
STATUTORY AUTHORITY: KRS 194.050, 205.200(2)
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, referred to as AFDC. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Approved JOBS activities" means participation in component, precomponent, component preparation, preemployment, transitional extension or self-initiated JOBS activities which have been determined by the Department for Social Insurance to be consistent with employment goals.
(2) "Assistance group" means a group composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The assistance group shall include the dependent child, child's eligible parent, and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the assistance group if the minor's parent applied for assistance. The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.
(3) "Beyond the control" means:
(a) Loss or theft of the money;
(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible;
(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the AFDC Standard of Need.
(4) "Certified child care providers" means a small family day care in a provider's home serving fewer than four (4) children. This provider has voluntarily registered with the Cabinet for Human Resources, Department for Social Services. Standards for certification are contained in 905 KAR 2:070.
(5) "Claimant" means the individual responsible for an overpayment.
(6) "Combination programs" means any educational program which includes as its basis literacy or GED. This program must also include life skills, skills training or job readiness training.
(7) "Component" means services and activities such as education, job skills training, job readiness, job development and placement, job search, on-the-job training, work supplementation or community work experience program activities available under the Job Opportunities and Basic Skills (JOBS) program. Each individual component is described in 904 KAR 2:006.
(8) "Component preparation" means the period in which assessment, testing, development of the employability plan and referrals for removal of barriers takes place.
(9) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.
(10) "Full-time school attendance" means a workload of at least:
(a) The number of hours required by the individual program for participation in a General Educational Development (GED) program; or
(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or
(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time; or
(d) Eight (8) clock hours per month in a literacy program.
(e) Twenty-five (25) clock hours per week in combination programs.
(11) "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 7 of this regulation.
(12) "Licensed child care providers" means day care centers serving twelve (12) or more children, or day care in a provider's home serving four (4) to twelve (12) children, which are licensed by the Division of Licensing and Regulation, Office of the Inspector General, as provided in 905 KAR 2:010.
(13) "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.
(14) "Minor" means any person who is under the age of eighteen (18) or under the age of

nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent is considered any person under the age of eighteen (18).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(26) "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, tools and transportation.

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

(2) The amount that can be reserved by each assistance group shall not be in excess of $1,000 equity value excluding those items specifically listed in subsection (1) of this section as follows:

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

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

(b) Home furnishings, including all appliances;

(c) Clothing;

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

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

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

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

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

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

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

(4) Disposition of resources.

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

(b) If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limitation, the household's application shall be denied, or assistance discontinued.

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

(d) If the amount of excess transferred resources does not exceed $500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

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

(1) Gross income test.

(a) The total gross non-AFDC income of the assistance group, as well as income of parent, sanctioned individual and amount deemed available from the parent of a minor parent living in the home with such assistance group, and amount deemed available from a stepparent living in the home, and amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor, shall not exceed the gross income limitation standard.

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

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

(2) Applicant eligibility test.

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

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

2. The assistance group has not received

assistance during the four (4) months prior to the month of application.

(b) The total gross income after application of exclusions or disregards set forth in Section 4(1) and (2) of this regulation shall be compared to the assistance standard set forth in Section 7 of this regulation.

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

(d) For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation.

(a) If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4(1), (2), and (3) of this regulation.

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

(c) Amount of assistance shall be determined prospectively.

(4) Ineligibility period.

(a) A period of ineligibility shall be established for an applicant or recipient whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

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

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

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

3. The assistance group incurs and pays necessary medical expenses not reimbursable by a third party.

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

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

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

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

(c) Disregards applicable to self-employment income;

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

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

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

(g) Nonemergency medical transportation payments;

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

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

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grants;

(m) Home produce utilized for household consumption;

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

(o) Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401;

(p) Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401;

(q) Benefits received from the Nutrition Program for the Elderly, under 42 USC 3001;

(r) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under 42 USC 5001 and 5011;

(s) Payments to "Volunteers in Service to America" (VISTA) participants under 42 USC 1451 except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater than the minimum wage under state or federal law, whichever is greater;

(t) The value of supplemental food assistance received under 42 USC 1771, and the special food service program for children under 42 USC USC 1755, as amended;

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

(v) Payments made under the Low Income Home Energy Assistance Program (LIHEAP) under 42 USC 8621, and other energy assistance payments which are made to an energy provider or provided in-kind;

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

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

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

(z) Effective January 3, 1989, loans.

(aa) Effective June 1, 1989, up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the United States

Government to compensate for hardships experienced during World War II.

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

(cc) Income of an individual receiving mandatory or optional state supplementary payments.

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

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

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

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

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

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

(d) Child care, for a child or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed $175 per month per individual for full-time employment or $150 per month per individual for part-time employment, or $200 per month per individual for child under age two (2).

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

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

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

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

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

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

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

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

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

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

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

6. Effective February 1, 1988, the available child care does not meet the needs of the child, for example, handicapped or retarded children.

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

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

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

(a) The first seventy-five (75) dollars of the gross earned income;

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

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

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

(e) Income of a stepparent and parent of a minor parent receiving Supplemental Security Income (SSI).

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

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

Section 6. Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor.

(2) The gross non-AFDC income and resources of an alien's sponsor shall be deemed available to the alien, subject to disregards as set forth below, for a period of three (3) years following entry into the United States.

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

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

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or

organization is no longer in existence or does not have the financial ability to meet the alien's needs.

(6) The provisions of this section shall not apply to those aliens identified in subsection (5) of this section.

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

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

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

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

4. Actual payments of alimony or child support paid to nonhousehold members; and

5. Income of a sponsor receiving SSI or AFDC.

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

Section 7. Payment Maximum. (1) The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities.

(2) Countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, as follows:

Effective July 1, 1989

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

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

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

Section 8. Job Opportunities and Basic Skills (JOBS) Child Care and Supportive Services. (1) With the exception of those in subsections (8) and (12) of this section those individuals participating in the JOBS program shall be entitled to payment of:

(a) Child care;

(b) Transportation; and

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

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

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

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Preemployment; or

(e) On-the-job training (OJT) and work supplementation participants discontinued from AFDC, until the end of the component placement.

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

(a) Child care shall be provided in the same situations as in JOBS components with the following exceptions:

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

2. Component preparation; and

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

(b) Child care shall be provided only for approved self-initiated activities.

(5) Child care limitations.

(a) Child care payments shall:

1. Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates for components which:

a. Do not provide earned income; or

b. Are work supplementation components.

2. Be allowed as a deduction as outlined in Section 4(2)(d) of this regulation for any component yielding earned income, other than work supplementation.

(b) Payments shall not be made to a provider if the provider is:

1. The parent;

2. The legal guardian;

3. A member of the AFDC assistance unit which includes the child needing care;

4. Not meeting applicable standards of state and local law; or

5. Not allowing parental access.

(c) Local market rates shall be determined by:

1. The type of provider;

2. The age of the child;

3. The special needs of the child. Special needs shall be verified by:

a. Entitlement to disability benefits; or

b. Written statement from a physician or professional from a service agency such as Comprehensive Care, or the Department for Social Services;

4. The amount of time care is needed; and

5. The geographical boundaries of the fifteen (15) area development districts.

(d) Full-time (FT) and part-time (PT) attendance shall be determined by the provider.

(e) FT and PT maximum payment levels shall be established for the following groups of dependent children:

1. "Special needs" includes children in no certain age group;

2. "Infants" includes children under age one (1);

3. "Toddlers" includes children from age one (1) up to age three (3);

4. "Preschool" includes children from age three (3) up to age five (5);

5. "School-age" includes children age five (5) and over.

(f) Child care maximum payments shall be made as follows:

PURCHASE AREA DEVELOPMENT DISTRICT #1

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

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

PENNYRILE AREA DEVELOPMENT DISTRICT #2

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

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

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

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

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

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

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

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

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

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

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

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

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

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

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

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

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

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

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

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

GATEWAY AREA DEVELOPMENT DISTRICT #9

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

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

FIVCO AREA DEVELOPMENT DISTRICT #10

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

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

BIG SANDY AREA DEVELOPMENT DISTRICT #11

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

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

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

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

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

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

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

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

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

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

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

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

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

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

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

1. Six (6) semesters (three (3) years) for a two (2) year postsecondary program;
2. Eight (8) semesters (nine (9) with good cause) for a four (4) year postsecondary program; or
3. No restrictions on other education and training activities.

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

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

(j) Child care payments shall not be made if:

1. An AFDC-UP qualifying parent is participating; and
2. The nonparticipating parent is not incapacitated.

(6) Authorization of child care payment.

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

the cost of care.

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

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

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

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

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

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

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

(a) Precomponent;

(b) Component preparation;

(c) Component participation, with the exception of OJT and work supplementation while the AFDC case remains active;

(d) Transitional extension; or

(e) On-the-job training (OJT) and work supplementation participants discontinued from AFDC, until the end of the component placement.

(9) Transportation payments in self-initiated activities.

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

1. Transitional extension;

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

3. Component preparation; and

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

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

(10) Transportation payment amount and authorization.

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

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

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

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

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

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

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

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

(12) Other supportive services in JOBS components.

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

1. Component preparation;

2. Component participation, except for expenses included in the work expense standard deduction for participants in OJT or work supplementation while the AFDC case remains active;

3. Transitional extension;

4. Preemployment; or

5. OJT and work supplementation participants discontinued from AFDC, until the end of the component placement.

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

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

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

2. Necessary clothing; or

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

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

(a) Transitional extension;

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

(c) Component preparation.

(14) Limitations on other supportive services.

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

1. Component preparation;

2. Component-related;

3. Transitional extension; or

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

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

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

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

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

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

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

[Section 9. Transitional Child Care (TCC). (1) Effective April 1, 1990, child care assistance shall be provided by the state to families whose eligibility for AFDC assistance has ceased due to:]

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

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

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

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

[(4) Technical eligibility. The following requirements shall be met during any month for

which TCC is paid:]

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

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

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

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

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

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

[(d) The family shall have ceased to be eligible for AFDC as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at Section 4(3)(b) of this regulation;]

[(e) The family shall have received AFDC:]

[1. In at least three (3) of the six (6) months preceding the first month of ineligibility; and]

[2. At least one (1) of the three (3) months was received in the state of Kentucky.]

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

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

[(5) Time limitations.]

[(a) Eligibility for TCC begins with the first month for which the family is ineligible for AFDC and continues for a period of twelve (12) consecutive months when the family requests assistance for TCC.]

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

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

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

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

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

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

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

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

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

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

[7. Temporary incarceration.]

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

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

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

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

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

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

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

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

[(a) A minimum fee of one (1) percent of the family's gross income shall be charged for families who fall below the federal poverty income guidelines. A fee equivalent to seven and five-tenths (7.5) percent of gross income shall be charged for child care when the gross income exceeds the federal poverty guidelines as defined in 905 KAR 3:010 and 905 KAR 3:020.]

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

[(10) Recoupment. The following provisions apply to overpayments in TCC:]

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

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

[1. The responsible party;]

[2. The family unit which was overpaid;]

[3. The provider who was responsible for the overpayment;]

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

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

[(c) Overpayments shall be recovered through:]

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

[2. Reduction in child care payments; or]

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

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

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

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

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

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

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

(a) The claimant;

(b) The overpaid assistance unit;

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

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

(3) Overpayments shall be recovered through:

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

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

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

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

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

Section 10. [11.] Material Incorporated by Reference. (1) Forms necessary for verification of child care and supportive service payments in the JOBS program are incorporated effective October 1, 1990. These forms include the PA-33, revised 10/90, the PA-33.1, revised 10/90, and the PA-32, revised 10/90.

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

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 5, 1991

FILED WITH LRC: September 12, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 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 October 16, 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: This amendment removes the Transitional Child Care Program from 904 KAR 2:016 and places it in 904 KAR 2:360. These regulations are promulgated at the same time and the type and number of entities affected are discussed in the regulatory impact analysis on 904 KAR 2:360.

(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: This amendment removes the transitional child care program from 904 KAR 2:016 and places it in 904 KAR 2:360. These regulations are promulgated at the same time and the costs are discussed in the regulatory impact analysis on 904 KAR 2:360.

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: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The Transitional Child (TCC) Program is removed from 904 KAR 2:016 and placed in 904 KAR 2:360. These regulations are promulgated at the same time.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(2)(1).

PROPOSED REGULATIONS RECEIVED THROUGH NOON, SEPTEMBER 13, 1991

FINANCE AND ADMINISTRATION CABINET
Department for Administration

200 KAR 5:330. Purchase of goods, supplies, equipment, materials and printing with minimum recycled content.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.520
NECESSITY AND FUNCTION: KRS 45A.520 mandates that every state agency, when purchasing goods, supplies, equipment, materials and printing, must require a minimum recycled material content for those goods, supplies, equipment, materials and printing which it purchases. The recycled material content for these goods, supplies, equipment, materials and printing is to be established by administrative regulation promulgated by the Finance and Administration Cabinet. KRS 45A.520 further provides that if the United States Environmental Protection Agency has established a minimum recycled content for certain products, then the Finance and Administration Cabinet shall adopt at a minimum, those standards established by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended. This regulation further implements the provisions of KRS 45A.525 and 45A.530.

Section 1. Definitions. As used in this regulation, unless the context indicates otherwise:
(1) "Recovered fly ash" means the component of coal which results from the combustion of coal, and is the finely divided mineral residue which is typically collected from boiler stack gases by electrostatic precipitator or mechanical collection devices.
(2) "Mill broke" means any paper generated in a paper mill prior to completion of the paper manufacturing process which is unsuitable for end use applications and is subsequently reused in the paper manufacturing process.
(3) "Postconsumer waste" means products or materials which have been discarded by a consumer.
(4) "Recovered material" means those materials which have been separated, diverted or removed from the solid waste stream after a manufacturing process.
(5) "Recovered paper material" means paper products and paper byproducts which, if not recovered, would otherwise be solid waste, and which are intended for sale, use, reuse, or recycling, whether such materials or byproducts require subsequent separation and processing, excluding the virgin content of mill broke and sawdust.
(6) "Rerefined oil" means used oils from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.
(7) "Solid waste stream" means a path of discarded material from point of origin to ultimate disposition.
(8) "State agency" as used in this regulation, shall have the same definition as that provided in KRS 45A.505.

Section 2. Minimum Recycled Content For State Agency Purchases. Except as provided under KRS 45A.510, any goods, supplies, equipment, materials and printing purchased by a state agency shall contain the following minimum recycled content; products designated by an asterisk have the same minimum recycled content standards as products as listed in the Code of Federal Regulations promulgated by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended:
*(1) Xerographic paper (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
*(2) Carbonless printing paper (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
(3) Flat sheet printing papers.
*(a) Paper, offset and opaque (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which fifteen (15) percent shall be postconsumer waste.
*(b) Paper, text (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which fifteen (15) percent shall be postconsumer waste.
*(c) Paper, parchtex (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which fifteen (15) percent shall be postconsumer waste.
*(d) Paper, cover, antique on wove and text (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
*(e) Paper, index (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
(4) Business papers.
*(a) Paper, mimeographic (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
*(b) Paper, spirit process (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
*(c) Paper, rag bond (all sizes). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
*(d) Paper, sulfite bond (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
(5) Computer paper.
*(a) Continuous stock paper, carbon interleaved (all sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent is postconsumer waste.
*(b) Continuous stock paper, plain (all sizes and colors). Product must contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.
(6) Miscellaneous office supplies.
(a) Blotters, desk (all sizes and colors). Product shall contain fifty (50) percent

recovered paper material of which ten (10) percent shall be postconsumer waste.

(b) Calendars (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(c) File pockets (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(d) Notebook filler (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(e) Angular heavy celluloid tab folder (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(f) File folder (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(g) Hanging folder (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(h) Open shelf file folder (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(i) Top tab folder (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(j) Two (2) inch expansion bottom gussett folder (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(k) Twenty-five (25) point classification folder (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(l) Guides, index monthly (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(m) Indexes, alphabetical (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(n) Mailing tubes (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent is postconsumer waste.

(o) Memo books (all types, sizes and colors). Product must contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(p) Memo case (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent is postconsumer waste.

(q) Memo sheets (all types, sizes and colors). Product must contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(r) Notebooks, three (3) hole punched (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(s) Notebooks, stenographic (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(t) Fan folded notes (all types, sizes and colors) Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(u) Columnar green pads (all types and sizes). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

*(v) Desk pads (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

*(w) Scratch pads (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer material.

(x) Adding machine paper (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(y) Tablets (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(z) Tags, shipping (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(aa) Wallet, elastic cord (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(bb) Wallet, expanding, string tie (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(cc) Legal pads, legal (all types, all sizes, all colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

(dd) Telephone message pads (all types, sizes and colors). Product shall contain fifty (50) percent recovered paper material of which ten (10) percent shall be postconsumer waste.

*(7) Toilet tissue. Product shall contain fifty (50) percent recovered paper material of which twenty (20) percent shall be postconsumer waste.

*(8) Paper towels. Product shall contain fifty (50) percent recovered paper material of which forty (40) percent shall be postconsumer waste.

*(9) Napkins. Product shall contain fifty (50) percent recovered paper material of which thirty (30) percent shall be postconsumer waste.

*(10) Industrial wipes. Product shall contain fifty (50) percent recovered paper material of which twenty (20) percent shall be postconsumer waste.

(11) Building insulation.

*(a) Cellulose loose-fill and spray-on. Product shall contain seventy-five (75) percent postconsumer waste.

*(b) Product shall contain Perlite composite board twenty-three (23) percent postconsumer waste.

*(c) Plastic rigid foam.

*1. Polyisocyanurate/polyurethane. Product shall contain the following:

a. Rigid foam: nine (9) percent recovered material.

b. Foam-in-place: five (5) percent recovered material.

c. Glass fiber reinforcer: six (6) percent recovered material.

*2. Phenolic rigid foam. Product shall contain five (5) percent recovered material.

*(d) Rock wool. Product shall contain fifty (50) percent recovered material.

*(12) Engine lubricating oils. Product shall contain twenty-five (25) percent rerefined oil.

*(13) Hydraulic fluid. Product shall contain twenty-five (25) percent rerefined oil.

*(14) Gear oils. Product shall contain twenty-five (25) percent rerefined oil.

*(15) Plastic sign blanks. Product shall contain 100 percent postconsumer waste.

*(16) Envelopes (all types, sizes and colors). Product shall contain fifty (50) percent postconsumer waste.

*(17) Doilies (all types, sizes and colors). Product shall contain fifty (50) percent postconsumer waste.

*(18) Corrogated boxes (all types and sizes). Product shall contain thirty-five (35) percent postconsumer waste.

*(19) Fiber boxes (all types and sizes). Product shall contain thirty-five (35) percent postconsumer waste.

*(20) Recycled paperboard (all types and sizes). Product shall contain eighty (80) percent postconsumer waste.

*(21) Brown papers (all types and sizes). Product shall contain five (5) percent postconsumer waste.

*(22) Pad backing (all types and sizes). Product shall contain ninety (90) percent postconsumer waste.

(23) Aluminum bars. Product shall contain twelve (12) percent recovered material.

(24) Aluminum bolts and nuts. Product shall contain twelve (12) percent recovered material.

(25) Aluminum channels. Product shall contain twelve (12) percent recovered material.

(26) Aluminum handrail post. Product shall contain twelve (12) percent recovered material.

(27) Aluminum sign blanks. Product shall contain twelve (12) percent recovered material.

(28) Aluminum sign panels. Product shall contain twelve (12) percent recovered material.

(29) Aluminum pipe. Product shall contain twelve (12) percent recovered material.

(30) Bituminous hot-mix. Product shall contain fifteen (15) percent postconsumer waste.

*(31) Cement. Product shall contain twenty (20) percent recovered fly ash.

*(32) Concrete cribbing. Product shall contain twenty (20) percent recovered fly ash.

*(33) Concrete pipe. Product shall contain twenty (20) percent recovered fly ash.

(34) Gabions. Products shall contain ten (10) percent postconsumer waste.

(35) Glass beads. Product shall contain fifty (50) percent postconsumer waste.

(36) Guardrail, guardrail post, and component parts. Product shall contain twenty (20) percent postconsumer waste.

(37) Metal bridge planks. Product shall contain ten (10) percent postconsumer waste.

(38) Metal pipe. Product shall contain ten (10) percent postconsumer waste.

*(39) Precast concrete buffer, curbs and headwalls. Product shall contain twenty (20) percent recovered fly ash.

*(40) Precast concrete bridges. Product shall contain twenty (20) percent recovered fly ash.

*(41) Ready-mix concrete. Product shall contain twenty (20) percent recovered fly ash.

(42) Reflective powder. Product shall contain fifty (50) percent postconsumer waste.

(43) Slag (boiler). Product shall contain 100 percent postconsumer waste.

(44) Sign brackets. Product shall contain ten (10) percent postconsumer waste.

(45) Steel cribbing. Product shall contain ten (10) percent postconsumer waste.

(46) Steel piling. Product shall contain ten (10) percent postconsumer waste.

(47) Steel post, sign and delineator. Product shall contain ten (10) percent postconsumer waste.

(48) Steel, open grid flooring. Product shall contain ten (10) percent postconsumer waste.

(49) Railroad rails. Product shall contain 100 percent postconsumer waste.

Section 3. State Agency Contracts for Construction, Repair, Renovation, and Demolition of Public Facilities and Improvements to Public Real Properties. Every state agency shall require, to the extent practicable, that every person, corporation, or other entity with whom it enters into a contract for building, altering, repairing, improving or demolishing any public structures or buildings or other improvements to any public real property, to use goods, supplies, equipment, materials, and printing to fulfill the contract, which meet the requirements for minimum recycled content established in Section 2 of this regulation.

Section 4. Projects Financed with State Bond Proceeds. Every state agency authorized to issue bonds shall require, to the extent practicable, that every project within the Commonwealth, fifty (50) percent or more of the cost of which is financed with the proceeds of bonds issued by the agency, be undertaken with goods, supplies, equipment, materials and printing which meet the requirements for minimum recycled material content established in Section 2 of this regulation.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: August 28, 1991
FILED WITH LRC: August 30, 1991 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 1991, at 9 a.m., EDT, in Room 149, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 17, 1991, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request or a transcript is made at cost to the requesting party. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification to attend the public hearing or written comments on the proposed administrative regulation to: Donald R. Speer, Commissioner, Department for Administration, Finance and Administration Cabinet, Room 274, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald R. Speer
(1) Type and number of entities affected: All state agencies as defined in KRS 45A.505.
(a) Direct and indirect costs or savings to those affected: Since contracts for goods with a recycled content are currently in the process of being established, it is not possible to determine the cost or savings of purchasing such goods. The price of each commodity will depend upon availability.
1. First year: Cannot be determined.
2. Continuing costs or savings: Cannot be determined.
3. Additional factors increasing or decreasing costs (note any effects upon competition): The price of goods with a recycled content should decrease in the coming years as demand increases and the number of manufacturers increase.
(b) Reporting and paperwork requirements: This regulation will not increase reporting and paperwork requirements by state agencies.
(2) Effects on the promulgating administrative body: The Finance and Administration Cabinet will continually seek to identify additional goods that can be purchased with a recycled content. Once the good has been identified, the minimum recycled material content will be identified and this regulation will be amended.
(a) Direct and indirect costs or savings: There will be no direct and indirect cost or savings to the Finance and Administration Cabinet when procuring goods with a minimum recycled content.
1. First year: There will be no direct and indirect cost or savings to the Finance and Administration Cabinet when procuring goods with a minimum recycled content.
2. Continuing costs or savings: See above.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: This regulation will not increase reporting and paperwork requirements by the Finance and Administration Cabinet.
(3) Assessment of anticipated effect on state and local revenues: It is anticipated that this regulation will have no direct effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods for establishing the minimum recycled content for products purchased by state agencies were considered, since the Finance and Administration Cabinet is mandated by KRS 45A.520 to establish these standards by administrative regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or governmental policies which may be in conflict or overlapping with this administrative regulation. However, as required under KRS 45A.520, where indicated in the regulation, the minimum recycled content for certain products are identical to the minimum recycled content established by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended.
(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? Yes. This regulation has been narrowly tailored to apply only to "state agencies" as defined by KRS 45A.505.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Office of General Counsel

601 KAR 1:116. Restricted taxicab certificate.

RELATES TO: KRS 211.950-211.958, Chapter 281
STATUTORY AUTHORITY: KRS 281.600
NECESSITY AND FUNCTION: The definition of taxicab and taxicab certificate specified in KRS 281.014(1) and the definitions of ambulance and ambulance provider specified in KRS 211.950 have caused conflict in the transportation of persons who are handicapped or incapacitated. The Human Resources Cabinet and the Transportation Cabinet have both in the past assumed responsibility for the licensure of some providers of transportation to handicapped or incapacitated persons. To eliminate the overlap between the authority of the cabinets and to provide adequate notice to transporters of the handicapped or incapacitated of the appropriate licensing agency and procedures, this administrative regulation is promulgated.

Section 1. Definitions. (1) "Nonhealth care transporter" means a person who provides taxicab transportation to handicapped or incapacitated persons when it is not expected that the passenger shall require health care while being transported. The vehicle used by the nonhealth care transporter shall not be supplied or equipped with any medical equipment. The vehicle may be equipped to transport or hold wheelchairs, but not stretchers.
(2) "Nonhealth care restricted taxicab certificate" means a taxicab certificate issued to a nonhealth care transporter who does not intend to provide full taxi service to a community.

Section 2. Prohibitions. (1) No vehicle operated under the auspices of either a taxicab or nonhealth care restricted taxicab certificate issued by the Transportation Cabinet shall be supplied or equipped with any medical equipment nor shall it be equipped with a stretcher.
(2) No nonhealth care transporter shall operate a taxi service for the commercial transportation of handicapped or incapacitated persons in the Commonwealth of Kentucky without first having been issued a taxicab certificate or restricted taxicab certificate by the Transportation Cabinet.

Section 3. Cabinet for Human Resources. Any transporter of handicapped or incapacitated persons who supplies or equips his vehicle with medical equipment or a stretcher, shall apply for operational authority to the Cabinet for Human Resources in accordance with KRS Chapter 211.

Section 4. Wheelchairs. Any transporter of handicapped or incapacitated persons whether operating under the authority of KRS Chapter 211 or Chapter 281 may equip his vehicle to transport or hold wheelchairs.

JEROME L. LENTZ, Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: September 5, 1991
FILED WITH LRC: September 9, 1991 at 3 p.m.
PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on October 21, 1991 at 9 a.m., local prevailing time in the Department for Employment Services, Second Floor, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40601. Any person who intends to attend this hearing must in writing by October 16, 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 October 16, 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, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: 20 taxi operators in Kentucky who specialize in transportation handicapped or incapacitated persons.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No new paperwork is required.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet considered continuing to license all transporters of handicapped or incapacitated persons even though those receiving some type of medical care or treatment during the transportation. However, since these latter persons are also required to be licensed by the Cabinet for Human Resources and the requirements of the two cabinets are different, it seemed necessary to draw a demarcation between providing or not providing medical care or facilities.
(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: The Cabinet for Human Resources is amending their administrative regulation relating to ambulances at this time in order that there be no confusion as to which agency is to regulate which entities.
TIERING: Was tiering applied? Yes. The entire administrative regulation is tiering of the taxicab certificate.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:023. Control of drug use in gas operations.

RELATES TO: KRS Chapter 278, 49 CFR Part 199, 49 USC §1674
STATUTORY AUTHORITY: KRS 278.280(2), 49 CFR Part 199, 49 USC §1674
NECESSITY AND FUNCTION: Section 5 of the Natural Gas Pipeline Safety Act of 1978 (49 USC §1674) requires each state participating in the federal/state pipeline safety program to certify that it has adopted each federal safety standard established under the Act that is applicable to interstate pipeline transportation under its jurisdiction. Pursuant to that requirement, this regulation adopts the standards set out in 49 CFR Part 199 for drug testing of employees of operators of natural gas pipeline facilities which are subject to 807 KAR 5:022.

Section 1. Definitions. (1) "Accident" means an incident reportable under 807 KAR 5:027 involving gas pipeline facilities.
(2) "Administrator" means the Administrator of the Research and Special Programs Administration (RSPA), or any person who has been delegated authority in the matter concerned.
(3) "DOT procedures" means the "Procedures for Transportation Workplace Drug Testing Programs" published by the Office of the U.S. Secretary of Transportation in 49 CFR Part 40.
(4) "Employee" means a person who performs on a pipeline an operating, maintenance, or emergency-response function regulated by 807 KAR 5:022. This does not include clerical, truck driving, accounting, or other functions not subject to 807 KAR 5:022. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.
(5) "Fail a drug test" means that the confirmation test result shows positive evidence of the presence under DOT procedures of a prohibited drug in an employee's system.
(6) "Operator" means a person who owns or operates pipeline facilities subject to 807 KAR 5:022.
(7) "Pass a drug test" means that initial testing or confirmation testing under DOT procedures does not show evidence of the presence of a prohibited drug in a person's system.

(8) "Prohibited drug" means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act, 21 USC 801.812 (1981 & 1987 Cum.P.P.): marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). In addition, for the purpose of reasonable cause testing, "prohibited drug" includes any substance in Schedule I or II if an operator has obtained prior approval from RSPA, pursuant to the "DOT procedures" in 49 CFR Part 40, to test for such substance, and if the U.S. Department of Health and Human Services has established an approved testing protocol and positive threshold for such substance.

(9) "Commission" means the Kentucky Public Service Commission.

Section 2. DOT Procedures. The anti-drug program required by this regulation shall be conducted according to the requirements of this regulation and the DOT procedures. In the event of conflict, the provisions of this regulation prevail. Terms and concepts used in this regulation have the same meaning as in the DOT procedures.

Section 3. Anti-drug Plan. Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this regulation and the DOT procedures. The plan shall contain:

(1) Methods and procedures for compliance with all the requirements of this regulation, including the employee assistance program;

(2) The name and address of each laboratory that analyzes the specimens collected for drug testing; and

(3) The name and address of the operator's medical review officer; and

(4) Procedures for notifying employees of the coverage and provisions of the plan.

Section 4. Use of Persons Who Fail or Refuse a Drug Test. (1) An operator shall not knowingly use as an employee any person who:

(a) Fails a drug test required by this regulation and the medical review officer makes a determination under Section 7(4)(b) of this regulation; or

(b) Refuses to take a drug test required by this regulation.

(2) Subsection (1)(a) of this section does not apply to a person who has:

(a) Passed a drug test under DOT procedures;

(b) Been recommended by the medical review officer for return to duty in accordance with Section 7(3) of this regulation; and

(c) Not failed a drug test required by this regulation after returning to duty.

Section 5. Drug Tests Required. Each operator shall conduct the following drug tests for the presence of a prohibited drug:

(1) Preemployment testing. No operator shall hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this regulation.

(2) Postaccident testing. As soon as possible but no later than thirty-two (32) hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. If an employee is injured, unconscious, or otherwise unable to evidence consent to the drug test, all reasonable steps shall be taken to obtain a urine sample. An operator may decide not to test under this subsection but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

(3) Random testing. Each operator shall administer, every twelve (12) months, a number of random drug tests at a rate equal to fifty (50) percent of its employees. Each operator shall select employees for testing by using a random number table or a computer-based random number generator that is matched with an employee's social security number, payroll identification number, or other appropriate identification number. However, during the first twelve (12) months following the institution of random drug testing under this regulation, each operator shall meet the following conditions:

(a) The random drug testing is spread reasonably through the twelve (12) month period;

(b) The last test collection during the year is conducted at an annualized rate of fifty (50) percent; and

(c) The total number of tests conducted during the twelve (12) months is equal to at least twenty-five (25) percent of the covered population.

(4) Testing based on reasonable cause. Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test shall be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two (2) of the employee's supervisors, one (1) of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two (2) supervisors may be by telephone. However, in the case of operators with fifty (50) or fewer employees subject to testing under this regulation, only one (1) supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test.

(5) Return to duty testing. An employee who refuses to take or does not pass a drug test shall not return to duty until the employee passes a drug test administered under this regulation and the medical review officer has determined that the employee may return to duty. An employee who returns to duty shall be subject to a reasonable program of follow-up drug testing without prior notice for not more than sixty (60) months after his return to duty.

Section 6. Drug Testing Laboratory. (1) Each operator shall use for the drug testing required by this regulation only drug testing laboratories certified by the U.S. Department of Health and Human Services under the DOT procedures.

(2) The drug testing laboratory must permit:

(a) Inspections by the operator before the laboratory is awarded a testing contract; and

(b) Unannounced inspections, including

examination of records, at any time, by the operator, the administrator or a commission representative.

Section 7. Review of Drug Testing Results. (1) MRO appointment. Each operator shall designate or appoint a medical review officer (MRO). If an operator does not have a qualified individual on staff to serve as MRO, the operator may contract for the provision of MRO services as part of its anti-drug program.

(2) MRO qualifications. The MRO shall be a licensed physician with knowledge of drug abuse disorders.

(3) MRO duties. The MRO shall perform the following functions for the operator:

(a) Review the results of drug testing before they are reported to the operator.

(b) Review and interpret each confirmed positive test result as follows to determine if there is an alternative medical explanation for the confirmed positive test result:

1. Conduct a medical interview with the individual tested.

2. Review the individual's medical history and any relevant biomedical factors.

3. Review all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally prescribed medication.

4. If necessary, require that the original specimen be reanalyzed to determine the accuracy of the reported test result.

5. Verify that the laboratory report and assessment are correct.

(c) Determine whether and when an employee who refused to take or did not pass a drug test administered under DOT procedures may be returned to duty.

(d) Determine a schedule or unannounced testing, in consultation with the operator, for an employee who has returned to duty.

(e) Ensure that an employee has been drug tested in accordance with the DOT procedures before the employee returns to duty.

(4) MRO determinations. The following rules govern MRO determinations:

(a) If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO is not required to take further action.

(b) If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO shall refer the individual tested to an employee assistance program, or to a personnel or administrative officer for further proceedings in accordance with the operator's anti-drug program.

(c) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the MRO may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the MRO should conclude that the test is negative for the presence of a prohibited drug or drug metabolite in an individual's system.

Section 8. Retention of Samples and Retesting. (1) Samples that yield positive results on confirmation shall be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT procedures. Within this 365-day period, the employee or his representative, the operator, the administrator, or a commission representative may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.

(2) If the medical review officer (MRO) determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, the original sample shall be retested if the employee makes a written request for retesting within sixty (60) days of receipt of the final test result from the MRO. The employee may specify retesting by the original laboratory or by a second laboratory that is certified by the U.S. Department of Health and Human Services. The operator may require the employee to pay in advance the cost of shipment (if any) and reanalysis of the sample, but the employee shall be reimbursed for such expense if the retest is negative.

(3) If the employee specifies retesting by a second laboratory, the original laboratory shall follow approved chain-of-custody procedures in transferring a portion of the sample.

(4) Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT procedures, but equal to or greater than the established sensitivity of the assay, shall, as technically appropriate, be reported and considered corroborative of the original positive results.

Section 9. Employee Assistance Program. (1) Each operator shall provide an employee assistance program (EAP) for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The operator may establish the EAP as a part of its internal personnel services or the operator may contract with an entity that provides EAP services. Each EAP shall include education and training on drug use. At the discretion of the operator, the EAP may include an opportunity for employee rehabilitation.

(2) Education under each EAP shall include at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding the use of prohibited drugs.

(3) Training under each EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause shall include one (1) sixty (60) minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use.

Section 10. Contractor Employees. With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this regulation be carried out by the contractor

provided:
(1) The operator remains responsible for ensuring that the requirements of this regulation are complied with; and
(2) The contractor allows access to property and records by the operator, the administrator, and a commission representative for the purpose of monitoring the operator's compliance with the requirements of this regulation.

Section 11. Recordkeeping. (1) Each operator shall keep the following records for the periods specified and permit access to the records as provided by subsection (2) of this section:
(a) Records that demonstrate the collection process conforms to this regulation shall be kept for at least three (3) years.
(b) Records of employee drug test results that show employees failed a drug test, and the type of test failed (e.g., postaccident), and records that demonstrate rehabilitation, if any, shall be kept for at least five (5) years, and include the following information:
1. The functions performed by employees who failed a drug test.
2. The prohibited drugs which were used by employees who failed a drug test.
3. The disposition of employees who failed a drug test (e.g., termination, rehabilitation, leave without pay).
4. The age of each employee who failed a drug test.
(c) Records of employee drug test results that show employees passed a drug test shall be kept for at least one (1) year.
(d) A record of the number of employees tested, by type of test (e.g., postaccident), shall be kept for at least five (5) years.
(e) Records confirming that supervisors and employees have been trained as required by this regulation shall be kept for at least three (3) years.
(2) Information regarding an individual's drug testing results or rehabilitation may be released only upon the written consent of the individual, except that such information shall be released regardless of consent to the administrator or a commission representative upon request as part of an accident investigation. Statistical data related to drug testing and rehabilitation that is not name-specific and training records shall be made available to the administrator or a commission representative upon request.

GEORGE EDWARD OVERBEY, JR, Chairman
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: August 15, 1991
FILED WITH LRC: August 16, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 1991, at 10 a.m., EDT in Hearing Room 1 of the Commission's Offices at 730 Schenkel Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 17, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lee M. MacCracken, Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lee M. MacCracken
(1) Type and number of entities affected: This new regulation affects all 80 gas utilities under the jurisdiction of the commission and subject to compliance with 807 KAR 5:022 (Gas Safety).
(a) Direct and indirect costs or savings to those affected: Total costs to utilities to comply with 807 KAR 5:023 will be determined by the number of affected personnel employed by each utility. The highest cost will be incurred by the 5 major gas utilities since they have the greatest number of employees-Columbia Gas of Kentucky; Delta Natural Gas Company; Louisville Gas and Electric Company; Union Light, Heat and Power Company; and Western Kentucky Gas Company. The first year and continuing costs will be substantially lower for the remaining minor distribution and intrastate pipeline utilities since each has a significantly less number of employees.
1. First year: Gas utilities in Kentucky have been subject to compliance with 49 CFR Part 199, the federal regulation which this proposed regulation essentially adopts without change, since August of 1990. Based upon information received from the 5 major utilities, the average first year costs were approximately $63,000. For the minor utilities, the average first year costs were approximately $900.
2. Continuing costs or savings: Start-up costs included education and policy development, expenditures which will not be required in as great a degree in future years. Except for changes in employment levels or increased costs related to testing, the continuing costs should remain virtually the same after the first year costs incurred by each utility.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional known factors which will increase or decrease costs. Since this regulation applies to all gas utilities under the jurisdiction of the commission, there are no effects upon competition.
(b) Reporting and paperwork requirements: The following new records must be kept by each utility to comply with this regulation: description of the collection process; failed drug tests; the type of test failed and what rehabilitation took place; passed drug tests; the number of employees tested by each type of test; and confirmation that supervisors and employees have been trained as required.
(2) Effects on the promulgating administrative body: The commission's Gas Pipeline Safety Branch inspects 80 gas utilities for compliance with 807 KAR 5:022. Monitoring compliance with 807 KAR 5:023 will not require additional staff time.
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Unless additional requirements are imposed at the federal level, there should be no other factors which would increase costs.

(b) Reporting and paperwork requirements: Commission employees have currently incorporated compliance monitoring of this regulation into their on-going inspections of gas utilities. Minimal additional time and training was required to become familiar with the federal requirements. No additional reporting or paperwork requirements have been necessary.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative method; reasons why alternatives were rejected: No alternative methods were available. The commission has a Section 5(a) Agreement with the U. S. Department of Transportation through which the commission assumes responsibility for inspecting gas pipeline facilities in the Commonwealth. In return, the federal government partially funds the commission's gas safety inspection program. One of the requirements of the Section 5(a) Agreement is that the Commonwealth of Kentucky adopt federal mandates related to gas pipeline safety, one of which is 49 CFR Part 199 (Control of Drug Use in Natural Gas, Liquefied Natural Gas and Hazardous Liquid Pipeline Operations.)

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: This regulation is focused on a narrowly defined population: operators of gas pipeline facilities must test employees for the presence of prohibited drugs and provide an employee assistance program. "Employee" means a person who performs on a pipeline an operating, maintenance, or emergency-response function regulated by 807 KAR 5:022. Therefore, this regulation does not conflict with, overlap, or duplicate any existing drug testing or prevention efforts by the Commonwealth.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering was not necessary since this regulation applies to all gas utilities under the jurisdiction of the commission which must comply with 807 KAR 5:022.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 5 of the Natural Gas Pipeline Safety Act of 1978 (49 USC §1674) requires each state participating in the federal/state pipeline safety program to certify that it has adopted each federal safety standard established under the Act that is applicable to interstate pipeline transportation under its jurisdiction. 49 CFR Part 199 -- "Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations" -- became effective in April of 1990 for utilities with 50 or more employees subject to the regulation, and in August of 1990 for utilities with fewer than 50 employees subject to the regulation.

2. State compliance standards. The regulation requires operators of pipeline facilities for the transportation of natural gas to test employees who perform sensitive safety-related functions for the presence of prohibited drugs, and to provide an employee assistance program. The regulation essentially adopts the standards of 49 CFR Part 199. The only way in which the proposed regulation differs from the federal regulation is that, unlike 49 CFR Part 199, the regulation does not apply to operators of pipeline facilities for the transportation of hazardous liquids or to operators of liquefied natural gas facilities. This is because Kentucky does not participate in the federal/state safety program in these areas.

3. Minimum or uniform standards contained in the federal mandate. The minimum standards contained in 49 CFR Part 199 are the same as those in the proposed regulation. As previously stated, the proposed state regulation differs from the federal regulation only in that its application is restricted to operators of pipeline facilities for the transportation of natural gas.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 49 CFR Part 199 applies to operators of pipeline facilities for the transportation of natural gas or hazardous liquids and operators of liquefied natural gas facilities, while this regulation applies only to operators of pipeline facilities for the transportation of natural gas. This is the only way in which the requirements of the proposed regulation are different than the requirements of the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Commonwealth of Kentucky, through the commission, has entered into a Section 5(a) Agreement with the U.S. Department of Transportation to assume safety jurisdiction over most gas pipeline facilities in Kentucky. Since the Commonwealth has chosen not to enter into similar agreements with USDOT regarding hazardous liquids pipelines and liquefied natural gas facilities, the commission has no authority over such operators. Operators of these facilities remain subject to federal safety jurisdiction, including 49 CFR Part 199.

CABINET FOR HUMAN RESOURCES
Office of Policy and Budget

900 KAR 1:007. Repeal of 900 KAR 1:006.

RELATES TO: HB 398, 1986 Acts of the General Assembly, Part I

STATUTORY AUTHORITY: KRS 194.050, HB 398, 1986 Acts of the General Assembly, Part I

NECESSITY AND FUNCTION: 900 KAR 1:006 is no longer required as HB 398, Part I, an Act of the 1986 General Assembly, authorized the biennial budget for state fiscal years 1987 and 1988. Since HB 398, Part I, was not codified and subsequently expired on June 30, 1988, 900 KAR 1:006 is no longer in effect.

Section 1. 900 KAR 1:006, Limitation on indirect administrative cost in contracts, is hereby repealed.

FRANK WILLEY, Executive Director
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 29, 1991
FILED WITH LRC: September 13, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1991, at 9 a.m., in the DES Conference Room, Second Floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 16, 1991, of their intent to appear and testify at the public hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Frank Willey
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: No fiscal impact.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No impact.
(4) Assessment of alternative methods; reasons why alternatives were rejected: None required.
(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: Repeals 900 KAR 1:006, which is no longer needed.
TIERING: Was tiering applied? No. Not applicable.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

902 KAR 20:117. Health care ground transportation services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 211.950, 216B.040, 216B.105
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services in Kentucky. This regulation provides for the minimum licensing requirements for ground health care transportation services.

Section 1. Definitions. (1) "Advanced life support (ALS) emergency care and ambulance transportation" means the provision of services that meet the minimal essential requirements as established by the cabinet for basic life support services by personnel trained in skills necessary for an advanced life support service. The minimum requirements established by the cabinet for the provision of advanced life support services are described in Section 12 of this regulation.
(2) "Ambulance" means a vehicle as defined in KRS 211.950(1) utilized for providing individuals with basic, advanced or specialized levels of emergency medical care. This unit may be used to provide emergency transportation or nonemergency runs for any individual who is sick, injured or otherwise incapacitated.
(3) "Ambulance service" means a provider as defined in KRS 211.950(2) and is licensed by the cabinet to supply basic, advanced or specialized levels of emergency medical care and emergency transportation, or nonemergency, convalescent runs.
(4) "Back-up ambulance" means a ground ambulance as defined in Section 5(3) of this regulation, and is licensed by the cabinet to provide emergency care and transportation when one (1) of the licensed primary ambulances is not in service, or on rare occasions when all of the primary ambulances are on runs and extreme circumstances dictate its use.
(5) "Basic life support emergency care and ambulance transportation" means health care and transportation provided on an emergency or scheduled basis to persons who are sick, injured, or otherwise incapacitated, and may require immediate stabilization and continued medical response and intervention during ground transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being. The minimum requirements established by the cabinet for the provision of basic life support services are described in Section 1 through Section 8 of this regulation.
(6) "CPR" means cardiopulmonary resuscitation as conforming to the basic rescuer course of the American Heart Association or the basic life support for the professional rescuer course of the American Red Cross, either of which as a minimum shall include one (1) or two (2) person CPR; airway obstruction and airway adjuncts for adults, children and infants.
(7) "Dispatch center" means the location where incoming calls are initially received requesting an ambulance, and where contact is made with the ambulance for direction to the patient scene.
(8) "Emergency medical technician (EMT)" means a person certified pursuant to 902 KAR 13:010 through 902 KAR 13:100.
(9) "Emergency medical technicial-first responder" means a person certified pursuant to 902 KAR 13:110.
(10) "Paramedic (EMT-P)" means a person certified pursuant to 201 KAR 9:101 through 201 KAR 9:136.
(11) "Employee" means any ambulance service personnel who may be either paid or volunteer, full-time or part-time provider staff.
(12) "Interfacility" means emergency or NEHT health care provided to a patient during ambulance transportation between two (2) hospitals or between a hospital and an extended care nursing facility, or vice versa.
(13) "Licensing agency" means the Division of Licensing and Regulation.
(14) "Nonconforming ambulance service" means an ambulance service that was licensed and incorporated into the emergency medical services system as nonconforming to laws and regulations

governing ambulance services. The minimum requirements established by the cabinet for a nonconforming ambulance service, until it is able to meet the full criteria of an ambulance service, are described in Section 10 of this regulation.

(15) "Nonemergency health transportation (NEHT)" means convalescent health care transportation provided on a prearranged basis to individuals whose impaired health condition requires stretcher transportation or medical supervision or equipment but does not indicate a need for emergency medical treatment during transit or upon arrival at the final destination.

(16) "Nonemergency health transportation (NEHT) service" is the entity exclusively licensed by the cabinet to provide only NEHT services. The minimum requirements established by the cabinet for the provision of services exclusive to nonemergency health transportation are described in Section 11 of this regulation.

(17) "Nonemergency health transportation (NEHT) vehicle" means a vehicle licensed by the cabinet to be used exclusively for nonemergency health transportation. The minimum requirements established by the cabinet for a NEHT vehicle are described in Section 11 of this regulation.

(18) "Prehospital" means emergency health care provided to a patient before and during ambulance transportation to a hospital.

(19) "Primary ambulance" means a ground ambulance as defined in Section 5(3) of this regulation, and is licensed by the cabinet to be utilized by an ambulance service for the provision of emergency care and transportation or for the provision of nonemergency runs.

(20) "Response time" means the time from which a call is received at the dispatch center, until an ambulance arrives at the patient scene.

(21) "Sharps" means a portion of or the whole unit of medical supplies used in treatment procedures, that may puncture the skin (e.g., used needles, glass ampules, etc.)

(22) "Specialized emergency care and ambulance transportation" means the services that meet the minimal essential requirements as established by the cabinet for the provision of emergency health care and transportation that may be unavailable to the general public and that has either specialized or limited functions which may require exceptional consideration of equipment or personnel requirements or hours of operation. The minimum requirements established by the cabinet for the provision of specialized emergency care services are described in Section 9 of this regulation.

Section 2. Scope of Operation and Services. This regulation covers health care transportation as provided to an individual in a vehicle specially designed or modified for the purpose of providing health care whereby the individual is afforded supervision or treatment by medically trained personnel who staff the vehicle, and the vehicle is equipped with medical equipment for use by the trained staff as appropriate.

Section 3. Licensing Requirements. The following licensing requirements shall apply to all ambulance and nonemergency health transportation (NEHT) services:

(1) No person shall provide, advertise, or profess to engage in the provision of basic, advanced life support specialized or nonconforming emergency medical care and transportation, nor nonemergency health transportation that originates in the Commonwealth of Kentucky without having first obtained a license from the cabinet. The following situations shall be exempt from the provisions of this regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(2)(f);

(b) Any vehicle serving as an ambulance during a major catastrophe;

(c) Any ambulance operated by the United States government; and

(d) Any ambulance from an out-of-state ambulance service making a run originating in Kentucky for the purpose of returning a patient to his out-of-state residence.

(2) The ambulance service shall comply with all local, state, and federal statutes and regulations.

(3) The license shall be displayed in a prominent place at the service base station. The following information shall be included on the license:

(a) Identity and location of the base station and the number and location of substations, if any, to be operated by the licensee;

(b) Designation of the geographic area to be served by the licensee, allowing for a maximum of thirty (30) minutes initial response time for ninety-five (95) percent of the population within the service area for all emergency calls. This does not preclude the service, in unusual circumstances, from providing mutual aid, disaster assistance, nonemergency health transportation or scheduled patient transfers outside the geographic service area;

(c) Designation of the levels of care which the service is authorized to provide (e.g., basic, advanced, specialized, nonemergency, etc.); and

(d) Designation of the number of primary and back-up ambulances to be operated by the service. If nonemergency runs are provided in other than the primary and back-up ambulances, the number of NEHT exclusive vehicles shall be designated separately on the license.

(4) Upon application for initial licensing or renewal of the license, the applicant or licensee shall specify the number of ambulances or NEHT vehicles to be operated and as a minimum provide the licensing agency with the ambulance or NEHT vehicle serial and license tag numbers.

(5) The licensee shall notify the licensing agency of any change in the number, type or use of the ambulances or NEHT vehicles to be operated and the licensee shall meet the following requirements:

(a) No ambulance or NEHT vehicle shall be operated until after the licensing agency has been notified and has verified that it meets requirements as applicable. If the ambulance or NEHT vehicle represents an expansion of service (e.g., an increase in the number of primary ambulances or NEHT vehicles), the licensing agency shall verify that a certificate of need has been granted prior to the inspection; and

(b) The licensing agency shall be notified on the next licensing agency business day, following disposition of any prior approved ambulance or NEHT vehicle operated by the service (i.e., discontinued from service, change in use by the same ownership, or sale to another identified licensed ambulance or NEHT service).

(6) The licensing agency procedures shall not

preclude the service from utilizing a replacement ambulance or NEHT vehicle on a temporary basis when a previously approved primary or back-up ambulance, or NEHT vehicle is out of service for maintenance. The following requirements shall apply:

(a) The licensing agency shall be immediately notified (or on the next working day) by phone of the ambulance service's need to operate a temporary replacement unit. Within five (5) days the ambulance service shall send the licensure agency written notice of the make, model, license number, and vehicle identification number and assurances that the temporary unit will be staffed and equipped in accordance with federal GSA specifications and this regulation;

(b) If the service plans to utilize the replacement for more than thirty (30) days, the service shall notify the licensing agency of the anticipated length of time the replacement will be in use; and

(c) The licensing agency shall be notified when the replaced unit is back in service.

(7) The cabinet shall maintain identifying records on all ambulances and NEHT exclusive vehicles according to established procedures.

Section 4. Management Requirements. All ambulance services shall:

(1) Establish lines of authority to include the designation of an administrator, and a designee who shall serve when necessary in the absence of the administrator, responsible for assuring compliance with all regulations during the daily operation of the service.

(2) Maintain adequate records and reports at the service base station to be made available for review as deemed necessary by the cabinet. Services shall:

(a) Complete the Kentucky emergency medical service ambulance run report form according to the guidelines established by the cabinet. They shall be maintained in a manner of confidentiality and safekeeping for a minimum of five (5) years from the last date of service, or in the case of a minor, until five (5) years beyond the age of majority (i.e., majority is eighteen (18) years of age). The form shall be completed for all runs that originate in Kentucky. The original, or a microfilm or similar copy procedure, may be utilized to meet the records retention requirement. A second copy stays with the patient record at the receiving facility. A third copy, or required data elements as approved by the cabinet, shall be forwarded to the cabinet in accordance with established procedures and submission dates.

(b) Maintain personnel files on each ambulance driver and attendant for a minimum of five (5) years, or longer if specified in local government archives approved schedules, following termination or retirement from employment; or five (5) years following the demise of the employee. Individual ambulance driver and attendant personnel files shall, as a minimum, contain evidence of training, experience, current credentials and health records to include:

1. A written statement from a physician that the employee is capable of performing assigned job duties; and

2. Maintenance of records for all known illnesses, accidents, physical or psychological impairments that may affect performance on duty. This shall include:

a. Follow-up activities relating to known exposure to communicable diseases or hazardous materials; and

b. Hepatitis B vaccination in accordance with OSHA regulation 29 CFR 1910.1030.

(3) Maintain and follow written administrative, personnel, medical and other operational policies and procedures, that are reviewed on an annual basis by the ambulance service in order to assess their effectiveness. The policies and procedures shall be developed to include at least the following areas:

(a) Organizational structure, staffing and allocation or responsibility and accountability;

(b) Ambulance service mutual aid agreements, and agreements with other providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that an in-service program is provided for its staff. The program shall include the following:

1. Evidence of in-service training for staff regarding the handling of infectious waste in accordance with the Centers for Diseases Control guidelines;

2. A plan for response to and the protection and decontamination of the patient, ambulance, equipment and its staff when called upon to transport a patient exposed to hazardous chemicals;

3. A plan for assessing all other staff in-service needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of written records to support in-service conducted by the licensee.

(e) A plan for quality assessment of patient care and evaluation of staff performance related to patient care.

Section 5. Operating Requirements. (1) Each ambulance service shall provide emergency care and transportation on a twenty-four (24) hour, seven (7) days a week basis. This provision may be met through an adequate call system or by written mutual aid agreement with another licensed ambulance service.

(2) When a licensed emergency ambulance service also makes nonemergency convalescent runs, a minimum of one (1) ambulance shall be held in reserve by the licensee to respond to emergency calls within the licensee's geographic service area. The licensee may enter into a written mutual aid agreement with another licensed ambulance service as a means to meet this requirement when the licensee's only remaining ambulance is called upon for an emergency response within or outside its geographic service area.

(3) Ambulance design and maintenance.

(a) Following the effective date of these regulations, each primary and back-up ground ambulance used in the provision of ambulance services shall be designed to provide adequately for the medical care and transportation of patients, and shall comply fully with ambulance design criteria contained in GSA federal specifications in effect at the time the ambulance is manufactured, except for color and provider identification. Ambulances shall comply with KRS 189.910 through 189.950 regarding the use of lights and siren.

(b) Following the effective date of these regulations, for newly purchased ambulances the ambulance service provider shall require that a certification decal or sticker be supplied by the manufacturer, indicating that the ambulance

met GSA federal specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment, or as later identified in any GSA federal specification revisions. For units that are later modified, the ambulance service provider shall require that the conversation company supply a letter to verify that the modification meets or exceeds the GSA federal specification requirements, except for color or provider identification, as incorporated in the GSA federal specifications on the ambulance original date of manufacture.

(c) In addition to the GSA federal specifications, the following additional state licensing requirements shall be maintained:

1. The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions;

2. The air conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions; and

3. The name of the ambulance service provider shall appear on the exterior surface of the ambulance.

(d) A preventive maintenance program for each ambulance and its equipment shall be developed and implemented for the purpose of keeping them in optimum working order to protect the health and safety of the patient and ambulance personnel. Documentation shall be maintained to support evidence of periodic inspections or calibrations as required for maintenance and operation of the ambulance and its equipment.

(e) The interior of the ambulance and its equipment shall be cleaned after each use, unless precluded by emergency conditions.

(4) Communications. A communications system shall be developed, coordinated and maintained by each ambulance and nonemergency health transportation service. The communication system shall meet the following requirements:

(a) All ambulances shall be equipped with two (2) way radio communications equipment, capable under normal conditions of contacting the ambulance dispatch center and the receiving hospital;

(b) A portable communication device, on the ambulance radio frequency, shall be provided for personnel when away from the ambulance;

(c) The ambulance service shall have an acceptable plan to assure that all calls are routinely answered, and runs dispatched in an expedient manner in accordance with subsection (1) of this section; and

(d) Each ambulance service shall provide orientation to all drivers and attendants related to communication protocols that have been established by the ambulance service.

(5) Each emergency ambulance service shall provide transportation to the nearest appropriate medical facility. For any run where the patient is not transported to the nearest facility, the ambulance service shall document that run to explain why another facility was more appropriate.

Section 6. Basic Life Support Personnel. (1) Number of personnel.

(a) Each ambulance service shall be staffed to provide, as a minimum, one (1) driver and one (1) attendant for each run involving emergency care and transportation or nonemergency runs. The attendant shall remain with the patient at all times during transport;

(b) There shall be no more patients, personnel and other persons than can be safely secured, by means of seat safety belts or similar devices, in the ambulance during transportation; and

(c) All personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue jeopardy.

(2) Qualifications of personnel.

(a) As a minimum, within six (6) months from the effective date of these regulations, the driver on each emergency care ambulance run shall:

1. Be at least eighteen (18) years of age, with current motor vehicle operator's license;

2. Have at least two (2) years of licensed driver/operator experience;

3. Complete a defensive driving training program that is developed by the ambulance service or in conjunction with another agency or organization. As a minimum, the training program shall consist of four (4) hours review of driving a vehicle under emergency conditions;

4. Documentation shall be available to support training in at least the following areas:

a. Review of KRS 189.910 through 189.950 regarding emergency vehicles.

b. Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose.

c. Review of defensive driving techniques and procedures by either hands-on experience, or exposure by visual aids, such as video tapes, slides or planned demonstrations.

5. The driver shall be capable of performing assigned duties.

(b) One (1) ambulance attendant on each prehospital emergency care ambulance run shall be certified or licensed for one (1) of the following levels:

1. Emergency medical technician (EMT);
2. Paramedic;
3. Registered nurse; or
4. Physician.

(c) The second ambulance attendant, who may also be the driver, as a minimum shall have certification or licensing within six (6) months after employment, for one (1) of the following levels:

1. American Red Cross advanced first aid and emergency care certification including supplemental cardiopulmonary-resuscitation (CPR) instruction approved by the American Red Cross or American Heart Association, until six (6) months after the effective date of this regulation, after which each shall become certified as an EMT first responder; or
2. EMT first responder;
3. EMT;
4. Paramedic;
5. Registered nurse; or
6. Physician.

(d) Personnel who on occasion may serve as either an attendant or a driver shall meet the qualifications for both roles. Personnel who serve as drivers only in a three (3) person crew and do not render any type of first aid or medical treatment, or personnel who serve as attendants only, shall have documentation of such in their personnel file.

(e) Ambulance personnel required to meet patient needs for interfacility or

facility-to-home patient transports shall be determined by the attending physician and the initiating facility, in conjunction with the ambulance service staff.

Section 7. Each ambulance used in the provision of emergency care and ambulance transportation shall carry and maintain in full operational order the following minimum equipment and supplies:

(1) Suction, ventilation and blood pressure equipment.

(a) Suction apparatus (fixed and portable);

(b) Hand operated bag mask ventilation unit with adult and child size masks (capable of use with oxygen);

(c) Hand operated infant bag-mask ventilation unit with infant size masks (capable of use with oxygen);

(d) Oropharyngeal airways (adult, child, and infant sizes); and

(e) Adult, obese adult and pediatric sphygmomanometer cuffs and stethoscope (permanently mounted sphygmomanometer shall not satisfy this requirement).

(2) Oxygen equipment.

(a) Fixed and portable oxygen tanks with a filled, minimum size D, secured spare portable cylinder;

(b) Pressure gauge and flow rate regulator (range of zero to fifteen (15) liters per minute);

(c) Oxygen humidifier attachment for use on the fixed oxygen tank;

(d) Adaptor and tubing;

(e) Transparent masks (adult, and child); and

(f) Nasal cannulas.

(3) Bandages and tape.

(a) Minimum of two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;

(b) Minimum of twenty-five (25) sterile gauze pads, four (4) inches by four (4) inches;

(c) Minimum of ten (10) soft roller self-adhering bandages, various sizes;

(d) Minimum of four (4) rolls of adhesive tape, minimum of two (2) sizes;

(e) Minimum of ten (10) triangular bandages with large safety pins; and

(f) Minimum of two (2) sterile burn sheets.

(4) Miscellaneous supplies.

(a) Eye protector pads and shields;

(b) Minimum of one (1) roll of aluminum foil, or any acceptable occlusive substitute;

(c) Shears for bandages;

(d) Flashlight;

(e) Minimum of one (1) thermometer;

(f) Minimum of two (2) sterile obstetrical kits;

(g) A poison kit to contain at least one (1) bottle of syrup of ipecac (with current expiration date) and one (1) bottle of activated charcoal (if in suspension, shall have current expiration date); and

(h) Sterile irrigation fluids with current expiration date.

(5) Splints and immobilization devices.

(a) Lower extremity traction splint, or equivalent as approved by the cabinet for use in EMT training;

(b) Splints for arm, leg and foot (e.g., inflatable air splints, padded boards or ladder splints, or an acceptable substitute);

(c) Immobilization devices.

1. Short spine board or other acceptable extrication device, as determined by the cabinet; and

2. Long spine board with cervical immobilization accessories, and an orthopedic "scoop" stretcher or other fullbody immobilization device as determined by the cabinet.

(d) Rigid, stiff cervical collars in large, medium, small adult and pediatric sizes;

(e) A short spine board or an acceptable substitute, as determined by the cabinet, shall be provided for administering CPR.

(6) Safety supplies and equipment.

(a) Minimum of two (2) five (5) pound size, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard or Factory Mutual. One (1) shall be located in the driver compartment and the other located in the patient compartment;

(b) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit;

(c) Minimum of one (1) pocket mask with oxygen inlet and isolation valve;

(d) Minimum of two (2) kits that include clean scrub gowns (or substitute, such as disposable coveralls), disposable masks and gloves;

(e) For instances when disposable gloves are not practical for use, a means of cleansing the hands shall be provided such as the provision of a solution or disposable towelettes;

(f) Disinfectants;

(g) Plastic bags for disposal of waste materials;

(h) If sharps are carried, puncture resistant containers shall be provided for disposal of the sharp objects;

(i) Clean linens; and

1. Sheets; and

2. Minimum of two (2) blankets.

(j) Personal supplies.

1. Tissues; and

2. Emesis.

(7) Additional medical supplies and equipment desired for storage in the ambulance for persons responding to the scene who are certified to provide higher level medical skills may be considered for approval by the cabinet. For eligibility, the ambulance service shall include documentation to assure a system of accountability for the storage and handling of the additional medical supplies and equipment. The cabinet shall have the authority to deny approval of the arrangement, if it is determined that such an arrangement is not in the best interest of quality patient medical care, or safety of the patient and personnel.

Section 8. Extrication Equipment. (1) For response to trauma scenes, each ambulance service shall provide and maintain in full operational order, the following minimum light access and extrication equipment on each ambulance:

(a) Minimum of two (2) pairs of eye protection goggles;

(b) Minimum of two (2) pairs of heavy work gloves;

(c) Minimum of two (2) hard hats;

(d) Minimum of one (1) spring loaded window punch or acceptable substitute; and

(e) A minimum of six (6) flares.

(2) For response to trauma scenes, each ambulance service shall as a minimum provide one (1) vehicle, which need not be an ambulance,

equipped with the following fully operational, more extensive access and extrication equipment. Ambulance services that have written agreements for this provision by rescue squads, fire departments for any emergency service agency that meets the requirement established by the cabinet, shall not be required to provide the more extensive access and extrication equipment.

(a) Minimum of two (2) 50 ft. long seven-sixteenths (7/16) or one-half (1/2) inch static nylon dynamic ropes;

(b) Minimum of one (1) pair of pliers, vise grip;

(c) Minimum of one (1) wrench, with adjustable, stable open end;

(d) Minimum of one (1) set of screw drivers, four (4) sizes, regular blade;

(e) Minimum of one (1) set of screw drivers, four (4) sizes, Phillips type;

(f) Minimum of one (1) double action tin snip;

(g) Minimum of one (1) crow bar, with pinch point;

(h) Minimum of one (1) hacksaw, with twelve (12) blades; and

(i) Minimum of one (1) hammer, three (3) pound size;

(j) Minimum of one (1) fire axe;

(k) Minimum of one (1) wrecking bar;

(l) Minimum of one (1) bolt cutter, with a minimum of one and one-fourth (1 1/4) inch jaw opening;

(m) Minimum of one (1) four (4) ton porta-power jack and spreader tool;

(n) Minimum of one (1) shovel, short handle, with pointed blade;

(o) Minimum of one (1) shovel, long handle, with pointed blade;

(p) Minimum of one (1) come-along tool; and

(q) Minimum of two (2) fire blankets.

Section 9. Specialized Emergency Care and Ambulance Transportation Service. An ambulance service which complies with Sections 1 through 8 of this regulation, and may also comply with Section 12, of this regulation may be allowed to have the following variances. If the ambulance service operates with these approved variances, it may be licensed as a specialized emergency care and ambulance transportation service:

(1) Each specialized ambulance service license shall specify the limitations of the services approved by the cabinet;

(2) In reference to Section 5(1) of this regulation, a specialized ambulance service shall not be required to provide emergency care and ambulance transportation on a twenty-four (24) hour, seven (7) days a week basis;

(3) Depending on the level of care to be provided, a specialized ambulance service shall be required to meet the minimum equipment, supplies and personnel requirements as listed in Sections 6 and 7 of this regulation or Section 12 of this regulation with certain variations as approved by the cabinet. Each specialized ambulance service desiring variations in equipment, supplies or personnel shall submit the requests in writing for consideration and for approval by the cabinet.

Section 10. Nonconforming Emergency Ambulance Service. No new ambulance service shall be eligible to become licensed as a nonconforming emergency ambulance service. Each existing service licensed as nonconforming shall on their next annual licensure survey submit an acceptable plan of correction to the licensing agency, for licensing as a basic ambulance service and may continue to operate according to the nonconforming license until it is able to meet the full criteria of the present regulations, or until the following annual survey whichever comes first, at which time it shall become licensed and fully comply with the standards of this regulation as a nonemergency health or a basic ambulance service. A nonconforming emergency ambulance service shall meet the minimum requirements of Sections 1 through 8 of this regulation with the exception of the following, until such time as the service is able to upgrade its operation to meet all requirements of the current laws and regulations governing ambulance services:

(1) In reference to Section 3(1) of this regulation, no ambulance service licensed in any category other than nonconforming ambulance service, shall be eligible to become licensed as a nonconforming ambulance service.

(2) In reference to Section 3(3)(b) of this regulation, a nonconforming ambulance service shall not expand its geographic area of operation unless it is in the process of upgrading to fully comply with the laws and regulations governing ambulance services.

(3) In reference to Section 3(5) of this regulation, a nonconforming ambulance service shall not expand its service by the addition of ambulances, other than replacement of a previously approved ambulance, unless it is in the process of upgrading to fully comply with the current laws and regulations governing ambulance services.

(4) In reference to Section 4(2) and (3) and Section 5(3)(d) of this regulation, a nonconforming ambulance service shall not be required to keep written records and reports.

(5) In reference to Section 5(3)(a), (b) and (c), a nonconforming ambulance service may continue to operate ambulances that were in operation prior to these regulations that did not meet GSA federal specifications. Each ambulance purchased after the effective date of these regulations shall have been originally designed for use as an ambulance, shall meet the GSA federal design specifications in effect at the time of manufacture except for color and location of the provider identification and shall be provided with a certification sticker by the manufacturer.

(6) In reference to Section 6 of this regulation, as a minimum the attendants for each emergency care ambulance run for a nonconforming ambulance service shall have current certification for one (1) of the following levels:

(a) American Red Cross Advanced First Aid, including supplemental CPR instruction approved by the American Red Cross or American Heart Association, until six (6) months after the effective date of this regulation, after which each shall become certified as an EMT first responder;

(b) EMT-first responder;

(c) EMT;

(d) Paramedic;

(e) Registered nurse; or

(f) Physician.

(7) In reference to Section 5(4)(b) of this regulation, a portable radio communication device, for use when away from the ambulance,

shall not be required for a nonconforming ambulance service.

Section 11. Nonemergency Health Care and Transportation (NEHT) Service. (1) A service that is designed for the transportation of a person who is unable to utilize common carrier and complies with Sections 1 through 8 of this regulation, while having the following variances, shall be deemed as meeting the requirements for a nonemergency health care and transportation exclusive service.

(2) In reference to Section 3(3)(b) of this regulation, NEHT exclusive services shall not be required to meet a maximum of thirty (30) minutes initial response time for ninety-five (95) percent of the population within the service area.

(3) In reference to Section 3(3)(d) of this regulation, NEHT exclusive services shall have only primary vehicles.

(4) In reference to Section 5(1) of this regulation, a NEHT exclusive service shall not be required to operate nor provide dispatch coverage on a twenty-four (24) hour basis, but may limit its prescheduled coverage to a designated range of hours.

(5) In reference to Section 5(3)(a), (b) and (c) of this regulation, vehicles used exclusively for nonemergency, convalescent health transportation may deviate from federal GSA requirements. In accordance with KRS 189.920, the NEHT vehicles shall not be equipped with emergency lights or sirens. As a minimum, each vehicle for a NEHT exclusive service shall:

(a) Be constructed to allow verbal communication between the driver and patient attendant during transit;

(b) In reference to Section 5(3)(c)1 and 2 of this regulation, have comparable heating and air conditioning systems in both the driver and patient compartments;

(c) Have two (2) access doors to the patient compartment, one (1) being at the right side and one (1) at the rear of the patient compartment; and

(d) Have in the patient compartment, interior minimum dimensions as follows:

1. Height of forty-two (42) inches from floor to ceiling;
2. Width of forty-eight (48) inches; and
3. Length of ninety-two (92) inches from the rear door to the driver section.

(6) In reference to Section 6(2)(a)3 of this regulation, the driver on each NEHT exclusive service run shall not be required to complete a defensive driving training program.

(7) In reference to Section 6(2)(b) of this regulation, the patient attendant on each NEHT exclusive service run shall as a minimum have:

(a) American Red Cross advanced first aid and emergency care certification, including supplemental CPR instruction certification approved by the American Red Cross or American Heart Association, until six (6) months after the effective date of this regulation after which each shall become certified as an EMT-first responder; or

(b) EMT-first responder certification.

(c) A second attendant, who may also be the driver, shall not be required to have certification or licensing in one (1) of the categories listed in Section 6(2)(c) of this regulation.

(d) For nonemergency health transportation in which the patient may require monitoring or potential treatment by personnel trained beyond the EMT-first responder level, ambulances licensed to be staffed and equipped for basic or advanced life support shall be used for transporting the patient.

(8) In reference to Section 7 of this regulation, all vehicles used exclusively for provision of nonemergency health care and transportation shall be required to provide and maintain in full operational order, only the following minimum supplies and equipment:

(a) Two (2) five (5) pound size, ABC multipurpose fire extinguishers approved by Underwriters Laboratory, the Coast Guard or Factory Mutual. One (1) extinguisher shall be located in the driver compartment and the other one shall be located in the patient compartment;

(b) Oxygen equipment, as specified in Section 7(2) of this regulation may be utilized only when the vehicle patient compartment is staffed minimally by EMT-first responder certified personnel.

(c) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit or equipped with a wheelchair lift and a mechanism to secure all wheelchairs utilized during transport;

(d) First aid supplies and equipment of quantities to be determined by the NEHT service director to include:

1. Sterile gauze pads, four (4) inches by four (4) inches;
2. Soft roller self-adhering bandages;
3. Adhesive tape, various size rolls;
4. Triangular bandages with large safety pins;
5. Bandaids, various sizes; and
6. Shears for bandages.

(e) Clean linens as required by Section 7(6)(i) of this regulation; and

(f) Personal supplies as required by Section 7(6)(j) of this regulation.

(9) In reference to Section 8 of this regulation, NEHT exclusive services shall not be required to carry extrication equipment nor have a written agreement with another service for this provision.

(10) In reference to Section 5(1) of this regulation, a NEHT exclusive service shall not be required to operate twenty-four (24) hours a day.

(11) The following additional variances shall apply to NEHT exclusive services:

(a) Each NEHT exclusive vehicle shall not be labelled to imply that it provides emergency medical services, nor display the Star of Life or the word ambulance. Vehicles so labelled prior to the effective date of this regulation shall, on the next scheduled licensure survey, submit an acceptable plan of correction to the licensing agency for complying with this regulation.

(b) The minimum staffing requirement for a NEHT exclusive vehicle shall be one (1) driver and one (1) attendant who shall remain with the patient at all times.

(c) Nonemergency health transportation exclusive vehicles, purchased after the effective date of these regulations, that have an orange stripe shall have a nonwhite field (a white field is acceptable for any vehicle having a nonorange stripe).

Section 12. Advanced Life Support (ALS) Emergency Care and Ambulance Transportation

Service. (1) An ALS ambulance service shall meet all the minimum requirements of Sections 1 through 8 of this regulation. It shall also meet the additional requirements of this section.

(2) Evidence shall be on file to verify that the ALS written medical protocols have been reviewed by the Kentucky Board of Medical Licensure to assure compliance with 201 KAR 9:161.

(3) An ALS emergency care and ambulance transportation service shall provide services on a twenty-four (24) hour, seven (7) days a week basis. This provision may be met through an adequate call system or by a written mutual aid agreement with another licensed advanced life support emergency care ambulance service.

(4) Each ALS ambulance shall be staffed according to the requirements of 201 KAR 9:171, Section 5.

(5) Each ALS nontransportation vehicle shall be staffed by a minimum of one (1) person who shall have minimum training and current certification as an EMT paramedic.

(6) In addition, each ALS service shall have a medical director who:

(a) Shall assume responsibilities in accordance with 201 KAR 9:171, Section 2(1) through (5);

(b) Shall assume other responsibilities as agreed upon between the medical director and the director of the ALS ambulance service;

(c) Shall meet the qualifications specified in 201 KAR 9:171, Section 2(6). Evidence shall be on file, to verify that the qualifications of the medical director have been reviewed by the Kentucky Board of Medical Licensure to assure compliance with 201 KAR 9:171, Section 2(6); and

(d) Shall have, within six (6) months after the effective date of this regulation, completed a residency program in emergency medicine approved by the Residency Review Committee of the American Medical Association, or shall be a physician who holds or is in the process of completing certification in advanced cardiac and advanced trauma life support, or shall have, in the personnel file, written approval from the Kentucky Board of Medical Licensure.

(7) Each ambulance used in the provision of ALS emergency care and ambulance transportation shall carry and maintain in full operational order the minimum equipment and supplies required by 902 KAR 20:115.

(8) A nonambulance, nontransportation ALS vehicle shall have available the minimum equipment and supplies required by 902 KAR 20:115. This may be accomplished through the coordinated response of an ambulance from the same service, or the coordinated response of an ambulance from a separate service under the provisions of a written mutual aid agreement on file with both services.

(9) In addition, each ALS service shall carry and maintain in full operational order the minimum ALS equipment and supplies as required in 201 KAR 9:171, Section 7, on each ALS ambulance or nontransportation vehicle.

(10) Drugs and medications, as provided for in protocols established in accordance with subsection (2) of this section shall be stocked and maintained.

(11) A locked compartment, or equivalent approved by the cabinet, shall be provided for the storage of controlled drugs.

Section 13. (1) 902 KAR 20:115 is hereby repealed.

(2) 902 KAR 20:120 is hereby repealed.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 6, 1991
FILED WITH LRC: September 11, 1991 at 3 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1991 at 9 a.m. in the Department for Employment Services, second floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 16, 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: Eric Friedlander/Ralph Von Derau/David Crane

(1) Type and number of entities affected: Emergency and nonemergency ground ambulance services (343).

(a) Direct and indirect costs or savings to those affected: This regulation establishes new compliance standards for ambulance services. The regulations relating to ambulance standards have not been updated since August of 1983. Additional medical supplies have been added to the minimum equipment list. Most services already comply with the revised standards, but a service that only meets minimum requirements could face an additional expense of approximately $1,200 dollars. It is impossible to determine the costs to the entire industry due to the differing rates of present compliance with these proposed amendments.

1. First year: For a service that presently only meets minimum requirements approximately $1,200 - less for most providers.

2. Continuing costs or savings: Less than the first year, but related to the supplies utilized over time.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No factors effecting competition.

(b) Reporting and paperwork requirements: Routine reports required by the cabinet.

(2) Effects on the promulgating administrative body: No effect on promulgating body.

(a) Direct and indirect costs or savings: $500 for reprinting regulation.

1. First year: $500 for reprinting regulation.

2. Continuing costs or savings: No continuing costs since reprinting regulations is built into the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional requirements.

(3) Assessment of anticipated effect on state and local revenues: State revenues should not be changed. Local revenues may be impacted based on the amount of local funding for EMS and the services state of compliance with these proposed standards.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are available.

(5) Identify any statute, administrative regulation or government policy which may be in

conflict, overlapping, or duplication: No conflict exists.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: No additional information.

TIERING: Was tiering applied? Yes. Tiering is utilized to the extent that different types of providers (i.e., ALS, BLS, specialized, nonemergency) are recognized in this regulation and different standards apply.

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

904 KAR 2:360. Transitional and at-risk child care.

RELATES TO: 45 CFR 256, 257
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the transitional and at-risk child care programs. This regulation sets forth the technical and financial requirements of these child care programs.

Section 1. Definitions. (1) "At-risk" means a family that has income at or below sixty (60) percent of the state median income and is therefore at risk of welfare dependency. Recipients of at-risk services may remain eligible for services with an income up to seventy-five (75) percent of the state median income.

(2) "Caregiver" means parent, step-parent or legally responsible guardian of an eligible child.

Section 2. Transitional Child Care (TCC). (1) Child care assistance shall be provided to a family whose eligibility for AFDC assistance has ceased:

(a) Due to increased hours of, or earnings from, employment; or

(b) As a result of the loss of income disregards due to the expiration of the time limits at Section 4(3)(b) of 904 KAR 2:016.

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

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

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

1. A dependent child who is physically or mentally incapable of caring for himself, as verified by the written determination of:

a. A physician; or

b. A licensed or certified psychologist; or

2. A needy dependent child under court supervision; or

3. Would be a dependent child except for the receipt of benefits under Supplemental Security Income (SSI) under 42 USC 1382 or foster care under 42 USC 672.

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

(c) Payments are not made for care provided by:

1. Parents;

2. Legal guardians; or

3. Members of the assistance group;

(d) The family shall have ceased to be eligible for AFDC as a result of:

1. Increased hours of, or increased income from, employment; or

2. The loss of income disregards due to the time limitations at Section 4(3)(b) of 904 KAR 2:016;

(e) The family shall have received AFDC:

1. In at least three (3) of the six (6) months preceding the first month of ineligibility; and

2. At least one (1) of the three (3) months was received in the state of Kentucky.

(f) The family:

1. Requests TCC benefits;

2. Provides the information necessary for determining eligibility and fees; and

3. Meets application requirements.

(4) Time limitations.

(a) Eligibility for TCC:

1. Begins with the first month that the family is ineligible for AFDC; and

2. Continues for a period of twelve (12) consecutive months.

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

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

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

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

1. The individual:

a. Is personally providing care for a child under age six (6); and

b. Employment will require the individual to work more than twenty (20) hours per week.

2. Child care:

a. Is necessary for the individual to participate in the program or accept employment; and

b. Is not available; or

c. The available child care does not meet the special needs of the child, e.g., handicapped or retarded child.

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

4. Transportation is unavailable and there is no readily accessible alternative means of transportation available.

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

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

7. Temporary incarceration.

8. Discrimination by an employer based on:

a. Age;

b. Race;

c. Sex;

d. Color;

e. Handicap;

f. Religious beliefs;

g. National origin; or

h. Political beliefs.

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

a. Consistently not being paid on schedule; or
b. The work presents a risk to the individual's health or safety.
10. Wage rates are decreased subsequent to acceptance of employment.
11. Acceptance of a better job which, because of circumstances beyond the control of the recipient, does not materialize.
12. Employment would result in a net loss of cash income.
(b) Fails to cooperate with the State IV-A agency in establishing payments and enforcing child support obligations, per 904 KAR 2:006, Section 11.
(7) Notices and hearings. Notices of adverse action, hearings, and appeals shall comply with the provisions of 904 KAR 2:046 and 904 KAR 2:055.
(8) Fee requirements. A family receiving TCC shall be required to contribute toward the payment based on the family's income as described in Section 3(10) of this regulation.
(9) Recoupment. The following provisions apply to overpayment in TCC:
(a) Necessary action shall be taken promptly by the department to correct and recoup an overpayment.
(b) An overpayment, including assistance paid pending a hearing decision, shall be recovered from:
1. The responsible party;
2. The family unit which was overpaid;
3. The provider who was responsible for the overpayment;
4. Individuals who were members of the family when overpaid; or
5. A family that includes a member of a previously overpaid family.
(c) An overpayment shall be recovered through:
1. Repayment by the individual or child care provider to the cabinet;
2. Reduction in child care payments; or
3. Reduction of AFDC benefits, only upon a voluntary request of the recipient family.
(d) Repayment by the individual shall allow the recipient family to retain, for any month, a reasonable amount of funds.
(e) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.
(f) Benefits shall not be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing, as specified in 904 KAR 2:055, when requested within the timely notice period.

Section 3. At-risk Child Care (ARCC). (1) Child care assistance shall be provided by the department to a family that:
(a) Is not receiving AFDC;
(b) Needs child care in order for a parent to accept or retain employment;
(c) Is at-risk of becoming eligible for AFDC as defined in Section 1 of this regulation; and
(d) Has no caregiver in the home to provide care for the child while a parent is working unless:
1. The caregiver is mentally or physically incapable of providing care; or
2. Is attending:
a. Job training; or
b. An educational program.
(2) In the event that a waiting list occurs, a family that loses eligibility in another child care program shall be given priority.
(3) ARCC shall be administered by the Cabinet for Human Resources, Department for Social Insurance through an Interagency Agreement with the Department for Social Services.
(4) Technical eligibility. The following requirements shall be met during any month for which ARCC is paid:
(a) The child is under age thirteen (13); or
1. Under age eighteen (18) and physically or mentally incapable of caring for himself as verified by the written determination of:
a. A physician; or
b. A licensed or certified psychologist; or
2. Under age eighteen (18) and under court supervision.
(b) The family:
1. Is at risk of becoming eligible for AFDC as defined in Section 1 of this regulation;
2. Is not receiving AFDC; and
3. Needs child care in order to accept employment and remain employed.
(5) Child care limitations.
(a) Child care payments shall be provided:
1. Directly to the provider;
2. In an amount equal to the actual cost up to a payment maximum based on local market rates described in Section 8 of 904 KAR 2:016; or
3. In an amount equal to the difference between subparagraph 2 of this paragraph and the amount allowed as a deduction for child care costs to recipients of statutory benefits; and
4. If child care arrangements would otherwise be lost:
a. For up to two (2) weeks prior to the start of employment; or
b. For up to one (1) month during a break in employment if subsequent employment is scheduled to begin within that period.
(b) Payments shall not be made to a provider if the provider is:
1. The parent;
2. The legal guardian;
3. Not meeting applicable standards of state and local law.
4. Not registered by the department, as required in subsection (6) of this section; or
5. Not allowing parental access.
(6) Registration.
(a) A provider shall be registered with the department prior to receiving payment if it is not:
1. Providing care solely to a member of the provider's family; and
2. Required to meet applicable standards of state and local law.
(b) Registration requirements shall be the provision, in writing, to the Department for Social Services of the provider's:
1. Name;
2. Mailing address; and
3. Social Security or tax identification number.
(7) Authorization of child care payment. ARCC payments shall be authorized when the following requirements are met:
(a) Application is made on form DSS-1A, which is incorporated by the Department for Social Services in 905 KAR 1:030; and
(b) Requested verification is provided for determination of:
1. Eligibility;
2. Fees; and
3. Cost of care.
(8) Notices and hearings. Notices of adverse action, hearings and appeals shall comply with

the provisions of 904 KAR 2:046 and 904 KAR 2:055.

(9) Recoupment. The following provisions apply to overpayments in ARCC:

(a) Necessary action shall be taken promptly to correct and recoup an overpayment in a case:

1. Of fraud;

2. Involving a current recipient; and

3. In which the overpayment would equal or exceed the cost of recovery.

(b) An overpayment shall be recovered from the child care provider.

(c) An overpayment shall be recovered through a reduction in the amount payable to the provider.

(d) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.

(10) Fee requirements.

(a) Each family receiving ARCC shall be required to contribute toward the payment for child care.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

(c) The parent contribution shall be based on the family's income and the sliding fee scale that is set out below:

Income Range (Monthly)		Family Size - Fee per day per family						
		2	3	4	5	6	7	8*
0	399	0.10	0.10	0.10	0.10	0.10	0.10	0.10
400	499	0.20	0.20	0.20	0.20	0.20	0.20	0.20
500	599	0.25	0.25	0.25	0.25	0.25	0.25	0.25
600	699	0.40	0.30	0.30	0.30	0.30	0.30	0.30
700	799	1.00	0.35	0.35	0.35	0.35	0.35	0.35
800	899	2.00	0.60	0.40	0.40	0.40	0.40	0.40
900	999	3.25	1.15	0.45	0.45	0.45	0.45	0.45
1000	1099	4.50	2.25	0.80	0.50	0.50	0.50	0.50
1100	1199	6.00	3.50	1.60	0.55	0.55	0.55	0.55
1200	1299	7.50	5.00	3.10	0.90	0.60	0.60	0.60
1300	1399	8.00	6.00	4.60	1.60	1.00	0.65	0.65
1400	1499		7.00	6.10	2.65	2.00	0.70	0.70
1500	1599		7.75	7.00	4.05	3.05	1.25	0.75
1600	1699		8.25	7.85	5.50	4.50	2.30	0.80
1700	1799			8.35	7.10	6.25	3.50	1.50
1800	1899			8.80	8.35	7.50	5.20	2.50
1900	1999			9.30	9.30	8.80	7.00	3.80
2000	2099			9.55	9.75	9.75	8.50	5.30
2100	2199				10.25	10.25	10.00	7.10
2200	2299				10.70	10.70	10.70	8.90
2300	2399				11.00	11.25	11.25	10.80
2400	2499					11.75	11.75	11.75
2500	2599					12.25	12.25	12.25
2600	2699					12.60	12.75	12.75
2700	2799						12.90	13.00

*For family size above eight (8), the parent fee will not increase.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 5, 1991
FILED WITH LRC: September 12, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1991 at 9 a.m. at the Department for Employment Services Conference Room, Second Floor West, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 16, 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 Randall

(1) Type and number of entities affected: It is estimated that the at-risk funds will serve 2,700 non-AFDC working families in FFY 92. The sliding fee scale revision in TCC will affect 460 families.

(a) Direct and indirect costs or savings to those affected:

1. First year: Kentucky will receive an allotment of $4,294, 326 for FFY 92 for the at-risk child care program which will be implemented September 16, 1991. The transitional child care sliding fee scale will result in an additional cost to the state of $25,000 in FFY 92.

2. Continuing costs or savings: Kentucky will receive a yearly allotment for the at-risk

program. A state's allocation for the at-risk program is based on the same ratio as the number of the state's children under 13 years to the number of children under 13 in the United States in the second preceding fiscal year. The TCC sliding fee scale change will result in $22,500 increase for FFY 93.

3. Additional factors increasing or decreasing costs (note any effects upon competition): As the numbers of TCC families increase, the cost of the sliding fee scale will increase. The at-risk funding is a capped entitlement.

(b) Reporting and paperwork requirements: The at-risk program will result in an application for benefits and on-going eligibility will be monitored every 6 months at reinvestigation or when reported changes occur. The TCC sliding fee scale revision will result in no additional paperwork.

(2) Effects on the promulgating administrative body: States must provide a match with state or local funds at the state Medicaid matching rate. Kentucky will use existing state child care funding through the Department for Social Services (DSS) as a match. These funds are already being spent by DSS for child care and, therefore, result in no additional funding from general funds.

(a) Direct and indirect costs or savings:

1. First year: Administrative funding for the at-risk program is included in the allotment. Funds for the TCC program are a 50/50 match. Therefore, the sliding scale revision will result in a $25,000 increase to the state.

2. Continuing costs or savings: The at-risk program will continue to result in no costs to the state as the federal allotment will pay for benefit and administration costs and the match results from already existing child care funds. The TCC revision will result in an increase of $27,000 to the state for the next federal fiscal year.

3. Additional factors increasing or decreasing costs: As the number of TCC families increase, the cost to the state will increase.

(b) Reporting and paperwork requirements: Quarterly reports of expenditures submitted on the SF-269 are required in the at-risk program. Since the at-risk child care plan is submitted as an amendment to the state supportive services state plan, the at-risk plan must be updated biennially and amended during the interim for revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Implementation of this program requires that federal mandates be followed.

(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 regulations require that eligibility conditions for transitional child care and at-risk child care must be applied on a consistent and equitable basis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 256 and 257.

2. State compliance standards. The state compliance standards are the same as the minimum federal standards.

3. Minimum or uniform standards contained in the federal mandate. This regulation sets forth the standards for the transitional child care (TCC) program and the at-risk child care programs. TCC provides child care assistance to a family whose eligibility for AFDC assistance has ceased: (a) due to increased hours of, or earnings from, employment; or (b) as a result of the loss of income disregards due to the expiration of the time limits. The at-risk child care program shall provide child care assistance to a family that: (a) is not receiving AFDC; (b) needs child care in order for a parent to accept or retain employment; and (c) is at-risk of becoming eligible for AFDC.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:540. Eligibility requirements for the Hospital Indigent Care Assurance Program (HICAP).

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.575

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the HICAP program. This regulation sets forth provisions relating to the eligibility requirements for recipients under HICAP.

Section 1. Definitions. (1) "Family unit" means the parents, stepparents, their minor children and stepchildren living in the same household; unmarried couples who have at least one (1) minor child in common and siblings of that child living in the same household; or a child under age eighteen (18), legal guardian and the legal guardian's family living in the same household. A minor child who is also a minor parent and who lives with his or her parents is included in the family unit along with his or her child; if the minor parent, his or her child and the child's other parent, regardless of their marital status, are in the same household, they are considered a separate family unit from any other family unit in that household.

(2) "Minor children" means individuals under the age of twenty-one (21) living with a parent, or under the age of eighteen (18) living with a legal guardian in the same household, or one (1) of the previously described children attending college or a similar type of higher education facility.

(3) "Minor parent" means an individual under the age of twenty-one (21) who has a minor child.

(4) "Self-support" means a demonstration by the minor child that he or she is paying more than fifty (50) percent of his or her living

expenses (i.e., proof of wages versus expenditures for living expenses, etc.).

Section 2. Eligibility Requirements. For an individual or family unit to be HICAP eligible the following requirements shall be met:

(1) The individual or family unit shall be a resident(s) of Kentucky. Transients and non-U.S. citizens in visa status (i.e., visitors, students, etc.) shall not be eligible for HICAP;

(2) The individual's or family unit's income shall not exceed 100 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United State government, and revised annually; and

(3) The individual or family unit must apply for ongoing Medicaid benefits if potentially eligible before a determination can be made that the individual or family unit is HICAP eligible. If an individual or family unit that is potentially eligible for ongoing Medicaid refuses to make an application for Medicaid benefits but applies for HICAP benefits, a finding of ineligibility for HICAP benefits shall be made. (Ongoing Medicaid does not include spenddown or time limited Medicaid benefits.) When a Medicaid application is made under this circumstance, the HICAP inquiry protects the HICAP application date.

Section 3. Exclusions from Eligibility. The following shall not be eligible for coverage under HICAP:

(1) Individuals within a correctional system (i.e., inmates of jails, prisons, etc.);

(2) Individuals in the custody of a unit of government which is responsible for coverage of the acute care needs of the individuals; and

(3) Individuals who receive ongoing Medicaid in any category, including Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI).

Section 4. Eligibility Periods. Each determination of eligibility shall be for the month of application and two (2) subsequent months with a retroactive determination of eligibility for the three (3) months preceding the month of application if the individual has had a hospitalization during that period of time. The Commissioner of the Department for Medicaid Services may determine on an individual case basis that an additional retroactive period is necessary when the applicant presents extenuating circumstances. No retroactive coverage shall be provided for a period of time prior to January 1, 1991.

Section 5. Income Considerations. Eligibility is determined by comparing the family unit's (or that of the individual not living with other family members) income to the poverty income guidelines for the appropriate family size. In comparing the family unit income to 100 percent of the official poverty income guidelines, the following policies shall be applied:

(1) For the application month and subsequent months, an average income of the most recent two (2) calendar months shall be used;

(2) For retroactive eligibility, actual income received for those months shall be used;

(3) For annualized income, the most recent tax return shall be used;

(4) For seasonal, contract and occasional work, the actual income received shall be used;

(5) If it is anticipated that no income will be received for future months due to illness, accident, or other reasons, no income shall be considered as available;

(6) The gross income or adjusted gross income for self-employment shall be used;

(7) Income of all family unit members, including ineligible members, shall be considered and compared to the appropriate HICAP family size;

(8) Parental income shall not be considered in eligibility determinations for children age twenty-one (21) or older. If the child, regardless of age, is not living with the parent or attending college or a similar type of higher education facility, parental income shall not be considered;

(9) A legal guardian's income shall be considered in determining eligibility for children living in the same household as the legal guardian until the child reaches the age of eighteen (18);

(10) A grandparent's income shall not be considered for grandchildren living with the grandparent unless the grandparent is the legal guardian;

(11) Income from a common law spouse living in the same household shall be considered. (Common law marriages are recognized if recognized by other states or the couple are holding themselves out to the community as married);

(12) State supplemental payments to individuals in personal care homes shall be excluded from consideration; and

(13) Lump sum payments shall be considered income in the month received.

Section 6. Verification Requirements. The cabinet shall generally require verification of the following in eligibility determinations (although it may require verification of residency in questionable situations):

(1) Income; and

(2) Self-support for children under age twenty-one (21) not living with parents and who attend college or a similar type of higher education facility.

Section 7. Dual Eligibility. An individual may be HICAP eligible and subsequently determined Medicaid eligible. An individual shall not apply for ongoing Medicaid and HICAP eligibility concurrently. An individual may apply for both HICAP and Medicaid spenddown eligibility. For Medicaid spenddown eligibility any hospital expense attributed to the individual's HICAP eligibility shall not be considered as an incurred cost in determining Medicaid spenddown eligibility. Individuals who are eligible as qualified Medicare beneficiaries (QMBs) only recipients may apply for HICAP eligibility.

Section 8. Fair Hearing. An applicant may request a fair hearing on his or her HICAP eligibility determination in accordance with 907 KAR 2:055.

Section 9. The provisions of this regulation shall be applicable for determinations of eligibility made on or after September 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 20, 1991
FILED WITH LRC: September 12, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 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 October 16, 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: Potentially eligible hospital indigent care assurance program (HICAP) recipients; all hospitals participating in HICAP.

(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. Tiering is not appropriate for regulations covering eligibility requirements.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the September 3 and 4, 1991 Meeting

The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 3, 1991 at 2 p.m. in Room 327 of the Capitol and on Wednesday, September 4, 1991 at 10 a.m. in Room 327 of the Capitol. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the August 5 and 6, 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: Don R. McCormick, Russell Kennedy, Lauren Schaaf, Art Boebinger, Department of Fish and Wildlife; Richard R. Hannan, Kentucky State Nature Preserves Commission; James Hale, Linda Stacy, Natural Resources and Environmental Protection Commission; Morgan Kelly, Petroleum Storage Tank Environmental Assurance Fund Commission; Jack Damron, Lori Poole, Susan Alley, Corrections Cabinet; Gary Bale, Don Hart, Perry Watson, Michael L. Luscher, Laura Graham, Ruth L. Fitzpatrick, Department of Education; Kevin M. Noland, Workforce Development Cabinet; O'Neal Briel, Bob Summens, State Board of Proprietary Education; Shanna King-Simms, Kentucky Literacy Commission; Michael Wallen, Brian Gilpin, Eugene D. Attkisson, Department of Mines and Minerals; Sam Crawford, Kentucky Farm Bureau; William Doyle, Attorney General; Paul P. Borden, Joyce A. Bryan, Richard Casey, Roger Tharp, Kentucky Higher Education Assistance Authority; Daniel F. Egbers, Department of Personnel; Warren Nash, Finance and Administration Cabinet; David W. Carby, Bill Schmidt, Kentucky Board of Medical Licensure; Nathan Goldman, Board of Nursing; Nancy Brinly, Board of Physical Therapy; Susan Bush, William C. Eddins, Department for Environmental Protection; Sandra Pullen, Transportation; David Garnett, Motor Vehicle Commission; Aaron D. Greenwell, Kathleen B. Dorman, Susan Mastin Scott, Public Service Commission; Judith Walden, Department of Housing, Buildings and Construction; Ked Fitzpatrick, Robert Goodlett, Joan White, Terry E. Conliffe, Vicki Hayes, Patrick A. Rickard, Barbara Coleman, Janice Kline, Cookie Whitehouse, Sue Tuttle, Robert P. McWilliams, Michael Cheek, Dennis Boyd, Donald E. Ralph, Charles Terrett, Ronnie Dunn, Mark Yancey, Mark Hooks, David Nichols, Kent Richards, Jeanne Southworth, Dudley J. Conner, Ryan M. Halloran, John P. Draper, Guy F. Delius, R.S., Cabinet for Human Resources; Dianna Knight, Vote Kentucky; Susan Holt; Donna Shedd, Camille Wagner, Parents and Professionals Involved in Education; Daphne Goodin, KEA; Jim Honaker, Kenton, Boone, and Campbell County Water District; Thomas A. Marshall, Kentucky Power Company; Christi LeMay, Kentucky Auto & Truck Recyclers Assn.; John Barnett, South Central Bell; Hank List, Kentucky Utilities Co.; Judy Paternostro, FRYSC Task Force; Judith Taylor.

LRC Staff: Joe Hood, Greg Karambellas, Susan Wunderlich, Donna Pierce, Peggy Jones, and Susan Eastman.

The Subcommittee determined that the following administrative regulations, as amended, do not comply with KRS Chapter 13A:

Public Protection and Regulation Cabinet: Public Service Commission: Utilities

807 KAR 5:014 (Management and Operation audits.) Questions had been raised as to the extent of management and operation audits of companies or entities that were owned by, or owned, or otherwise affiliated with utilities. This regulation had been deferred in order to enable interested parties to reach a compromise on the extent of these audits. Since it was impossible to reach an agreement, all parties agreed to the deletion of Section 2, defining affiliated entities and the scope of these audits. The Subcommittee approved this amendment.

An objection had been raised by Mr. Hughes and Mr. Honaker on Section 3(5). They stated that the PSC has ordered an investigation into the feasibility of merging Kenton County Water District I, Campbell and Boone Counties Water Districts; that audit by independent auditors shall be made of these water districts, and that the water districts shall share the costs of such audits. They added that feasibility of merger of water districts is governed by KRS 74.361, which establishes specific procedures for such studies, and not by KRS 278.255, the authorizing statute for 807 KAR 5:014; that KRS 278.255 governs "periodic management and operation audits" of a utility, and not merger of water districts; that KRS 74.361 governs merger of water district pursuant to a study made by the Commission. They argued that while KRS 74.361(2) provides that a study shall contain "such...investigations, facts, historical data, and projections as...may be required...to formulate a proper decision regarding...merger", there was no authority to impose the costs of an audit on the water districts. The Commission proposed to delete Section 3(5), that apportioned audit costs among audited entities. Mr. Honaker stated that this deletion would not preclude imposition of audit costs on the water districts involved in the feasibility study, and proposed adding language to this regulation that would exempt water districts involved in a feasibility study. Commission personnel stated that they could not agree to this amendment at this time. Upon motion, the Subcommittee approved the deletion of Section 3(5). Senator Huff voted no.

William Doyle, Office of the Attorney General (OAG), objected to this regulation on the grounds that it did not provide for consumer participation; expensive management audit costs would be passed on to the consumer; there was no cap, control, or public review of auditors' expenses.

The Subcommittee approved a motion that this regulation did not comply with KRS 74.361, governing merger of water districts.

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.) Dianna Knight, Vote Kentucky; Susan Holt; Donna Shedd, Camille Wagner, Parents and Professionals

Involved in Education; Daphne Goodin, KEA, appeared to speak on this regulation.

The Cabinet proposed various amendments to comply with the drafting requirements of KRS 13A.222; to comply with the format requirements of KRS Chapter 13A; to clarify the roles of the Task Force and Cabinet; to incorporate by reference the Implementation Plan of the Task Force, applications for grants, criteria and other requirements for the centers. In addition, procedures, ratings, and other requirements or material relevant to the awarding of grants or the establishment of centers were incorporated by reference. The Subcommittee approved these amendments.

Ms. Holt and Ms. Wagner stated that they believed that the rights of parents and the necessity for parental consent to services were not protected. They stated that the regulation and related material were vague in specifying the conditions required for parental consent. The Cabinet agreed to amend new Section 2(7)(i) to add the following language: "Except for the services specified in this paragraph, parental consent shall be obtained before the provision of services Exempt services shall be provided as required by applicable statutes." This language was followed by a list of specific services, and applicable statutes, that may be provided without parental consent. The Subcommittee approved this amendment.

Ms. Knight objected to the tax burden that would be imposed by the cost of these centers. She stated that the intent of the legislature was not followed in the implementation of these centers. She also objected to the interference with parental control and the requirement of parental consent, and services and counseling that would interfere with a family's religious beliefs and practices.

Ms. Shedd stated that the statutes limited services to economically disadvantaged children, but that the regulation would provide services for all children. She also objected to the tax burden on the public, and to the expenditure of funds "to market" the centers. She felt that such marketing would interfere with parental control and cause children to accept services to which parents were opposed. Ms. Shedd objected to the lack of specificity in determining which children were "at risk", and pointed out that the Cabinet interpreted this term so broadly as to include all children. When questioned, Cabinet personnel confirmed that the term "at risk" was broadly defined to include potential risk, such as school dropouts, or potential for failing or not succeeding. Ms. Shedd also objected to the types of services related to families and family planning that it appeared would be offered. She stated that it appeared that the Cabinet did not feel restricted by the legislative mandate.

Ms. Goodin supported the regulation and the establishment of the centers, and spoke of the opportunities it offered to members of her community.

Subcommittee members questioned the provision of services to those who were not economically disadvantaged, the matters for which parental consent would be required, the exact nature of the services and counseling provided.

The Subcommittee approved a motion that this regulation exceeded statutory authority.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

General Government Cabinet: Board of Medical Licensure

The following five regulations were amended to provide the correct citations of statutory authority; to comply with the drafting requirements of KRS 13A.222; and to comply with the format requirements of KRS Chapter 13A. The amendments to these regulations did not change the substantive provisions.

201 KAR 9:031 (Examinations.)

201 KAR 9:175 (Physician assistants; certification and supervision.)

201 KAR 9:300 (Interpretation of KRS 311.900(1).)

201 KAR 9:305 (Continued certification of athletic trainers.)

Board of Nursing

201 KAR 20:056 (Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization.) This regulation was amended to comply with the drafting requirements of KRS 13A.222; and to comply with the format requirements of KRS Chapter 13A. The amendments to these regulations did not change the substantive provisions.

Board of Physical Therapy

The following six regulations were amended to comply with the drafting requirements of KRS 13A.222; and to comply with the format requirements of KRS Chapter 13A. The amendments to these regulations did not change the substantive provisions.

201 KAR 22:020 (Method of applying for licensure.)

201 KAR 22:040 (Procedure for renewing licenses.)

201 KAR 22:070 (Requirements for foreign-trained physical therapists.)

201 KAR 22:101 (Eligibility and method of applying for physical therapist's assistant certification.)

201 KAR 22:110 (Renewal of assistant's certification.)

201 KAR 22:135 (Fees.)

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: Identification and Listing of Hazardous Waste

The Subcommittee requested that LRC refer the Waste Management regulations to the Interim Joint Committee on Agriculture and Natural Resources; they further requested that the regulations be carefully reviewed and compared with federal regulations to determine if they exceed federal requirements.

401 KAR 31:060 (Rule making petitions for hazardous waste.) This regulation was amended to correct the citation of the federal regulation.

401 KAR 31:110 (Appendix on toxicity characteristic leaching procedure.) Section 1(1) was amended to delete a compliance date of September 25, 1991, and to insert "the effective date of this amendment" in lieu thereof.

Standards Applicable to Generators of Hazardous Waste

401 KAR 32:010 (General provisions for generators.) Section3(2) and (5) were amended to add the latest revised date of the material incorporated by reference.

401 KAR 32:100 (Appendix on hazardous waste manifest and instructions.) This regulation was amended to add the citation of the federal regulation to the RELATES TO and STATUTORY AUTHORITY lines.

Standards for Owners and Operators of Hazardous Waste Storage, Treatment and Disposal Facilities

401 KAR 34:230 (Landfills.) This regulation was amended to add the citation of the federal regulation to the RELATES TO and STATUTORY AUTHORITY lines.

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

401 KAR 35:200 (Surface impoundments (IS).) Section 10(4)(a) was amended to clarify the listing of EPA numbers.

Petroleum Storage Tank Environmental Assurance Fund Commission

415 KAR 1:020 (General provisions for state financial responsibility.) This regulation was amended to add the citation of the federal regulation. Section 1(4)(c) was amended to require that monies falsely received be paid back, rather than "may" be paid back.

Corrections Cabinet: Office of Secretary

501 KAR 6:030 (Kentucky State Reformatory.) This regulation was amended to correctly identify the latest revised date of material incorporated reference.

501 KAR 6:070 (Kentucky Correctional Institution for Women.) This regulation was amended to corretly identify the latest revised date of material incorporated reference. This regulation was also amended to return KCIW 20-01-01, 20-01-03, 20-01-04, 20-01-05, 20-01-06, 20-01-07, 20-01-08, and 20-01-09 to their original language. The promulgating agency stated that they would amend this incorporated material after they have time to study needed compliance with federal and state education laws concerning an appropriate education for handicapped school age students.

501 KAR 6:090 (Frankfort Career Development Center.) This regulation was amended to corretly identify the latest revised date of material incorporated reference.

Transportation Cabinet: Department of Vehicle Regulation: Division of Driver Licensing: Driver's License

601 KAR 12:060 (Hardship driver's license.) The Cabinet offered an amendment proposed by a district court judge. The amendment addressed the following problems: existing language did not conform to the actual practice of the circuit court clerks which issue licenses on behalf of the Cabinet; and did not recognize that forms involved would not contain adequate space for required information. In addition, the regulation should have required that certified or attested copies of court orders be attached, because of the lack of space on forms used by the Administrative Office of the Courts that are transmitted to the circuit court clerks. Additional language was suggested to clarify which district court the Cabinet is required to notify. The word "inadvertently" was deleted because it was misleading. The Subcommittee approved the amendment.

Department of Highways: Division of Planning: Traffic

603 KAR 5:070 (Motor vehicle dimension limits.) The Cabinet proposed an amendment to Section 3(1) to add to the list of designated highways on which the operation of motor vehicles with increased dimensions, which do not exceed the dimensions limits specified in Section 2(2), was permitted. Upon motion, the Subcommittee approved the amendment.

Department of Education: Office of Learning Programs Development: Student Services

704 KAR 7:090 (Homeless children education program.) Section 2(1)(a) was amended to require that homeless students be placed in appropriate programs as expeditiously as legally possible, rather than within two school days of the student's appearance in the district.

Office of Education for Exceptional Children: Exceptional and Handicapped Programs

707 KAR 1:150 (Preschool education program for children with disabilities.) This regulation was amended to add the citation of appropriate federal statutes and regulations. To comply with KRS Chapter 13A, Section 1 was amended to include only definitions, and the remainder of that section was renumbered Section 2. Section 8(4) was amended to cross-reference 704 KAR 3:410, which pertains to the adult-to-child ratio for nondisabled children.

Workforce Development Cabinet: Governor's Commission on Literacy

784 KAR 1:010 (Adult literacy program fund.) Section 3 was amended to properly identify and incorporate by reference the application forms required. Section 5(3) was deleted in its entirety as being unnecessary after the forms were incorporated by reference.

784 KAR 1:020 (State adult literacy program plan.) Section 1 was deleted because it was nonregulatory in nature.

Public Protection and Regulation Cabinet: Department of Mines and Minerals: Division of Oil and Gas

805 KAR 1:020 (Protection of fresh water zones.) Section 2(1)(c) was amended to clarify that material required was incorporated by reference.

805 KAR 1:120 (Operating or deepening existing wells and drilling deeper than the permitted depth.) Section 3 was amended to identify and incorporate by reference the required form.

805 KAR 1:130 (Deep well regulation relating to casing, cementing, plugging, gas detection and blow-out prevention.) Section 1 was amended to delete cross-references for definitions in other regulations, and to include the definitions in this regulation. Section 2 was amended to identify and incorporate by reference required forms.

805 KAR 1:140 (Directional and horizontal wells.) Section 1 was amended to delete a cross-reference for definitions in another regulation, and to include the definitions in this regulation. Section 2(1), (5)(d) and Section 3 were amended to identify and incorporate by reference required forms.

Public Protection and Regulation Cabinet: Public Service Commission: Utilities

807 KAR 5:001 (Rules of procedure.) Sections 4(4) and 7(4) and (8) had been amended in order

to comply with the provisions of 807 KAR 5:005. 807 KAR 5:005 was withdrawn by the Commission. The withdrawal required the amendment of these sections. Section 4(4) was amended to restore language that had been deleted and to delete language that had been added. Section 7(4) and (8) were amended to permit a petitioner for the disclosure of material, that had been determined to be confidential by the commission, twenty (instead of ten) days to challenge the commission's decision in the courts. A new Section 7(6) was added in order to make it clear that rights granted under KRS 61.870 through 61.884 for the disclosure of public records were not limited by this regulation. The old Section 7(6) was renumbered as Section 7(7), and was amended to make it clear that the denial of access to records made by the Commission under the procedures established in Section 7 could be challenged under KRS 61.870 through 61.884. Upon motion, the Subcommittee approved these amendments.

Thomas A. Marshall, Kentucky Power Company, proposed that Section 7(8)(b) be amended to provide that disclosure of material, by someone other than the person requesting the material be made confidential, in violation of an agreement or Commission order, would not transform that material into a public record. The Subcommittee and the Commission agreed to this amendment.

William Doyle, Office of the Attorney General (OAG), objected to the confidentiality requirement of this regulation. He stated that the OAG could not effectively intervene and present its case before the Commission because the Commission approves confidentiality requests of utilities. He added that in many cases these requests related to material for which there was no legal basis for confidentiality. As an example, he cited a request for confidentiality of corporate income tax forms of a utility. Senator Huff asked Mr. Doyle whether the OAG had subpoena power or other legal measures it could take to obtain material. Mr. Doyle responded that the OAG does have subpoena power.

Department of Housing, Buildings and Construction

The following three regulations were amended to comply with the drafting requirements of KRS 13A.222; and to comply with the format requirements of KRS Chapter 13A. Additional amendments were made to delete language that was determined to exceed statutory authority by the initial review.

Office of State Fire Marshall: Boilers and Pressure Vessels

815 KAR 15:020 (Administrative procedures; requirements.)

Hazardous Materials

815 KAR 30:060 (Certification of underground petroleum storage tank contractors.)

Volunteer Fire Department Aid Fund

815 KAR 46:010 (Aid to fire departments.)

Cabinet for Human Resources: Department for Social Insurance: Public Assistance

904 KAR 2:006 (Technical requirements; AFDC.) This regulation was amended to cite the correct federal statute, and to insert federal requirements that recipients must meet.

Department for Medicaid Services

907 KAR 1:515 (Targeted case management services for adults with chronic mental illness.) Section 1(2) was amended to comply with the requirements of KRS 13A.222 relating to the proper format for definitions contained in a regulation.

907 KAR 1:525 (Targeted case managements services for severely emotionally disturbed children.) Portions of Section 1(2)(b) were deleted in order to remove language that repeated statutory language, as required by KRS Chapter 13A. New language to accomplish this was inserted in this section.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Finance and Administration Cabinet: Department for Facilities Management: State Owned Buildings and Grounds

200 KAR 3:010 (Vehicle parking and traffic control.)

Tourism Cabinet: Kentucky Heritage Land Conservation Fund Board

301 KAR 10:010 (Kentucky heritage land conservation fund board.)

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: Identification and Listing of Hazardous Waste

401 KAR 31:010 (General provisions for hazardous wastes.)

401 KAR 31:030 (Characteristics of hazardous wastes.)

401 KAR 31:040 (Lists of hazardous wastes.)

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

401 KAR 35:220 (Land treatment (IS).)

401 KAR 35:240 (Incinerators (IS).)

Waste Management

401 KAR 37:100 (Appendix on treatment standards.)

Standards for Solid Waste Facilities

401 KAR 48:050 (Siting requirements for solid waste landfills.) The agency amended the regulation to use a toxicity characteristic leaching procedure (TCLP) test rather than the extraction procedure test. The TCLP test was estimated to cost approximately $5,000, where the previous test cost substantially less. On September 3, 1991, on motion of Representative Bruce, the Subcommittee determined that this regulation did not comply with statutory authority due to the excessiveness of the test cost. On September 4, 1991, the second day of the Subcommittee's two-day meeting, Representative Bruce requested that the motion to attach an objection be reconsidered. The Subcommittee approved the motion to reconsider, and approved a motion that the regulation be approved without objection.

Petroleum Storage Tank Environmental Assurance Fund Commission

415 KAR 1:010 (Definitions for terms used in 415 KAR Chapter 1.)

415 KAR 1:030 (Guidelines for financial assistance applications.)

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

Transportation Cabinet: Department of Highways: Division of Planning: Traffic

603 KAR 5:071 (Bus dimension limits.)

Motor Vehicle Commission
605 KAR 1:010 (Meetings.)
605 KAR 1:030 (Applications.)
605 KAR 1:050 (Dealer and salesman.)
605 KAR 1:090 (Business names.)
605 KAR 1:130 (Procedures.)
605 KAR 1:160 (Motor vehicle component manufacturers.)

Education and Humanities Cabinet: Department of Education: Educational Innovative Incentive Committee
701 KAR 7:011 (Repeal of 701 KAR 7:010.)
Office of District Support Services: General Administration
702 KAR 1:001 (School facilities manual.)
Pupil Transportation
702 KAR 5:141 (Repeal of 702 KAR 5:140, Reimbursement for midday transportation of kindergarten pupils.)
702 KAR 5:150 (Transportation of preschool children.)
Office of Learning Programs Development: Instructional Services
704 KAR 3:012 (Repeal of 704 KAR 3:010, 704 KAR 3:025, 704 KAR 3:030.)
Teacher Education
704 KAR 15:091 (Repeal of 704 KAR 15:090.)
Office of Special Instructional Services: Facilities and Equipment
705 KAR 3:011 (Repeal of 705 KAR 3:050, 705 KAR 3:090 and 705 KAR 5:050.)

Workforce Development Cabinet: Board for Proprietary Education
783 KAR 1:030 (Student protection fund.)

Public Protection and Regulation Cabinet: Department of Mines and Minerals: Division of Oil and Gas
805 KAR 1:050 (Surety bonds; requirements, cancellation.)

Cabinet for Human Resources: Department for Health Services: Food and Cosmetics
902 KAR 45:006 (Kentucky bed and breakfast regulation.) Chairman Kerr asked whether boarding homes were also regulated. Agency personnel stated that they were not. Chairman Kerr asked why there was a restriction on the type of breakfast served. Agency personnel stated that certain types of food would require certain methods of preparation. Chairman Kerr asked whether requirements relating to sanitation and other matters could be written in terms a layman could understand. Agency personnel stated that the requirements were the same as those in the retail food code. Chairman Kerr asked whether the code was contained in another statute or regulation.
Department for Employment Services: Unemployment Insurance
903 KAR 5:390 (Reduction in workforce; no disqualification.)
Department for Social Services: Aging Services
905 KAR 8:150 (Boarding home registration.)
Department for Medicaid Services: Medicaid Services
907 KAR 1:004 (Resources and income standard of medically needy.)
907 KAR 1:010 (Payments for physician's services.)
907 KAR 1:011 (Technical eligibility requirements.)
907 KAR 1:012 (Inpatient hospital services.)
907 KAR 1:021 (Amounts payable for drugs.)
907 KAR 1:027 (Payments for dental services.)
907 KAR 1:031 (Payments for home health services.)
907 KAR 1:040 (Payments for vision care services.)
907 KAR 1:055 (Payments for primary care center and federally-qualified health center services.)
907 KAR 1:340 (Payments for hospice services.)
907 KAR 1:480 (Tax assessment schedule for physicians.)
907 KAR 1:485 (Tax assessment schedule for dentists.)
907 KAR 1:490 (Tax assessment schedule for optometrists.)
907 KAR 1:495 (Tax assessment schedule for pharmacies.)
907 KAR 1:505 (Psychiatric residential treatment facility services.)
907 KAR 1:510 (Payments for psychiatric residential treatment facility services.)
907 KAR 1:520 (Payments for targeted case management services for adults with chronic mental illness.)
907 KAR 1:530 (Payments for targeted case management services for severely emotionally disturbed children.)
Department for Mental Health and Mental Retardation Services: Institutional Care
908 KAR 3:080 (Policies and procedures for Hazelwood Center.)
908 KAR 3:090 (Policies and procedures of Central State Hospital ICF/MR (Intermediate care facility-mental retardation).)
908 KAR 3:100 (Policies and procedures of Eastern State Hospital.)
908 KAR 3:110 (Policies and procedures of Central State Hospital.)
908 KAR 3:120 (Policies and procedures of Western State Hospital.)
908 KAR 3:160 (Policies and procedures of Kentucky Correctional Psychiatric Center.)
908 KAR 3:180 (Policies and procedures of Oakwood.)

The following regulations were deferred at the promulgating agency's request:

State Board of Elections: Forms and Procedures
31 KAR 4:070 (Recanvass procedures.)

Department of Personnel: Classified
101 KAR 2:035 (Compensation plan and pay incentive systems. (Deferred from August) (Found Deficient by ARRS, November 7, 1990)

General Government Cabinet: Board of Veterinary Examiners
201 KAR 16:010 (Code of conduct.)

Transportation Cabinet: Motor Vehicle Commission
605 KAR 1:190 (Motor vehicle advertising.) Christi LeMay, of the Kentucky Auto and Truck Recyclers Association, raised questions relating to Section 15, requiring that a dealer disclose to a prospective purchaser that a motor vehicle is a rebuilt motor vehicle. Ms. LeMay stated that this section did not require individual sellers, or other sellers who were not dealers, to disclose this information. Agency personnel stated that the Commission did not have the authority to regulate nondealers. Upon motion of Representative Bruce, the Subcommittee requested

that this regulation be deferred. Agency personnel agreed.

Department of Education: Office of District Support Services: Pupil Transportation
702 KAR 5:030 (Superintendent's responsibilities.)

Cabinet for Human Resources: Department for Health Services: Sanitation
902 KAR 10:140 (On-site sewage disposal system installer certification program standard.)

OTHER BUSINESS:

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.

At this meeting, upon motion by Senator Quinlan, the Subcommittee attached a letter of objection to the regulation based on the amendment of Section 1(3) by requiring that qualified teaching service means only teaching in a public school of the Commonwealth, rather than in a school accredited by the Commonwealth. The Subcommittee believes that this made the regulation exceed statutory authority and legislative intent. Paul Borden represented the Higher Education Assistance Authority, and stated that he would take the concerns of the Subcommittee back to the Authority.

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 12:30 o.m. until October 7, 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 APPROPRIATIONS AND REVENUE
Meeting of August 22, 1991

The Interim Joint Committee on Appropriations and Revenue, at its August 22, 1991 meeting, reviewed four administrative regulations referred to the committee at the August 5-6, 1991 meeting of the Legislative Research Commission. All four regulations had been promulgated by the Kentucky Infrastructure Authority.

The committee determined that regulations 200 KAR 17:030 and 200 KAR 17:050 conformed to statutory authority, and approved their adoption. The committee found that regulations 200 KAR 17:020 and 200 KAR 17:040 were "deficient," and objected to their adoption.

Regulation 17:020 was found to be deficient because the Kentucky Infrastructure Authority, the agency promulgating the regulation, lacked the statutory authority to do so, a violation of KRS 13A.120(d). KRS 224A.270 and KRS 224A.280 provide that the Natural Resources and Environmental Protection Cabinet may promulgate administrative regulations to administer a Solid Waste Revolving Fund and a Solid Waste Grant Program, the subject matter of 200 KAR 17:020. While the Kentucky Infrastructure Authority argued that KRS 224A.070 and KRS 224A.113 gave the Authority authorization to promulgate regulations to govern the application for, and financial assistance from, the Solid Waste Revolving Fund and the Solid Waste Grant Program, the committee determined that the statutes pertaining to the promulgation of regulations by the Natural Resources and Environmental Protection Cabinet were more specific, superseding the general statute applicable to the Kentucky Infrastructure Authority.

Regulation 200 KAR 17:040 was found to be deficient because it ignored provisions of the 1990 Budget Memorandum, an act of the General Assembly having the equivalent force and effect of a statute. This omission was a violation of KRS 13A.120(i).

The 1990 Budget Memorandum mandated the execution of several solid waste projects, without intervention by the Kentucky Infrastructure Authority. The proposed regulation failed to recognize the mandate of the Budget Memorandum, and would have applied general criteria applicable to all solid waste projects to those listed in the memorandum.

This is to advise you of the Committees' action.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of August 28, 1991

The Interim Joint Committee on Agriculture and Natural Resources met August 28, 1991, and submits this report:

The committee determined that Department of Fish and Wildlife Resources administrative regulations 301 KAR 2:111 and 301 KAR 3:021 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 withdrawn at the request of James H. (Mike) Molloy, Chairman, Kentucky Emergency Response Commission.

The committee adjourned at 3:40 p.m., August 28, 1991.

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of August 30, 1991

The Interim Joint Committee on Business Organizations and Professions met on Friday, August 30, 1991, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A:

Board of Medical Licensure
201 KAR 9:041 - Fee Schedule

Department of Alcoholic Beverage Control
804 KAR 1:100 - General advertising practice

The Committee adjourned at 2:30 p.m.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of August 21, 1991

The Interim Joint Committee on Health and Welfare met on Wednesday, August 21, 1991, and submits this report. The Committee voted to approve the following regulations:

902 KAR 20:290
902 KAR 55:075
904 KAR 3:020 & E
904 KAR 3:025 & E
905 KAR 1:180
905 KAR 1:320
905 KAR 1:330
905 KAR 5:070
907 KAR 1:410

CUMULATIVE SUPPLEMENT

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

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Emergency Regulation	17 Ky.R. Page No.	Effective Date
200 KAR 17:030E	3085	4-15-91
Replaced		8-22-91
200 KAR 17:040E	3088	4-15-91
Replaced		8-22-91
200 KAR 17:050E	3090	4-15-91
Replaced		8-22-91
415 KAR 1:010E	3356	4-25-91
415 KAR 1:020E	3357	4-25-91
415 KAR 1:030E	3358	4-25-91
900 KAR 4:010E	3360	4-16-91
902 KAR 20:290E	3363	5-7-91
Replaced	3538	8-21-91

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201 KAR 16:010		
Amended	3494	
415 KAR 1:010	3592	(See 18 Ky.R.)
415 KAR 1:020	3594	(See 18 Ky.R.)
415 KAR 1:030	3597	(See 18 Ky.R.)
605 KAR 1:190	3600	
704 KAR 3:035		
Amended	3254	(See 18 Ky.R.)
780 KAR 2:130		
Amended	3260	(See 18 Ky.R.)
805 KAR 4:085		
Amended	3270	(See 18 Ky.R.)
805 KAR 4:100		
Amended	3272	(See 18 Ky.R.)
805 KAR 4:110		
Amended	3274	(See 18 Ky.R.)
807 KAR 5:014	3072	
Withdrawn		9-13-91
900 KAR 4:010	3342	(See 18 Ky.R.)
902 KAR 10:030		
Amended	3048	(See 18 Ky.R.)
902 KAR 20:290		
Amended	3538	
902 KAR 55:075	3606	(See 18 Ky.R.)
905 KAR 1:180		
Amended	3558	
905 KAR 1:320	3608	(See 18 Ky.R.)
905 KAR 1:330	3612	
905 KAR 5:060	3075	
Amended	3470	(See 18 Ky.R.)
905 KAR 5:070	3618	

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Emergency Regulation	18 Ky.R. Page No.	Effective Date
101 KAR 1:325E	256	6-21-91
Replaced	82	9-6-91
101 KAR 2:035E	4	6-14-91
105 KAR 1:215E	979	8-21-91
200 KAR 5:330E	980	8-30-91
301 KAR 2:044E	619	8-9-91
415 KAR 1:040E	7	6-13-91
500 KAR 8:010E	9	5-31-91
Withdrawn		7-1-91
Resubmitted	257	7-1-91
500 KAR 8:020E	258	7-1-91
500 KAR 8:030E	259	7-1-91
501 KAR 6:020E	983	8-21-91
601 KAR 12:060E	621	7-26-91
701 KAR 5:090E	10	5-29-91
Replaced	217	9-6-91
702 KAR 1:001E	259	7-11-91
704 KAR 3:006E	260	7-11-91
704 KAR 20:580E	263	6-17-91
Replaced	75	8-2-91
902 KAR 20:006E	985	8-22-91
903 KAR 5:270E	265	6-17-91
Replaced	608	9-6-91
904 KAR 2:006E	622	7-19-91
904 KAR 3:020E	11	6-5-91
Replaced	202	8-21-91
904 KAR 3:025E	15	6-5-91
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905 KAR 8:150E	628	7-23-91
907 KAR 1:004E	629	7-23-91
907 KAR 1:010E	265	7-1-91
907 KAR 1:011E	640	7-23-91
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907 KAR 1:013E	646	7-24-91
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907 KAR 1:025E	654	7-19-91
907 KAR 1:027E	268	7-1-91
907 KAR 1:044E	661	7-29-91
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907 KAR 1:525E	668	7-23-91
907 KAR 1:530E	669	7-23-91
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11 KAR 4:040		
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11 KAR 8:030		
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106 KAR 1:120		
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109 KAR 11:010		
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109 KAR 11:020		
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109 KAR 11:030		
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109 KAR 12:010		
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Recodified from 200 KAR 11:020		7-8-91
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109 KAR 12:030		
Recodified from 200 KAR 11:030		7-8-91
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109 KAR 12:040		
Recodified from 200 KAR 11:040		7-8-91
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109 KAR 12:050		
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200 KAR 3:010		
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200 KAR 4:005		
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200 KAR 5:330	1255	
200 KAR 8:010		
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